

# Water management and Economic Interests

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# Water management

- ▶ Water law or water management regulates water-related interests of all kinds, both economic and conservative-protective ones.
- ▶ The Roman Law and Germanic Law traditions
  - – res nullius – public domain – private property

# Constitution, interests and social rights

- ▶ The idea of sound water resources has led to the adoption of the term “life quality” as a kind of basic right. One finds in some constitutional contexts the right of citizens to claim both good water quality and a sound living environment.

# Interests

- ▶ All elements of economy in relation to water management projects are not legally relevant. Some of them refer more to politics, development strategies and market expectations than to law.

# The PPP

- ▶ This principle of polluter pays is a strong economic principle, originally developed by the OECD in the 1960s. The principle includes the assumption that environmental costs for prevention are lower than the costs for reparation of a polluted site.
- ▶ = External costs (to be included in business costs) – incl. liability for necessary measures and recovery

# The Basin Principle and Equity

- ▶ This principle addresses decision-makers to consider impacts of planned activities not just within the border of legislation but as well beyond the borders.



# The WPFD: economic analysis

- ▶ No project may be carried out without an economic analysis of impacts in the basin and no deterioration of water quality is permitted.
- ▶ The preamble includes several references to water utilization as modes of promotable activities. These cover especially water supply but also sustainable use in general.

# Concept of the 1980s: sustainability

- ▶ What is sustainability – 4 pillars! (economy, Ecology, society, culture)
- ▶ The UN Sustainable Development Report (Gro Harlem Brundtland)
  - Social wealth and environmental protection are possible to pursue together. Has been questioned!

# WPFD: water service

- ▶ "Water services" means all services which provide, for households, public institutions or any economic activity:
  - ▶ (a) abstraction, impoundment, storage, treatment and distribution of surface water or groundwater,
  - ▶ (b) waste-water collection and treatment facilities which subsequently discharge into surface water.
39. "Water use" means water services together with any other activity identified under Article 5 and Annex II having a significant impact on the status of water. This concept applies for the purposes of Article 1 and of the economic analysis carried out according to Article 5 and Annex III, point (b).

# Water management and water governance

- ▶ “‘water governance’ refers to the range of political, social, economic and administrative systems that are in place to develop and manage water r, at different levels of society”esources, and the delivery of water services” (Hall)
- ▶ 1) the profitable or economic use of water resources and 2) the protection of the aquatic environment.

# Transboundary waters

- ▶ The UN Convention 1997 on the Law of the Non-Navigational Uses of International *Watercourses* is the main treaty governing shared freshwater resources internationally.
- ▶ Water law principles that the International Law Association (ILA) has developed since the 1960 especially in order to adopt rules for an equitable and economically as well as ecologically sustainable use of water resources. (Basin)

# Categories of water management

- ▶ Traditional: improvement of water supply, health structures, traffic structures, energy supply, food production and agriculture – installation or creation of industrial and urban sites (growth-oriented)
- ▶ Adaptive water management
- ▶ Integrated water management

# International project financing

- ▶ "From a legal perspective, an improvement in environmental indicators requires that the Bank's lending strategy continues to take into account relevant international and national legal instruments, as well as Bank environment-related policy".
- ▶ commitment "to the objectives of the project, to carry out the project with due diligence and efficiency and in conformity with appropriate practices"

# Corruption (Aled Williams and others)

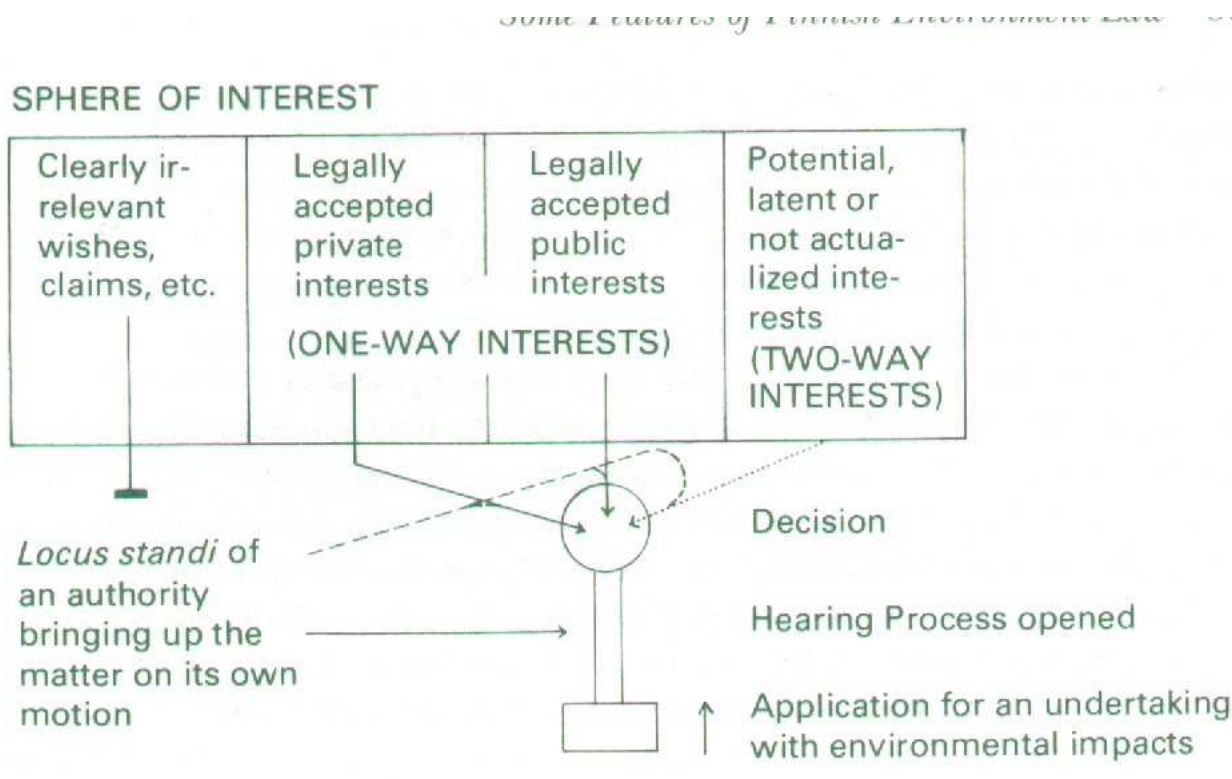
- ▶ Findings: “Poor water infrastructure in Kyrgyzstan from the Soviet era led international donors to support investments in agricultural irrigation and potable freshwater systems. The financial investments made, however, did not always underpin improvements in local water delivery and the Kyrgyz Vice President once noted that “the lion’s share of the credit was stolen”.”



# Interests in national law

- ▶ All law is about solving conflicts of interest.
- ▶ The concept of interest has numerous dimensions but from a legal point of view interests are either human-oriented or value-oriented.
- ▶ Human interests refer to health, human rights and human needs, for instance to access to water.
- ▶ Value-oriented interests refer to property and economic expectations.
- ▶ Subjects of these economic interests may be individuals but also faceless interest-groups, associations, foundations, even states and municipalities.

# Example of administrative env interests



# Three examples of discretion

## Example 1

- ▶ In a state there is an obvious need for energy and the country is rich in watercourses and waterfalls. The construction of a water plant would require a permit even in cases where the applicant owns the waterpower. It has been estimated that hydropower in addition, would solve some of the challenges in relation to the mitigation of CO<sub>2</sub> emissions. The authority and subsequently the court rejects the permit application on the basis that damage caused to private interests and fisheries is too high compared to the benefit from the installation.

# Example 2

- ▶ In another region an application proposes the construction of a large basin and several dams in the river downstream. This application is turned down despite the overwhelming economic profit both regionally and nationally. As reasons for rejection the court refers to general environmental principles and damage to the natural landscape in the region.

# Example 3

- ▶ In a different region of the same state, an international harbour was planned. The EIA had stated that there were two or three suitable locations for the harbour. In the end the permit was granted to the applicant city despite remarkable changes in both landscape and nature; even Natura 2000 species lived in the region. The authority undertook an interest analysis in which public and economic interests were assessed to supersede losses. The alternative site options were not considered in the benefit analysis.

# Modes of discretion

- ▶ Political or legal decision?
- ▶ Planning and initiation of alternative water management projects with national importance should be decided politically. The chosen alternative would then be controlled and conditioned by an independent permit authority and the courts.

▶ ¡Muchas gracias! -Thanks!