Reports of Cases

JUDGMENT OF THE COURT (Fourth Chamber)

14 March 2013*

(Environment — Directive 85/337/EEC — Assessment of the effects of certain public and private projects on the environment — Consent for such a project without an appropriate assessment — Objectives of that assessment — Conditions to which the existence of a right to compensation are subject — Whether protection of individuals against pecuniary damage is included)

In Case C-420/11,

REQUEST for a preliminary ruling under Article 267 TFEU from the Oberster Gerichtshof (Austria), made by decision of 21 July 2011, received at the Court on 10 August 2011, in the proceedings

Jutta Leth

v

Republik Österreich,

***Land* Niederösterreich,**

THE COURT (Fourth Chamber),

composed of L. Bay Larsen, (Rapporteur), President of the Chamber, J. Malenovský, U. Lõhmus, M. Safjan and A. Prechal, Judges,

Advocate General: J. Kokott,

Registrar: V. Tourrès, Administrator,

having regard to the written procedure and further to the hearing on 17 October 2012,

after considering the observations submitted on behalf of:

— Ms Leth, by W. Proksch, Rechtsanwalt,

— Republik Österreich, by C. Pesendorfer and P. Cede, acting as Agents,

— *Land* Niederösterreich, by C. Lind, Rechtsanwalt,

— the Czech Government, by D. Hadroušek and M. Smolek, acting as Agents,

— Ireland, by D. O'Hagan, acting as Agent, assisted by E. Fitzsimons, SC,

* Language of the case: German.

— the Greek Government, by G. Karipsiades, acting as Agent,

— the Italian Government, by G. Palmieri, acting as Agent, assisted by S. Varone, avvocato dello Stato,

— the Latvian Government, by I. Kalniņš and A. Nikolajeva, acting as Agents,

— the United Kingdom Government, by J. Beeko and L. Seeboruth, acting as Agents, assisted by E. Dixon, Barrister,

— the European Commission, by P. Oliver and G. Wilms, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 8 November 2012,

gives the following

Judgment

1 This request for a preliminary ruling concerns the interpretation of Article 3 of Council Directive 85/337/EEC of 27 June 1985 on the assessment of the effects of certain public and private projects on the environment (OJ 1985 L 175, p. 40), as amended by Council Directive 97/11/EC of 3 March 1997 (OJ 1997 L 73, p. 5) and by Directive 2003/35/EC of the European Parliament and of the Council of 26 May 2003 (OJ 2003 L 156, p. 17) ('Directive 85/337').

2 The request has been made in the course of proceedings between Ms Leth, on the one hand, and Republik Österreich (Republic of Austria) and *Land* Niederösterreich (State of Lower Austria), on the other, regarding her application for (i) compensation for the pecuniary damage which she claims to have sustained as a result of the decrease in the value of her home following the extension of Vienna-Schwechat airport (Austria) and (ii) a declaration that the defendants in the main proceedings will be liable for any future damage.

Legal context

European Union law

Directive 85/337

3 The first, third, sixth and eleventh recitals in the preamble to Directive 85/337 are worded as follows:

'… the … action programmes of the European Communities on the environment … stress that the best environmental policy consists in preventing the creation of pollution or nuisances at source, rather than subsequently trying to counteract their effects; … they affirm the need to take effects on the environment into account at the earliest possible stage in all the technical-planning and decision-making processes; … to that end, they provide for the implementation of procedures to evaluate such effects;

…

… in addition, it is necessary to achieve one of the Community's objectives in the sphere of the protection of the environment and the quality of life;

…

… general principles for the assessment of environmental effects should be introduced with a view to supplementing and coordinating development consent procedures governing public and private projects likely to have a major effect on the environment;

… development consent for public and private projects which are likely to have significant effects on the environment should be granted only after prior assessment of the likely significant environmental effects of these projects has been carried out; … this assessment must be conducted on the basis of the appropriate information supplied by the developer, which may be supplemented by the authorities and by the people who may be concerned by the project in question;

…

… the effects of a project on the environment must be assessed in order to take account of concerns to protect human health, to contribute by means of a better environment to the quality of life, to ensure maintenance of the diversity of species and to maintain the reproductive capacity of the ecosystem as a basic resource for life'.

4 Article 1 of Directive 85/337 states:

'1. This Directive shall apply to the assessment of the environmental effects of those public and private projects which are likely to have significant effects on the environment.

2. For the purposes of this Directive:

"project" means:

— the execution of construction works or of other installations or schemes,

— other interventions in the natural surroundings and landscape including those involving the extraction of mineral resources;

…'

5 Article 2(1) of Directive 85/337 provides:

'Member States shall adopt all measures necessary to ensure that, before consent is given, projects likely to have significant effects on the environment by virtue, inter alia, of their nature, size or location are made subject to a requirement for development consent and an assessment with regard to their effects. These projects are defined in Article 4.'

6 Article 3 of Directive 85/337 states:

'The environmental impact assessment shall identify, describe and assess in an appropriate manner, in the light of each individual case and in accordance with Articles 4 to 11, the direct and indirect effects of a project on the following factors:

— human beings, fauna and flora;

— soil, water, air, climate and the landscape;

— material assets and the cultural heritage;

— the interaction between the factors mentioned in the first, second and third indents.'

7 Under Article 4, paragraphs 1 to 3, of Directive 85/337:

‘1. Subject to Article 2(3), projects listed in Annex I shall be made subject to an assessment in accordance with Articles 5 to 10.

2. Subject to Article 2(3), for projects listed in Annex II, the Member States shall determine through:

(a) a case-by-case examination,

or

(b) thresholds or criteria set by the Member State,

whether the project shall be made subject to an assessment in accordance with Articles 5 to 10.

Member States may decide to apply both procedures referred to in (a) and (b).

3. When a case-by-case examination is carried out or thresholds or criteria are set for the purpose of paragraph 2, the relevant selection criteria set out in Annex III shall be taken into account.’

8 Article 5(1) and (3) of the Directive provides:

‘1. In the case of projects which, pursuant to Article 4, must be subjected to an environmental impact assessment in accordance with Articles 5 to 10, Member States shall adopt the necessary measures to ensure that the developer supplies in an appropriate form the information specified in Annex IV …

3. The information to be provided by the developer in accordance with paragraph 1 shall include at least:

…

— the data required to identify and assess the main effects which the project is likely to have on the environment,

…’

9 Among the projects referred to in Article 4(1) of Directive 85/337 are, according to Annex I, paragraphs 7(a) and 22, the ‘[c]onstruction of lines for long-distance railway traffic and of airports with a basic runway length of 2 100 m or more’ and ‘[a]ny change to or extension of projects listed in this Annex where such a change or extension in itself meets the thresholds, if any, set out in this Annex.’

10 The first indent of paragraph 13 of Annex II to Directive 85/337 includes, among the projects referred to in Article 4(2) of that directive, ‘[a]ny change or extension of projects listed in Annex I …, already authorised, executed or in the process of being executed, which may have significant adverse effects on the environment (change or extension not included in Annex I)’.

11 Annex IV to the directive, entitled ‘Information referred to in Article 5(1)’ states, in paragraphs 3 to 5:

‘3. A description of the aspects of the environment likely to be significantly affected by the proposed project, including, in particular, population, fauna, flora, soil, water, air, climatic factors, material assets, including the architectural and archaeological heritage, landscape and the inter-relationship between the above factors.

4. A description … of the likely significant effects of the proposed project on the environment resulting from:

— the existence of the project,

— the use of natural resources,

— the emission of pollutants, the creation of nuisances and the elimination of waste,

and the description by the developer of the forecasting methods used to assess the effects on the environment.

5. A description of the measures envisaged to prevent, reduce and, where possible, offset any significant adverse effects on the environment.'

Austrian law

12 Directive 85/337 was transposed into Austrian law by the Law of 1993 on the environmental impact assessment (Umweltverträglichkeitsprüfungsgesetz 1993; 'UVP-G 1993'), which was in force from 1 July 1994 until the entry into force, on 11 August 2000, of the Law of 2000 on the environmental impact assessment (Umweltverträglichkeitsprüfungsgesetz 2000), which was designed to transpose Directive 97/11.

The dispute in the main proceedings and the questions referred for a preliminary ruling

13 Since 1997, Ms Leth, the applicant in the main proceedings, has been the owner of a property situated within the security zone of Vienna-Schwechat airport. She lives in the house built on that property.

14 Since the accession of the Republic of Austria to the European Union, on 1 January 1995, the authorities of the defendants in the main proceedings have, without carrying out environmental impact assessments, consented to and completed several projects relating to the development and extension of Vienna-Schwechat airport. By decision of 21 August 2001, the Minister-President of *Land* Niederösterreich expressly stated that no environmental impact assessment procedure was necessary in relation to the continued development and certain extensions of that airport.

15 In 2009, Ms Leth brought an action before the Landesgericht für Zivilrechtssachen Wien (Regional Civil Court, Vienna) against the two defendants in the main proceedings, in which she sought payment by them of EUR 120 000 in respect of the decrease in the value of her property, in particular as a result of aircraft noise, and a declaration that the defendants will be liable for any future damage, including damage to her health, arising from the late and incomplete transposition of Directive 85/337, Directive 97/11, and Directive 2003/35, and from the failure to carry out an environmental impact assessment before giving the various consents relating to the development of Vienna-Schwechat airport. The defendants in the main proceedings have contended that their authorities acted lawfully and without negligence, and that the claim brought is time-barred.

16 The Landesgericht für Zivilrechtssachen Wien dismissed the action in its entirety on the ground that the rights relied upon were time-barred. By way of a part-judgment on the appeal, the Oberlandesgericht Wien (Higher Regional Court, Vienna) confirmed the dismissal of the claim for payment of EUR 120 000, but set aside the dismissal of the claim in relation to the application for a declaration that the defendants in the main proceedings would be liable for future damage, referring the case back to the first-instance court in order for it to rule afresh on that latter application. In that respect, the Oberlandesgericht Wien found that the claim for payment of EUR 120 000 related only to

purely pecuniary damage, which did not come within the objective of protection pursued by the provisions of European Union law, in particular those of the relevant directives, and by national law. As regards the application for a declaration of liability in respect of future damage, that court found that that application was not time-barred. Subsequently, an appeal on a point of law ('Revision') against the dismissal of the claim for that payment and an appeal against the referral back of the application for a declaration of liability were brought before the referring court.

17 The referring court takes the view that the decision on those claims, which are in any event not time-barred in their entirety, depends on whether the duty of the competent authorities of the Member State concerned to carry out an environmental impact assessment, laid down in both European Union law and national law, is liable to protect the individuals concerned against purely pecuniary damage caused by a project in respect of which such an assessment has not been carried out.

18 It is in that context that the Oberster Gerichtshof (Supreme Court, Austria) decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

'Is Article 3 of Directive 85/337 …, as amended by Directive 97/11 … and by Directive 2003/35 …, to be interpreted as meaning that:

1. the term 'material assets' covers only their substance or also their value;

2. the environmental impact assessment serves also to protect an individual against pecuniary damage as a result of a decrease in the value of his property?'

Procedure before the Court

19 By letter of 21 December 2012, the applicant in the main proceedings requested the reopening of the oral procedure, claiming, first, that, in examining – in her Opinion delivered on 8 November 2012 – the issue of whether the environmental impact assessment under Article 3 of Directive 85/337 includes the assessment of the effects of the project under examination on the value of material assets, the Advocate General introduced a new question which had not been posed by the referring court and which had not been the subject of an exchange of views between the interested persons referred to in Article 23 of the Statute of the Court of Justice of the European Union, and, as a consequence, the first question as posed by the referring court was not answered. Secondly, she claims that those interested persons did not have the opportunity to exchange views on the consequences to be drawn from the fact that the public concerned was not informed of the projects at issue and could not, therefore, participate in the decision-making process.

20 In that respect, it must be pointed out that, under Article 83 of its Rules of Procedure, the Court may at any time, after hearing the Advocate General, order the reopening of the oral part of the procedure, in particular if it considers that it lacks sufficient information or where the case has to be decided on the basis of an argument which has not been debated between the parties or the interested persons referred to in Article 23 of the Statute.

21 In the present case, the Court considers that the request for a preliminary ruling does not need to be examined on the basis of an argument that has not yet been debated before it and that it has all the information necessary to deal with the request for a preliminary ruling.

22 The request by the applicant in the main proceedings that a new hearing be held and her alternative application for leave to submit additional written observations must therefore be dismissed.

The questions referred to the Court

23 By its questions, the referring court asks, in essence, whether Article 3 of Directive 85/337 must be interpreted as meaning, first, that the environmental impact assessment, as provided for in that article, includes the assessment of the effects of the project under examination on the value of material assets and, secondly, that the fact that an environmental impact assessment has not been carried out, in breach of Directive 85/337, confers on an individual a right to compensation for pecuniary damage caused by a decrease in the value of his property resulting from the environmental effects of the project under examination.

24 As regards the term 'material assets' within the meaning of Article 3 of Directive 85/337, it must be recalled that, according to settled case-law, it follows from the need for a uniform application of European Union law that the terms of a provision of European Union law which makes no express reference to the law of the Member States for the purpose of determining its meaning and scope must normally be given an independent and uniform interpretation throughout the European Union, having regard to the context of the provision and the objective pursued by the legislation in question (see Case C-287/98 *Linster* [2000] ECR I-6917, paragraph 43, and Case C-497/10 PPU *Mercredi* [2010] ECR I-14309, paragraph 45).

25 Pursuant to Article 3 of Directive 85/337, it is necessary to examine the direct and indirect effects of a project on, inter alia, human beings and material assets and, in accordance with the fourth indent of that article, it is also necessary to examine such effects on the interaction between those two factors. Therefore, it is necessary to examine, in particular, the effects of a project on the use of material assets by human beings.

26 It follows that, in the assessment of projects such as those at issue in the main proceedings, which are liable to result in increased aircraft noise, it is necessary to assess the effects of the latter on the use of buildings by human beings.

27 However, as has correctly been pointed out by *Land* Niederösterreich and by several of the governments which have submitted observations to the Court, an extension of the environmental assessment to the pecuniary value of material assets cannot be inferred from the wording of Article 3 of Directive 85/337 and would also not be in accordance with the purpose of that directive.

28 It follows from Article 1(1) of, and from the first, third, fifth and sixth recitals in the preamble to, Directive 85/337 that the purpose of that directive is an assessment of the effects of public and private projects on the environment in order to attain one of the Community's objectives in the sphere of the protection of the environment and the quality of life. The information which must be supplied by the developer in accordance with Article 5(1) of, and Annex IV to, Directive 85/337, as well as the criteria which enable Member States to determine whether small-scale projects, meeting the characteristics laid down in Annex III to that directive, require a environmental assessment, also relate to that purpose.

29 Consequently, it is necessary to take into account only those effects on material assets which, by their very nature, are also likely to have an impact on the environment. Accordingly, pursuant to Article 3 of that directive, an environmental impact assessment carried out in accordance with that article is one which identifies, describes and assesses the direct and indirect effects of noise on human beings in the event of use of a property affected by a project such as that at issue in the main proceedings.

30 It must therefore be held that the environmental impact assessment, as provided for in Article 3 of Directive 85/337, does not include the assessment of the effects which the project under examination has on the value of material assets.

31 That finding, however, does not necessarily imply that Article 3 of Directive 85/337 must be interpreted as meaning that the fact that an environmental impact assessment has not been carried out, contrary to the requirements of that directive, in particular an assessment of the effects on one or more of the factors set out in that provision other than that of material assets, does not entitle an individual to any compensation for pecuniary damage which is attributable to a decrease in the value of his material assets.

32 It must be recalled, from the outset, that the Court has already ruled that an individual may, where appropriate, rely on the duty to carry out an environmental impact assessment under Article 2(1) of Directive 85/337, read in conjunction with Articles 1(2) and 4 thereof (see Case C-201/02 *Wells* [2004] ECR I-723, paragraph 61). That directive thus confers on the individuals concerned a right to have the environmental effects of the project under examination assessed by the competent services and to be consulted in that respect.

33 Accordingly, it is necessary to examine whether Article 3 of Directive 85/337, read in conjunction with Article 2 thereof, is intended, in the event of an omission to carry out an environmental impact assessment, to confer on individuals a right to compensation for pecuniary damage such as that invoked by Ms Leth.

34 In that respect, it follows from the third and eleventh recitals in the preamble to Directive 85/337 that the purpose of that directive is to achieve one of the European Union's objectives in the sphere of the protection of the environment and the quality of life and that the effects of a project on the environment must be assessed in order to take account of the concerns to contribute by means of a better environment to the quality of life.

35 In circumstances where exposure to noise resulting from a project covered by Article 4 of Directive 85/337 has significant effects on individuals, in the sense that a home affected by that noise is rendered less capable of fulfilling its function and the individuals' environment, quality of life and, potentially, health are affected, a decrease in the pecuniary value of that house may indeed be a direct economic consequence of such effects on the environment, this being a matter which must be examined on a case-by-case basis.

36 It must therefore be concluded that the prevention of pecuniary damage, in so far as that damage is the direct economic consequence of the environmental effects of a public or private project, is covered by the objective of protection pursued by Directive 85/337. As such economic damage is a direct consequence of such effects, it must be distinguished from economic damage which does not have its direct source in the environmental effects and which, therefore, is not covered by the objective of protection pursued by that directive, such as, inter alia, certain competitive disadvantages.

37 As regards a right to compensation for such pecuniary damage, it follows from the Court's settled case-law that, under the principle of sincere cooperation laid down in Article 4(3) TEU, Member States are required to nullify the unlawful consequences of a breach of European Union law. In that regard, the Court has already held that, in order to remedy the failure to carry out an environmental impact assessment of a project within the meaning of Article 2(1) of Directive 85/337, it is for the national court to determine whether it is possible under national law for a consent already granted to be revoked or suspended in order to subject the project in question to an assessment of its environmental impacts, in accordance with the requirements of Directive 85/337, or alternatively, if the individual so agrees, whether it is possible for the latter to claim compensation for the harm suffered (see *Wells*, paragraphs 66 to 69).

38 The detailed procedural rules that are applicable are a matter for the domestic legal order of each Member State, under the principle of procedural autonomy of the Member States, provided that they are not less favourable than those governing similar domestic situations (principle of equivalence) and that they do not render impossible in practice or excessively difficult the exercise of rights conferred by the European Union legal order (principle of effectiveness) (see *Wells*, paragraph 67).

39 Thus, it is on the basis of the rules of national law on liability that the Member State must make reparation for the consequences of the loss or damage caused, provided that the conditions for reparation of that loss or damage laid down by national law ensure compliance with the principles of equivalence and effectiveness recalled in the previous paragraph (see Joined Cases C-46/93 and C-48/93 *Brasserie du Pêcheur and Factortame* [1996] ECR I-1029, paragraph 67).

40 It must, however, be pointed out that European Union law confers on individuals, under certain conditions, a right to compensation for damage caused by breaches of European Union law. According to the Court's settled case-law, the principle of State liability for loss or damage caused to individuals as a result of breaches of European Union law for which the State can be held responsible is inherent in the system of the treaties on which the European Union is based (see Case C-429/09 *Fuß* [2010] ECR I-12167, paragraph 45 and the case-law cited).

41 In that respect, the Court has repeatedly held that individuals who have been harmed have a right to reparation if three conditions are met: the rule of European Union law infringed must be intended to confer rights on them; the breach of that rule must be sufficiently serious; and there must be a direct causal link between that breach and the loss or damage sustained by the individuals (see, *Fuß*, paragraph 47, and Case C-568/08 *Combinatie Spijker Infrabouw-De Jonge Konstruktie and Others* [2010] ECR I-12655, paragraph 87 and the case-law cited).

42 Those three conditions are necessary and sufficient to found a right in individuals to obtain redress on the basis of European Union law directly, although this does not mean that the Member State concerned cannot incur liability under less strict conditions on the basis of national law (see *Brasserie du Pêcheur and Factortame*, paragraph 66).

43 It is, in principle, for the national courts to apply the criteria, directly on the basis of European Union law, for establishing the liability of Member States for damage caused to individuals by breaches of European Union law, in accordance with the guidelines laid down by the Court for the application of those criteria (see Case C-446/04 *Test Claimants in the FII Group Litigation* [2006] ECR I-11753, paragraph 210 and the case-law cited).

44 In that regard, it has already been established, in paragraphs 32 and 36 of the present judgment, that Directive 85/337 confers on the individuals concerned a right to have the effects on the environment of the project under examination assessed by the competent services, and that pecuniary damage, in so far as it is a direct economic consequence of the environmental effects of a public or private project, is covered by the objective of protection pursued by Directive 85/337.

45 However, as indicated in paragraph 41 of the present judgment, the existence of a direct causal link between the breach in question and the damage sustained by the individuals is, in addition to the determination that the breach of European Union law is sufficiently serious, an indispensable condition governing the right to compensation. The existence of that direct causal link is also a matter for the national courts to ascertain, in accordance with the guidelines laid down by the Court.

46 To that end, the nature of the rule breached must be taken into account. In the present case, that rule prescribes an assessment of the environmental impact of a public or private project, but does not lay down the substantive rules in relation to the balancing of the environmental effects with other factors or prohibit the completion of projects which are liable to have negative effects on the environment.

Those characteristics suggest that the breach of Article 3 of Directive 85/337, that is to say, in the present case, the failure to carry out the assessment prescribed by that article, does not, in principle, by itself constitute the reason for the decrease in the value of a property.

47 Consequently, it appears that, in accordance with European Union law, the fact that an environmental impact assessment was not carried out, in breach of the requirements of Directive 85/337, does not, in principle, by itself confer on an individual a right to compensation for purely pecuniary damage caused by the decrease in the value of his property as a result of environmental effects. However, it is ultimately for the national court, which alone has jurisdiction to assess the facts of the dispute before it, to determine whether the requirements of European Union law applicable to the right to compensation, in particular the existence of a direct causal link between the breach alleged and the damage sustained, have been satisfied.

48 The answer to the questions referred is therefore that Article 3 of Directive 85/337 must be interpreted as meaning that the environmental impact assessment, as provided for in that article, does not include the assessment of the effects which the project under examination has on the value of material assets. However, pecuniary damage, in so far as it is the direct economic consequence of the effects on the environment of a public or private project, is covered by the objective of protection pursued by Directive 85/337. The fact that an environmental impact assessment has not been carried out, in breach of the requirements of that directive, does not, in principle, by itself, according to European Union law, and without prejudice to rules of national law which are less restrictive as regards State liability, confer on an individual a right to compensation for purely pecuniary damage caused by the decrease in the value of his property as a result of the environmental effects of that project. However, it is for the national court to determine whether the requirements of European Union law applicable to the right to compensation, including the existence of a direct causal link between the breach alleged and the damage sustained, have been satisfied.

Costs

49 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national court, the decision on costs is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (Fourth Chamber) hereby rules:

Article 3 of Council Directive 85/337/EEC of 27 June 1985 on the assessment of the effects of certain public and private projects on the environment, as amended by Council Directive 97/11/EC of 3 March 1997 and by Directive 2003/35/EC of the European Parliament and of the Council of 26 May 2003, must be interpreted as meaning that the environmental impact assessment, as provided for in that article, does not include the assessment of the effects which the project under examination has on the value of material assets. However, pecuniary damage, in so far as it is the direct economic consequence of the effects on the environment of a public or private project, is covered by the objective of protection pursued by Directive 85/337.

The fact that an environmental impact assessment has not been carried out, in breach of the requirements of that directive, does not, in principle, by itself, according to European Union law, and without prejudice to rules of national law which are less restrictive as regards State liability, confer on an individual a right to compensation for purely pecuniary damage caused by the decrease in the value of his property as a result of the environmental effects of that project. However, it is for the national court to determine whether the requirements of European Union law applicable to the right to compensation, including the existence of a direct causal link between the breach alleged and the damage sustained, have been satisfied.

[Signatures]