JUDGMENT OF THE COURT (First Chamber)
18 December 1997 *

In Case C-309/96,

REFERENCE to the Court under Article 177 of the EC Treaty by the Pretura Circondariale di Roma, Sezione Distaccata di Tivoli, for a preliminary ruling in the proceedings pending before that court between

Daniele Annibaldi

and

Sindaco del Comune di Guidonia,

Presidente Regione Lazio,

on the interpretation of Article 40(3) of the EC Treaty and of the general principles of Community law,

THE COURT (First Chamber),

composed of: D. A. O. Edward (Rapporteur), acting for the President of the First Chamber, P. Jann and L. Sevón, Judges,

* Language of the case: Italian.

Advocate General: G. Cosmas,
Registrar: R. Grass,

after considering the written observations submitted on behalf of:

— Mr Annibaldi, by Romano Vaccarella, of the Rome Bar,

— the Mayor of the Municipality of Guidonia, by Giovanni Mascioli, of the Rome Bar,

— the President of the Lazio Region, by Giuseppe La Cute, Aldo Rivela and Massimo Luciani, of the Rome Bar,

— the Commission of the European Communities, by Paolo Ziotti, of its Legal Service, acting as Agent,

having regard to the Report of the Judge-Rapporteur,

after hearing the Opinion of the Advocate General at the sitting on 2 October 1997,

gives the following

Judgment

1 By order of 9 September 1996, received at the Court on 23 September 1996, the Pretura Circondariale di Roma, Sezione Distaccata di Tivoli (Rome District

Magistrates' Court, Tivoli Division) referred to the Court for a preliminary ruling under Article 177 of the EC Treaty two questions on the interpretation of Article 40(3) of the EC Treaty and of the general principles of Community law.

2 Those questions were raised in proceedings between Mr Annibaldi, on the one hand, and the Municipality of Guidonia and the Lazio Region, on the other, concerning the refusal to grant Mr Annibaldi permission to plant an orchard of 3 hectares within the perimeter of a regional park.

3 Article 1 of Lazio Regional Law No 22 of 20 June 1996 (*Supplemento Ordinario No 2* of the *Bollettino Ufficiale della Regione Lazio* No 18 of 1 July 1996, p. 3, 'the Regional Law') established Inviolata Nature and Archaeological Park. According to Article 2(1) of that Law, the park was created in order to protect and enhance the value of the environment and the cultural heritage of the area concerned.

4 In order to achieve those objectives, Articles 7, 8 and 9 of the Regional Law impose a number of prohibitions on certain activities within the perimeter of the park which, in exceptional cases, are subject to certain derogations relating to the pursuit of the objectives of the park and require, as a general rule, special permission to be granted by the managing organization. The prohibitions provided for in Article 7 of the Regional Law include changes in cultivation and movement of soil (Article 7(e)), the driving or parking of motor vehicles (Article 7(g)), the opening of new roads or access paths (Article 7(h)) and all construction work (Article 7(l)).

5 Under Article 9(2) of the Regional Law, part of the funds intended for the management of the park is to be used to pay compensation for loss of income resulting, in particular, from the application of the rules relating to the use of forest and agricultural areas of the park.

6 Mr Annibaldi is the owner of an agricultural holding known as 'Prato Rotondo', situated within the Municipality of Guidonia; of its 65 hectares, 35 are included within the park.

7 By letter of 8 August 1996, the Mayor of Guidonia, in his capacity as manager of the park, refused to grant Mr Annibaldi permission to plant an orchard of 3 hectares within the park.

8 Mr Annibaldi, considering that the Regional Law effects, in essence, expropriations without compensation, brought an action on 26 August 1996 against that refusal before the Pretura Circondariale di Roma. He claimed that the Regional Law was contrary to the provisions of the EC Treaty, in particular Articles 40 and 52 thereof, to the general principles of law, in particular those concerning property, carrying on business and equal treatment by the national authorities, and to the Italian Constitution.

9 Taking the view that the dispute raised certain questions involving the interpretation of Community law, the Pretura Circondariale di Roma stayed proceedings and referred the following questions to the Court of Justice for a preliminary ruling:

'1. Is a national law which requires undertakings incorporated within a nature and archaeological park to refrain from any activity whatsoever in the area concerned — which amounts to a substantial expropriation of the undertakings incorporated within the park itself without any provision being made for payment of compensation to the individuals whose property is expropriated — in breach of the fundamental right to property, to carry on business and to equal treatment by the national authorities?

2. Irrespective of the answer which the Court of Justice may consider appropriate in response to the first question, are the measures provided for by Article 7 of the Regional Law in question (equivalent, for the purposes of proceedings under Community law, to any other national legislation) in breach of the principle of equal treatment and the related prohibition of discrimination laid down in the second subparagraph of Article 40(3) of the Treaty of Rome?'

The Court's jurisdiction

10 The Lazio Region and the Commission take the view that the Court has no jurisdiction to give a ruling on the questions referred since the provisions of the Regional Law do not fall within the scope of Community law.

11 Mr Annibaldi, on the other hand, considers that the Court is entitled to identify the general principles of the Community legal order in reply to questions referred to it for a preliminary ruling on the interpretation of those principles.

12 It should be observed at the outset that, as the Court has consistently held (see, in particular, Opinion 2/94 of 28 March 1996 [1996] ECR I-1759, paragraph 33), fundamental rights form an integral part of the general principles of law, the observance of which it ensures. For that purpose, the Court draws inspiration from the constitutional traditions common to the Member States and from the guidelines supplied by international treaties for the protection of human rights on which the Member States have collaborated or of which they are signatories. The European Convention for the Protection of Human Rights and Fundamental Freedoms of 4 November 1950 ('the Convention') has special significance in that respect. It follows that the Community cannot accept measures which are incompatible with observance of the human rights thus recognized and guaranteed (see, in particular, Case C-260/89 *ERT* [1991] ECR I-2925, paragraph 41).

13 It is also apparent from the Court's case-law (see, in particular, Case C-299/95 *Kremzow* v *Austrian State* [1997] ECR I-2629, paragraph 15) that, where national legislation falls within the scope of Community law, the Court, in a reference for a preliminary ruling, must give the national court all the guidance as to interpretation necessary to enable it to assess the compatibility of that legislation with the fundamental rights — as laid down in particular in the Convention — whose observance the Court ensures. However, the Court has no such jurisdiction with regard to national legislation lying outside the scope of Community law.

14 Accordingly, it is necessary to consider whether national legislation, such as the Regional Law, which establishes a nature and archaeological park in order to protect and enhance the value of the environment and the cultural heritage of the area concerned, falls within the scope of Community law, in particular Article 40(3) of the Treaty.

15 First of all, Article 2 of the EC Treaty defines the task of the Community and its aims are set out in Article 3 (see, in particular, Case C-177/94 *Perfili* [1996] ECR I-161, paragraph 10). Under Article 3(e) and (k) of the EC Treaty, the activities of the Community are to include the implementation of common policies in the spheres of agriculture and the environment.

16 Next, Article 128 of the EC Treaty provides for action by the Community in the field of culture including, in particular, the conservation and safeguarding of cultural heritage of European significance (second indent of Article 128(2)).

17 Finally, Article 222 of the EC Treaty provides that it 'shall in no way prejudice the rules in Member States governing the system of property ownership'.

18 Under the second subparagraph of Article 40(3) of the Treaty, the common organization of the agricultural markets to be established in the context of the common agricultural policy must 'exclude any discrimination between producers or consumers within the Community'. That prohibition of discrimination is merely a specific enunciation of the general principle of equality which is one of the fundamental principles of Community law (see, in particular, Joined Cases 201/85 and 202/85 *Klensch and Others* v *Secrétaire d'État* [1986] ECR 3477, paragraph 9, and Case C-2/92 *The Queen* v *Ministry of Agriculture, Fisheries and Food* ex parte *Bostock* [1994] ECR I-955, paragraph 23).

19 In particular, Article 40(3) of the Treaty covers all measures relating to the common organization of the agricultural markets, irrespective of the authority which lays them down. Consequently, it is also binding on the Member States when they are implementing the said common organization (see, in particular, *Klensch and Others*, cited above, paragraph 8, and Case C-351/92 *Graff* v *Hauptzollamt Köln-Rheinau* [1994] ECR I-3361, paragraph 18).

20 Furthermore, the Court has consistently held (see Joined Cases 141/81, 142/81 and 143/81 *Holdijk and Others* [1982] ECR 1299, paragraph 12, and Case 118/86 *Openbaar Ministerie* v *Nertsvoederfabriek Nederland* [1987] ECR 3883, paragraph 12) that the establishment of a common organization of the agricultural markets pursuant to Article 40 of the Treaty does not have the effect of exempting agricultural producers from any national provisions intended to attain objectives other than those covered by the common organization, even though such provisions may, by affecting the conditions of production, have an impact on the volume or the cost of national production and therefore on the operation of the common market in the sector concerned. The prohibition of any discrimination between producers in the Community, laid down in the second subparagraph of Article 40(3) of the Treaty, refers to the objectives pursued by the common organization and not to the various conditions of production resulting from national rules which are general in character and pursue other objectives (see *Holdijk and Others*, cited above, paragraph 12).

21 Against that background, it is clear, first of all, that there is nothing in the present case to suggest that the Regional Law was intended to implement a provision of Community law either in the sphere of agriculture or in that of the environment or culture.

22 Next, even if the Regional Law be capable of affecting indirectly the operation of a common organization of the agricultural markets, it is not in dispute that, the park having been created to protect and enhance the value of the environment and the cultural heritage of the area concerned, the Regional Law pursues objectives other than those covered by the common agricultural policy, or that the Law itself is general in character.

23 Finally, given the absence of specific Community rules on expropriation and the fact that the measures relating to the common organization of the agricultural markets have no effect on systems of agricultural property ownership, it follows from the wording of Article 222 of the Treaty that the Regional Law concerns an area which falls within the purview of the Member States.

24 Accordingly, as Community law stands at present, national legislation such as the Regional Law, which establishes a nature and archaeological park in order to protect and enhance the value of the environment and the cultural heritage of the area concerned, applies to a situation which does not fall within the scope of Community law.

25 The Court therefore has no jurisdiction to answer the questions referred by the Pretura Circondariale di Roma.

Costs

26 The costs incurred by the Commission of the European Communities, which has submitted observations to the Court, are not recoverable. Since these proceedings are, for the parties to the main proceedings, a step in the proceedings pending before the national court, the decision on costs is a matter for that court.

On those grounds,

THE COURT (First Chamber),

in answer to the questions referred to it by the Pretura Circondariale di Roma, Sezione Distaccata di Tivoli, by order of 9 September 1996, hereby rules:

The Court has no jurisdiction to answer the questions referred by the Pretura Circondariale di Roma.

Edward Jann Sevón

Delivered in open court in Luxembourg on 18 December 1997.

R. Grass M. Wathelet

Registrar President of the First Chamber