JUDGMENT OF THE COURT (Sixth Chamber)
12 December 1996 *

In Case C-142/95 P,

Associazione Agricoltori della Provincia di Rovigo,

Associazione Polesana Coltivatori Diretti di Rovigo,

Consorzio Cooperative Pescatori del Polesine,

Cirillo Brena,

represented by Ivone Cacciavillani, of the Venice Bar, with an address for service in Luxembourg at the Chambers of Alain Lorang, 51 Rue Albert 1er,

appellants,

APPEAL against the order of the Court of First Instance of the European Communities of 21 February 1995 in Case T-117/94 *Associazione Agricoltori della Provincia di Rovigo and Others* v *Commission* [1995] ECR II-455, seeking to have that order set aside,

the other parties to the proceedings being:

* Language of the case: Italian.

Commission of the European Communities, represented by Lucio Gussetti, of its Legal Service, acting as Agent, with an address for service in Luxembourg at the office of Carlos Gómez de la Cruz, of its Legal Service, Wagner Centre, Kirchberg,

Mauro Girello,

Greguoldo Daniele,

THE COURT (Sixth Chamber),

composed of: G. F. Mancini, President of the Chamber, J. L. Murray, C. N. Kakouris, G. Hirsch and H. Ragnemalm (Rapporteur), Judges,

Advocate General: D. Ruiz-Jarabo Colomer,
Registrar: R. Grass,

having regard to the report of the Judge-Rapporteur,

after hearing the Opinion of the Advocate General at the sitting on 12 September 1996,

gives the following

Judgment

1 By application lodged at the Registry of the Court of Justice on 4 May 1995, Associazione Agricoltori della Provincia di Rovigo, Associazione Polesana Coltivatori Diretti di Rovigo, Consorzio Cooperative Pescatori del Polesine and

Cirillo Brena ('the appellants') brought an appeal pursuant to Article 49 of the EC Statute of the Court of Justice against the order of 21 February 1995 in Case T-117/94 *Associazione Agricoltori della Provincia di Rovigo and Others* v *Commission* [1995] ECR II-455, by which the Court of First Instance dismissed as inadmissible an action for annulment of the decision of the Commission of the European Communities of 15 October 1993 ('the contested decision') approving financing measures under Council Regulation (EEC) No 1973/92 establishing a financial instrument for the environment (LIFE) (OJ 1992 L 206, p. 1, hereinafter 'the regulation').

2 Article 1 of the regulation established a financial instrument for the environment, the objective of which is to contribute to the development and implementation of Community environmental policy and legislation, essentially by financing priority actions in the Community.

3 Article 9(1) of the regulation provides that proposals for actions to be financed are to be submitted to the Commission by the Member States. Upon the conclusion of the committee procedure provided for in Article 13 of the regulation, the Commission is to approve the actions to be financed under the regulation by adopting a 'framework decision'. That decision specifies, in particular, the way in which the appropriations are to be allocated among the Member States and as between projects. On the basis of the framework decision, the Commission, acting pursuant to Article 9(5) of the regulation, may either adopt a decision approving the action concerned, addressed to the Member States, or conclude with the beneficiaries responsible for the implementation of the actions in question a contract or agreement governing the rights and obligations of the parties.

4 According to the contested order, in 1992 the Italian Republic submitted to the Commission two proposals for actions relating to the Po delta area for which it sought financing under the regulation (paragraph 3).

5 On 15 October 1993 the Commission approved, by means of the contested decision, the actions to be financed under the regulation. That decision constituted a framework decision specifying the way in which the appropriations were to be allocated among Member States and as between the different projects. The projects thus approved included the Po delta programme, which resulted from an amalgamation of the two Italian proposals (paragraph 6).

6 In the meantime, the Commission had negotiated the procedures for implementing the Po delta programme with the Italian Ministry for the Environment, the Italian Ministry for the Coordination of Agricultural, Food and Forestry Policies, the Veneto region, the region of Emilia-Romagna, the provinces concerned and the Lega Italiana Protezione Uccelli (LIPU — Italian Society for the Protection of Birds) (paragraph 7).

7 The appellants are two associations comprising, respectively, agriculturalists and farmers operating in the Province of Rovigo, a consortium of cooperatives made up of professional fishermen from the same province and a landowner and farmer carrying on his activities in the Po delta area.

8 On 23 March 1994 the appellants brought an action before the Court of First Instance in which, relying on three pleas, they sought annulment of the contested decision. The first plea alleged 'an *ultra vires* act having a defective basis' and lack of competence, the second infringement of the third subparagraph of Article 2(2) of the regulation, and the third infringement of the second paragraph of Article 1 and misuse of powers.

9 The appellants argued, in essence, that, by submitting the project in question to the Commission, the Italian Government had disregarded Italian law and the principle of sound administration, and that, by granting financial assistance for the project, the Commission had disregarded the provisions of the regulation and the objectives of Community environmental policy.

10 The Commission raised an objection of inadmissibility on the ground that the contested measure was not of direct and individual concern to the appellants.

11 The appellants argued in that regard that they had all been entitled to take part in the procedure by which the Po delta programme was drawn up and shaped. That entitlement ensued, in particular, from the second paragraph of Article A of the Treaty on European Union, Articles 1 and 2 of the regulation and the Community programme of policy and action in relation to the environment and sustainable development, the general approach and strategy of which were adopted by resolution of the Council and the Representatives of the Governments of the Member States, meeting within the Council, of 1 February 1993 (OJ 1993 C 138, pp. 1 and 5, hereinafter 'the Fifth Environment Action Programme'). Moreover, the associations had an interest of their own, which was separate from that of their members and which stemmed from the Italian Constitution.

The contested order

12 The Court of First Instance found in the first place that the contested decision was addressed to all the Member States at that time, with the exception of the Kingdom of Belgium and the Grand Duchy of Luxembourg (paragraph 23).

13 The Court of First Instance further found that, in so far as it granted financial assistance to the Po delta programme, the contested decision constituted a measure of general scope which applied to situations determined objectively and had legal effects with regard to categories of persons viewed generally and in the abstract (paragraph 24).

14 The Court of First Instance, referring to the judgment of the Court of Justice in Case 231/82 *Spijker* v *Commission* [1983] ECR 2559, paragraph 9, held that the decision concerned the applicants who were physical persons merely by virtue of their objective capacity as agriculturalists operating in the Po delta area in the same manner as any other agriculturalist who was, or might in the future be, in the same situation (paragraph 25).

15 As regards the three applicant associations, the Court of First Instance drew attention to the order of the Court of Justice in Case 60/79 *Fédération Nationale des Producteurs de Vins de Table et Vins de Pays* v *Commission* [1979] ECR 2429 and the judgment of the Court of Justice in Case 282/85 *DEFI* v *Commission* [1986] ECR 2469, paragraph 16, according to which it cannot be accepted as a principle that an association, in its capacity as the representative of a category of traders, is individually concerned by a measure affecting the general interests of that category. It therefore held that the three applicant associations were not concerned by the contested decision, which affected the general interests of the category of traders which they represented, otherwise than in their capacity as representatives of that category (paragraphs 27 and 28).

16 The Court of First Instance further found that none of the provisions relied on by the applicants in support of their claim to be entitled to take part in the procedure by which the Po delta programme was drawn up and shaped placed the Commission under any duty, before granting financial assistance under the regulation, to take account of the particular situation of each of the agriculturalists carrying on activities in the areas concerned or of each of the associations representing them, or to consult them (paragraph 30).

17 The Court of First Instance therefore dismissed the action as inadmissible.

The appeal

18 In their appeal, the appellants request the Court to set aside the contested order, to declare the action admissible and to make an order for costs in their favour.

19 The appellants complain, in essence, that the Court of First Instance erred in law in finding that the contested decision was not of individual concern to them. Since they were entitled to take part in the procedure by which the Po delta programme was drawn up, they should have been regarded as individually concerned by it, and should therefore have the right to apply for its annulment.

20 The appellants base that argument on the following reasoning. The regulation was adopted on 21 May 1992. On 1 February 1993 the Council and the representatives of the Governments of the Member States adopted the resolution concerning the Fifth Environment Action Programme. Lastly, the contested decision was adopted by the Commission on 15 October 1993. In those circumstances, the approval of the Po delta programme should have taken account of the guidelines set out in the Fifth Environment Action Programme.

21 The Fifth Environment Action Programme constituted a radical turning-point in Community environmental policy, since it introduced the principle of responsibility-sharing at all levels of society. In thus applying the principle of subsidiarity, it required those principally concerned by environmental protection measures to act in concert and to work together in a spirit of cooperation. It is in the light of those considerations that the situation of individuals and representative

associations operating in the Po delta area should have been assessed in relation to any measure devised and implemented for the conservation of the natural habitat in the delta.

22 As regards measures to preserve or restore natural habitats, the appellants further observe that the Fifth Environment Action Programme acknowledges that agriculturalists are one of the main groups concerned. Consequently, the financing of the Po delta programme required the active participation of agriculturalists, or at least of the main organizations representing farmers. Moreover, the right of representative organizations to take part in the formulation of environmental protection measures is recognized in most Member States. In the present case, all the main interested parties apart from agriculturalists took part in the preparation and implementation of the Po delta programme.

Admissibility

23 The Commission maintains that the appellants are seeking in their appeal to show that it disregarded an alleged obligation to consult them before adopting the contested decision. That plea was not raised before the Court of First Instance, as witness paragraph 31 of the contested order, which states that 'none of the applicants relied, in support of its application, on pleas alleging that the Commission is in breach of any obligation to consult them, whilst the Commission averred, without being contradicted by any of the applicants, that the latter had not been consulted in any way before the contested decision was adopted'. It follows, according to the Commission, that the appeal is inadmissible.

24 As stated in paragraph 11 of this judgment, the appellants argued before the Court of First Instance, in connection with the objection of inadmissibility raised by the Commission, that the latter was under an obligation to consult them before adopt-

ing the contested decision and that that obligation was enough to distinguish them individually. As is stated in paragraph 16 above, the Court of First Instance rejected that plea on the ground that none of the provisions referred to by the applicants, including the Fifth Environment Action Programme, placed the Commission under any duty to take account of the particular situation of each of the agriculturalists or of each of the associations representing them, or to consult them.

25 It follows that the plea was raised before the Court of First Instance and that the objection of inadmissibility must be rejected.

Substance

26 The fourth paragraph of Article 173 of the EC Treaty provides: 'Any natural or legal person may ... institute proceedings against a decision addressed to that person or against a decision which, although in the form of a regulation or a decision addressed to another person, is of direct and individual concern to the former'.

27 In the present case, the appellants maintain that, in their capacity as associations and individuals which should have been consulted, they were concerned by the decision by reason of an attribute which is peculiar to them and differentiates them from all other persons, and which therefore distinguishes them individually just as in the case of the person addressed.

28 First, there is nothing in the regulation establishing any obligation to consult the appellants before the contested decision was adopted.

29 Secondly, as regards the Fifth Environment Action Programme, it is apparent, first of all, from the resolution relating thereto that the Council and the representatives of the Governments of the Member States, meeting within the Council, considered that 'in so far as it provides a comprehensive framework as well as a strategic approach to sustainable development the programme constitutes an appropriate point of departure for the implementation of Agenda 21 by the Community and the Member States', Agenda 21 being the plan adopted by the United Nations Conference on Environment and Development in Rio de Janeiro in 1992.

30 Next, the Council and the representatives of the Governments of the Member States stated in that resolution that they approved 'the general approach and strategy of the programme' and invited the Commission 'to come forward with appropriate proposals to give effect to the programme in so far as it pertains to action at Community level'.

31 Lastly, reference must be made to point 12 of the summary of the Fifth Environment Action Programme, in which the nature of the programme is described as follows:

'For each of the main issues, long-term objectives are given as an indication of the sense of direction or thrust to be applied in the pursuit of sustainable development, certain targets are indicated for the period up to the year 2000 and a representative selection of actions is prescribed with a view to achieving the said targets. These objectives and targets do not constitute legal commitments but, rather, performance levels or achievements to be aimed at now in the interests of attaining a sustainable development path.'

32 It is clear from the foregoing that the Fifth Environment Action Programme is designed to provide a framework for defining and implementing Community environmental policy, but that it does not lay down legal rules of a mandatory nature.

33 It follows that the adoption of the Fifth Environment Action Programme does not have the effect of imposing on the Commission, when the regulation is applied, any obligation to consult individuals carrying on activities in the areas concerned, or the associations representing them, before financial assistance is granted to Member States.

34 Consequently, the contested decision cannot be regarded as being of individual concern to the appellants.

35 The appeal must be dismissed as unfounded.

Costs

36 Under Article 69(2) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings. Since the appellants have been unsuccessful, they must be ordered to pay the costs.

On those grounds,

THE COURT (Sixth Chamber)

hereby:

1. Dismisses the appeal;

2. Orders the appellants to pay the costs.

Mancini Murray Kakouris

Hirsch Ragnemalm

Delivered in open court in Luxembourg on 12 December 1996.

R. Grass

Registrar

G. F. Mancini

President of the Sixth Chamber