JUDGMENT OF THE COURT (First Chamber)
11 November 2004 *

In Case C-216/02,

REFERENCE for a preliminary ruling under Article 234 EC

from the Verwaltungsgerichtshof (Austria), made by decision of 23 May 2002, received at the Court on 12 June 2002, in the proceedings

Österreichischer Zuchtverband für Ponys, Kleinpferde und Spezialrassen

v

Burgenländische Landesregierung,

Österreichischer Shetland pony zuchtverband,

intervener,

* Language of the case: German.

THE COURT (First Chamber),

composed of P. Jann, President of the Chamber, A. Rosas (Rapporteur) and R. Silva de Lapuerta, Judges,

Advocate General: D. Ruiz-Jarabo Colomer,
Registrar: M.-F. Contet, Principal Administrator,

having regard to the written procedure and further to the hearing on 4 October 2003,

after considering the observations submitted on behalf of:

— the Österreichischer Zuchtverband für Ponys, Kleinpferde und Spezialrassen, by C. Böhm, M. Breitenecker and C. Kolbitsch, Rechtsanwältinnen, and by H. Vana, Rechtsanwalt, and by M. Maier, Obmann,

— the Austrian Government, by C. Pesendorfer, acting as Agent,

— the Commission of the European Communities, by G. Braun, acting as Agent,

after hearing the Opinion of the Advocate General at the sitting on 15 January 2004,

gives the following

Judgment

1 This reference for a preliminary ruling turns on the interpretation of the first indent of Article 2(2) of Commission Decision 92/353/EEC of 11 June 1992 laying down the criteria for the approval or recognition of organisations and associations which maintain or establish stud-books for registered equidae (OJ 1992 L 192, p. 63).

2 This reference has been made in proceedings between the Österreichischer Zuchtverband für Ponys, Kleinpferde und Spezialrassen ('Zuchtverband für Ponys', the Austrian association of breeders of ponies, small horses and special breeds) and the Government of the Burgenland concerning the decision taken by the latter to recognise in the territory of that Austrian Land the Österreichischer Shetlandponyzuchtverband ('the Ö.SZV'), as an organisation of breeders of Shetland Island ponies. The Ö.SZV has the status of intervener in the main proceedings.

The legal framework

The relevant provisions of Community law

3 Council Directive 90/427/EEC of 26 June 1990 on the zootechnical and genealogical conditions governing intra-Community trade in equidæ (OJ 1990 L 224, p. 55) defines the conditions applicable to intra-Community trade in equidae, including their sperm, ova and embryos. It appears from the second and third recitals in the

preamble to that directive that the latter is designed to lay down at Community level rules on the marketing of equidae, in order to ensure rational development of equidæ production, thereby increasing productivity in that sector, which constitutes a source of income for part of the farming population. According to the fourth recital in the preamble to that directive, satisfactory results in that respect depend largely on the use of equidæ registered in stud-books maintained by officially approved organisations or associations. The fifth recital in the preamble to that directive emphasises that complete liberalisation of trade calls for further harmonisation of the rules governing entry in those books.

4 Article 4(2) of Directive 90/427 provides for the Commission to adopt decisions fixing, in particular, the criteria for the approval or recognition of organisations and associations which maintain or establish stud-books. Article 4(1) defines the principles to be taken into account in the adoption of those decisions, which are to be taken following the procedure laid down in Article 10 of that directive.

5 That is the context in which the Commission adopted Decision 92/353, which lays down the criteria for the approval or recognition of organisations and associations which maintain or establish stud-books for registered equidae. Under Article 1 of that decision, in order to be officially approved or recognised, the organisations or associations concerned must submit an application to the authorities of the Member State in the territory of which their headquarters are situated.

6 Article 2 of Decision 92/353 provides:

'1. The authorities of the Member State concerned must grant official approval or recognition to any organisation or association which maintains or establishes a stud-book, provided it meets the conditions laid down in the Annex.

2. However, in a Member State where one or more officially approved or recognised organisations or associations already exist in respect of a given breed, the authorities of that Member State may refuse to recognise a new organisation or association:

— if it endangers the preservation of the breed or jeopardises the operation or the improvement or selection programme of an existing organisation or association, or

— if equidae of that breed may be entered or registered in a specific section of a stud-book maintained by an organisation or association which applies in particular for that section the principles laid down in accordance with point 3(b) of the Annex by the organisation or association which maintains the stud-book of the origin of that breed.

3. Member States shall inform the Commission of any official approval or recognition granted, as well as contested refusals.

4. Where an organisation or association in a Member State is refused official approval or recognition, the reasons for the refusal must be communicated in writing to the association or organisation.'

7 In addition, Article 3 of Decision 92/353 provides that where an organisation or association which maintains a stud-book no longer consistently meets the conditions laid down in the annex to that decision, the authorities of the Member State in question are to withdraw official approval or recognition from that body.

The relevant provisions of national law

8 In Austria, both the transposition of Directive 90/427 and the implementation of decisions of the Commission taken on the basis of that directive fall within the competence of the Länder.

9 Paragraph 9 of the third section of the Burgenländischen Tierzuchtgesetz (the Law of the Burgenland on the breeding of animals, 'the Tierzuchtgesetz') of 2 March 1995 (LGBl 1995/33, in the version in LGBl 2001/32) governs recognition of breeders' organisations. That paragraph provides, in particular:

'(1) The Government of the Land shall be required to recognise a breeders' organisation where:

1. its breeding programme is likely to encourage breeding within the meaning of Paragraph 1(2),

2. the pre-existing population is large enough for the purposes of implementing the breeding programme,

3. the staff and equipment needed for high-quality breeding are available,

4. it is certain, especially with regard to staffing, technical and organisational conditions, that

   (a) the breeders' organisation has its registered office in the Burgenland;

   (b) the breeding animals are identified in a long-lasting manner so that their identity may be established;

   (c) the stud-book or -register is kept in the prescribed manner and the holdings make the registrations required;

   (d) in an association, any animal that, having regard to its lineage and quality — including its external appearance —, fulfils the conditions for registration shall be registered or noted on request and may be registered in the stud-book; animals brought into the Burgenland shall not be subject to more stringent conditions than animals native to that *Land*, and

5. any breeder in the substantive and geographic sphere of activity of a breeders' association falling within its legal system, who satisfies the condition as to due exercise of such activity, may be a member of that association.

(2) The application for recognition shall include the following documents:

...

3. the breeding programme, showing the purpose and method of breeding, its dimension, and also the kind and quantity of performance tests carried out and the manner in which they are used;

4. information concerning the predicted number of animals kept by the farms or breeders taking part in the breeding programme;

5. in the case of an association of breeders:

   (a) documentary evidence concerning the legal basis and stating the association's substantive and geographical sphere of activity;

   (b) the stud-book rules showing the conditions to be fulfilled for entry in the various headings of the stud-book;

...

(3) Associations of breeders of which the substantive and geographical sphere of activity overlaps in whole or in part that referred to in Paragraph 9(2)(5)(a) shall be entitled to a hearing in recognition proceedings.

...

(5) If, for a particular breed, there already exists a recognised organisation, or there already exist several recognised organisations, of breeders, the Government of the *Land* shall refuse to recognise a new organisation of breeders if doing so would endanger the preservation of the breed or the breeding programme of an organisation already in existence.'

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

10 The Zuchtverband für Ponys has since 14 August 1997 been recognised in the Burgenland, in accordance with the provisions of the Tierzuchtgesetz.

11 In 1997 the Ö.SZV too applied to the Government of the Burgenland, the competent authority in that sphere, for recognition as an organisation of breeders of Shetland ponies.

12 The Zuchtverband für Ponys stated its views in the course of the administrative proceedings that followed. It argued against recognition of the Ö.SZV, contending that such recognition would endanger the preservation of the breed, its own operation as an already existing organisation and its programme of improvement and selection.

13 By a decision of 30 April 2001 the Ö.SZV was recognised in the Burgenland, pursuant to Paragraph 9 of the Tierzuchtgesetz, according to a specified breeding programme for a period of 10 years.

14 The Zuchtverband für Ponys has challenged that decision before the Verwaltungsgerichtshof (Higher Administrative Court). According to the Government of the Burgenland, however, it does not have standing as a party to the proceedings concerning recognition of the Ö.SZV or any right to challenge that decision at law.

15 The Verwaltungsgerichtshof explains that, in order to rule on the admissibility of the action, it must first consider whether the applicant in the main proceedings has a judicially protected right to ensure that a new organisation of breeders be refused recognition, if certain conditions are fulfilled.

16 It states that, if national law alone is applied, the action must be dismissed and it is not possible to consider whether recognition of the Ö.SZV as an organisation of breeders endangers the preservation of the breed or the breeding programme of the applicant in the main proceedings. Indeed, the Verwaltungsgerichtshof has consistently held, apropos of other legislation, that if a provision confers on a person only the right to be heard in administrative proceedings, the person concerned has not the status of a party to those administrative proceedings. Now, in the Austrian law of administrative procedure the status of a party is the procedural means by which legal claims are set in motion. The result of denying a person the status of party to the proceedings is that that person is not entitled to request from the administration a decision to a particular effect or, subsequently, to challenge before the courts the decision taken by the administration.

17 The Zuchtverband für Ponys contends that Community law confers on it a judicially protected right both to have it ascertained whether or not recognition of the Ö.SZV endangers the preservation of the breed or the breeding programme of an already existing organisation and, if that question receives an affirmative answer, to have that recognition refused by the administrative authority. In support of its position it relies on Directive 90/427 and Decision 92/353.

18 The Verwaltungsgerichtshof does not state that it is impossible for the Zuchtverband für Ponys to rely on Decision 92/353. It notes, in this regard, that since the judgment in Case 9/70 *Grad* [1970] ECR 825, the Court's established case-law has made it possible for individuals to rely, before national authorities and courts, on a decision addressed to the Member States, on the same conditions as would apply if a directive were involved.

19 With regard to the question whether Article 2(2) of Decision 92/353 is sufficiently unconditional and precise in content to be relied upon directly by an individual, the Verwaltungsgerichtshof makes several observations.

20 In its view, the word 'may' used in that provision could mean that it is for the Member States to decide freely whether to refuse to recognise a new association if to do so would endanger the preservation of the breed or jeopardise the operation or the improvement or selection programme of an already existing organisation or association. In that case, the Zuchtverband für Ponys is not entitled to rely directly on Decision 92/353.

21 Nevertheless, according to the Verwaltungsgerichtshof, the freedom of action apparently left to the Member States by the use of the verb 'may' can be obviated by other provisions of Community law. It notes that in Case C-435/97 *WWF and Others* [1999] ECR I-5613, the Court declared that the discretion apparently given to the Member States by Article 4(4) 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) was restricted by Article 2(1) of that directive.

22 Even if it were to be considered that Article 2(2) of Decision 92/353 confers discretion on the Member States, the question would still arise whether, in the light of the principles of Community law, a Member State can lay down the conditions for refusal of recognition of new associations without giving associations already in existence a judicially protected right to have recognition refused.

23 So far as the hypothesis of endangering the preservation of the breed is concerned, the Verwaltungsgerichtshof doubts that an already existing organisation may invoke a judicially protected right to have recognition refused. There is as a matter of fact no direct link between that ground for refusing recognition and the interests of a pre-existing organisation.

24 The Verwaltungsgerichtshof also points out that, according to the Court's case-law, a directive cannot of itself impose obligations on an individual and cannot therefore be relied upon as such against him (Case C-91/92 *Faccini Dori* [1994] ECR I-3325). On that point, it remarks that Article 2(2) of Decision 92/353 is not confined to conferring an advantage on already existing organisations, an advantage that they might possibly plead against a Member State. The provision seems also to impose a burden on an association of breeders which seeks recognition, since if the conditions laid down in the first indent of Article 2(2) are satisfied, it will be refused recognition. None the less, the Verwaltungsgerichtshof considers that it cannot conclude with certainty whether a 'burden' of this kind amounts to 'an obligation on an individual' for the purposes of the Court's case-law.

25 In its opinion, the Court's case-law accepts that a directive may indirectly create obligations for individuals. In that context, it refers to the Court's judgments in Case

C-431/92 *Commission* v *Germany* [1995] ECR I-2189, known as 'Großkrotzenburg', and Case 103/88 *Fratelli Costanzo* [1989] ECR 1839.

26 In addition, the Verwaltungsgerichtshof examines the issue of how far Community law affects the field of domestic procedural law and the national rules on jurisdiction. Having regard to the unambiguous wording of Paragraph 9(3) of the Tierzuchtgesetz, it is impossible to interpret the Austrian law as meaning that an association of breeders already in existence has any right of appeal against a decision taken by the administration in the course of the procedure for recognising a new organisation of breeders. Now, according to Austrian academic writing, which is based on the Court's decisions (Case 158/80 *Rewe* [1981] ECR 1805), in the absence of a specific rule laid down by Community law, it is for the Member States to provide the means of redress that will allow individuals to exercise the rights conferred on them by Community law. Observance of the autonomy of the Member States means that Community law cannot be substituted for the application of provisions of domestic law in the sphere of procedure and jurisdiction.

27 In this case, the Austrian legislature has structured the procedural status of associations and organisations of breeders already in existence in such a way that they cannot bring proceedings before the Verwaltungsgerichtshof. In those circumstances, even if the first indent of Article 2(2) did give to associations already in existence a right to enforce observance of the conditions laid down in that provision, the right in question would not receive judicial protection in Austria.

28 The Verwaltungsgerichtshof considers that such a result is unsatisfactory and that it cannot be deduced from the Court's case-law (Case C-76/97 *Tögel* [1998] ECR I-5357, and Case C-258/97 *HI* [1999] ECR I-1405). It would have to be possible for a

claim based on Community law to be brought before the Verwaltungsgerichtshof, the national court which generally has jurisdiction in claims of the same kind based on domestic law.

29 Having regard to those matters, the Verwaltungsgerichtshof has decided to stay proceedings and to refer the following questions to the Court for a preliminary ruling:

'(1) Does the first indent of Article 2(2) of ... Decision 92/353 ... confer on an association (organisation) of breeders already in existence a right to have the competent authority refuse to recognise another organisation (another association) if to recognise that other organisation (association) would endanger the preservation of the breed or jeopardise the operation or the improvement or selection programme of an organisation or association already in existence?

(2) Does the first indent of Article 2(2) of ... Decision [92/353] ... preclude the application of a provision of national law which

(a) confers on an organisation or association already in existence only the right to be heard in proceedings before the competent authority for the recognition of another organisation (association), but not the right to have recognition of that other organisation (association) refused where recognition would endanger the preservation of the breed or jeopardise the

operation or the improvement or selection programme of an existing organisation or association, and

(b) does not give the organisation or association already in existence the right to challenge before the courts (the Verwaltungsgerichtshof) the recognition granted in spite of its submissions to the contrary?'

Concerning the first question

30 By its first question, and the first part of its second, the national court asks the Court in essence whether, on a proper construction of the first indent of Article 2(2) of Decision 92/353, where at least one of the circumstances mentioned in that provision is proved to exist, organisations or associations already officially recognised or approved in respect of a breed of equidae are entitled to demand of the competent authorities that the latter should refuse to recognise or approve a new association or organisation maintaining or establishing stud-books for the same breed.

31 As a preliminary point, it is to be borne in mind that, under Article 2(1) of Decision 92/353, the competent authorities of the Member State concerned must grant official approval or recognition to any organisation or association which maintains or establishes a stud-book, provided that it meets the conditions laid down in the annex to the decision.

32 As that provision, just like the recitals in the preamble to Directive 90/427, makes clear, official recognition of new associations or organisations maintaining or establishing stud-books is, as a general rule, in keeping with the objectives pursued by the Community legislation in the sphere of intra-Community trade in equidae. Indeed, the pursuit of the objectives of encouraging the breeding of registered equidae and of developing their marketing in intra-Community trade presupposes that there exists, in the various Member States of the Community, a sufficient number of organisations capable of maintaining the stud-books in which a growing number of equidae can be registered.

33 While favouring the official recognition or approval of new associations or organisations maintaining or establishing stud-books, the Community legislation still requires, as the wording of Article 2(1) of Decision 92/353 makes clear, that each association or organisation should meet the conditions laid down in the annex to that decision. In addition, it follows from Article 4(1)(a) of Directive 90/427 that recognition or approval of those organisations or associations is conditional upon observance of the principles laid down by the organisation or association which maintains the stud-book of the origin of the breed.

34 With regard to Article 2(2) of Decision 92/353, it ought to be stated that, as the Austrian Government and the Commission have rightly maintained, the principal object of that provision is to confer on the competent authorities of the Member States discretion allowing them, in one or another of the circumstances referred to in the first or second indent of Article 2(2), to refuse an application for recognition made by a new association or organisation, even if the conditions laid down in the annex to that decision are satisfied. Indeed, except in those circumstances, and in accordance with Article 2(1) of that decision, the competent authorities are bound to grant recognition to any organisation or association that fulfils the conditions laid down in that annex.

35 That is the context in which the first indent of Article 2(2) of Decision 92/353 expressly sets out the circumstances in which the competent authorities of a Member State may refuse to recognise a new organisation or association. Those are situations in which, in the Member State concerned, there is at least one organisation or association or there are several organisations or associations officially recognised in respect of a breed of equidae and in which recognition of the new organisation or association would endanger the preservation of that breed or jeopardise the operation or the improvement or selection programme of the organisation or association already in existence.

36 Contrary to the argument put forward by the Zuchtverband für Ponys, the first indent of Article 2(2) of Decision 92/353 cannot be interpreted as meaning that it gives an association already in existence a personal right to demand of the competent authorities concerned that they should refuse the recognition requested by a new association or organisation when it is proved that at least one of the circumstances referred to in that provision exists. Indeed, if such an interpretation were to be accepted, it would amount to doing away with the discretion that Article 2(2) of Decision 92/353 meant to leave to the competent authorities of the Member States.

37 The answer to be given to the first question is therefore that, on a proper construction of the first indent of Article 2(2) of Decision 92/353, where one or more of the circumstances mentioned in that provision is or are proved to exist, organisations or associations already officially recognised or approved in respect of a breed of equidae are not entitled to demand of the competent authorities that the latter should refuse to recognise or approve a new association or organisation maintaining or establishing stud-books for the same breed.

Concerning the second question

38 By the second part of its second question, the national court in essence asks the Court whether it is contrary to Community law for the legislation of a Member State to deprive associations and organisations already in existence, which have submitted observations opposing the recognition of a new association or organisation, of a judicial means of obtaining redress challenging the competent national authorities' decision to grant recognition.

39 It follows from the reply given to the first question that, where one or more of the circumstances mentioned in the first indent of Article 2(2) is or are proved to exist, organisations or associations already officially recognised or approved in respect of a breed of equidae are not entitled to demand of the competent authorities that the latter should refuse to recognise or approve a new association or organisation which maintains or establishes stud-books for the same breed.

40 In those circumstances, and for the reasons set out by the Advocate General in paragraphs 38 to 40 of his Opinion, the answer to be given to the second question must be that it is not contrary to Community law for the legislation of a Member State to deprive associations and organisations already in existence, which have submitted observations opposing the recognition of a new association or organisation, of a judicial means of obtaining redress challenging the competent national authorities' decision to grant recognition.

Costs

41 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. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (First Chamber), rules as follows:

1. **On a proper construction of the first indent of Article 2(2) of Commission Decision 92/353/EEC of 11 June 1992 laying down the criteria for the approval or recognition of organisations and associations which maintain or establish stud-books for registered equidae, where one or more of the circumstances mentioned in that provision is or are proved to exist, organisations or associations already officially recognised or approved in respect of a breed of equidae are not entitled to demand of the competent authorities that the latter should refuse to recognise or approve a new association or organisation maintaining or establishing stud-books for the same breed.**

2. **It is not contrary to Community law for the legislation of a Member State to deprive associations and organisations already in existence, which have submitted observations opposing the recognition of a new association or organisation, of a judicial means of obtaining redress challenging the competent national authorities' decision to grant recognition.**

Signatures.