ORDER OF THE COURT (Fifth Chamber)

24 March 2011 *

In Case C-344/09,

REFERENCE for a preliminary ruling under Article 234 EC from the Mora kommun, Miljö- och hälsoskyddsnämnden (Sweden), made by decision of 2 June 2009, received at the Court on 21 August 2009, in the context of the examination of a complaint filed by

Dan Bengtsson

THE COURT (Fifth Chamber),

composed of E. Levits, acting as President of the Fifth Chamber, M. Safjan (Rapporteur) and M. Berger, Judges,

Advocate General: J. Mazák,
Registrar: A. Calot Escobar,

* Language of the case: Swedish.

after hearing the Advocate General,

makes the following

Order

1 The reference for a preliminary ruling concerns the interpretation of Council Recommendation 1999/519/EC of 12 July 1999 on the limitation of exposure of the general public to electromagnetic fields (0 Hz to 300 GHz) (OJ 1999 L 199, p. 59), in the light of Article 174(2) EC.

2 The reference for preliminary ruling was submitted by Mora, Miljö- och hälsoskyddsnämnden (the environmental and health committee for the Municipality of Mora, 'the EHCM'), following a request received from Mr Bengtsson for the level of non-ionising radiation from the mobile phone companies' base stations sited close to his home to be reduced.

The main proceedings and the question referred for a preliminary ruling

3 It is apparent from the reference for a preliminary ruling and the observations submitted to the Court that, during 2006, Mr Bengtsson, a resident of the Municipality of Mora, sent a complaint to the EHCM claiming to suffer serious ill health as a result

of exposure to radiation from base stations for telecommunications and wireless data transmission sited close to his home. He requested that the precautionary principle be applied and that an order be made providing for measures to reduce the exposure of his home to that radiation.

4 The ECHM is a municipal committee, responsible for surveillance in the field of health and environmental protection in the municipality concerned, which has the task of adopting the necessary corrective measures. In that respect, it must monitor, inter alia, the base stations for telecommunications and wireless data transmission.

5 Chapter 26, paragraph 9, of the Act establishing the miljöbalken (Swedish Environmental Code) (1998:808) confers on municipal committees, such as the ECHM, the power to address orders and injunctions to mobile phone companies. Pursuant to Chapter 26, paragraph 14, of that law, such orders or injunctions may be accompanied by a fine.

6 Under Chapter 19, paragraph 1, of that law, the decisions of those municipal committees may be the subject of a complaint before the Länsstyrelse (Prefecture of the Department); the decisions of the latter may then be the subject of an appeal before the Miljödomstolen (Environmental Court).

7 The mobile telephone companies whose base stations are sited near Mr Bengtsson's home were invited by the ECHM to submit their observations on Mr Bengtsson's complaint. In that regard, all those mobile companies maintained that they have complied with the rules in force, since radiation exposure is below the reference levels set out in Council Recommendation 1999/519. Consequently, they have not

voluntarily reduced the non-ionising radiation to a level regarded as acceptable by the complainant.

8 In response to the observations of the mobile telephone companies, Mr Bengtsson pointed out that those reference levels merely indicate the level of exposure at which scientifically proved warming effects arise and are thus irrelevant to the investigation of other effects on health in the light of the precautionary principle.

9 In its capacity as the supervisory body for base stations for telecommunications and wireless data transmission, the ECHM must take a decision on the action to be taken in relation to Mr Bengtsson's complaint.

10 It was in those circumstances that the ECHM decided to refer the following question to the Court of Justice for a preliminary ruling:

'… In the light of Article 174(2) EC, [must] the reference levels for electromagnetic fields set out in the Recommendation … be interpreted as guidelines for the application of the precautionary principle, or [does] that principle supplement the Recommendation?'

The jurisdiction of the Court

11 Under Article 92(1) of the Rules of Procedure of the Court of Justice, applicable to references for a preliminary ruling by virtue of Article 103(1) of the same regulation, where it is clear that the Court has no jurisdiction to hear and determine an application or where the latter is manifestly inadmissible, the Court may, after hearing the Advocate General and without taking further steps in the proceedings, give a decision on the action by reasoned order.

12 The ECHM, in response to a request for clarification, addressed to it under Article 104(5) of the Rules of Procedure, claims that, in the context of its supervisory activity, it constitutes an administrative authority exercising judicial functions. In that regard, the ECHM claims that it satisfies all the criteria established by the case-law to be classed as a 'court or tribunal of a Member State' within the meaning of Article 234 EC. Furthermore, a case is pending before it and it is called upon to give judgment in proceedings intended to lead to a decision of a judicial nature.

13 TeliaSonera Mobile Networks AB takes the view that the ECHM is not a court or tribunal within the meaning of Article 234 EC, on the ground that its supervisory task is not to be regarded as the exercise of a judicial function.

14 Tele2 Sverige AB takes the view that the decision-making activity of the ECHM falls within the executive function and cannot be placed on the same footing as judicial activity. Furthermore, there is no dispute between the parties as identified by the referring body.

15 The Czech Government argues that the ECHM is not part of the judicial system of the Member State concerned. Since its decisions may be the subject of an appeal before the Länsstyrelse, and since in the case of a parajudicial authority, it is necessary to apply the criteria established by the case-law more strictly, in particular as regards the requirement of independence, the ECHM is not a court or tribunal within the meaning of Article 234 EC.

16 The French Government doubts whether the ECHM can classified as a court or tribunal within the meaning of Article 234 EC.

17 The European Commission raises the point that, as a supervisory body, the ECHM may issue injunctions to the mobile phone companies, which constitutes the exercise of an administrative function. Therefore, the ECHM is not seised of a dispute and will not be called upon to give judgment in proceedings intended to lead to a decision of a judicial nature. Moreover, because the municipal council can remove all the members of the ECHM when the political majority of the municipal council no longer corresponds to that of that committee or in the event of changes in the organisation of the committee, in accordance with Chapter 4, paragraph 10a, of municipal law 1991:900 (kommunallagen (1991:900)), the requirement that the referring body be independent is not met.

18 According to settled case-law, it follows from Article 234 EC that national courts or tribunals may refer a question to the Court only if there is a case pending before them and if they are called upon to give judgment in proceedings intended to lead to a decision of a judicial nature (see, inter alia, the order in Case C-138/80 *Borker* [1980] ECR 1975, paragraph 4; Case C-53/03 *Syfait and Others* [2005] ECR I-4609, paragraph 29, and Case C-14/08 *Roda Golf & Beach Resort* [2009] ECR I-5439, paragraph 34).

19 Thus, when it makes an administrative decision without at the same time being required to decide a legal dispute, within the meaning of the case-law of the Court of Justice, the referring body cannot be regarded as exercising a judicial function (see, inter alia, Case C-111/94 *Job Centre* [1995] ECR I-3361, paragraph 11; Case C-182/00 *Lutz and Others* [2002] ECR I-547, paragraph 14; and *Roda Golf & Beach Resort*, paragraph 35).

20 In this instance, it must be noted that, in the context of the complaint filed by Mr Bengtsson, the ECHM acts in an administrative capacity.

21 Indeed, firstly, it appears that that municipal committee is responsible for supervision in the field of health and environmental protection and has the task of adopting the necessary corrective measures.

22 Secondly, it is in no way apparent from the reference for a preliminary ruling or from the observations submitted to the Court that Mr Bengtsson's situation gave rise, before the ECHM made the reference, to a decision against which a complaint was made to that committee. That committee is thus the first authority to entertain the application seeking reduction of the level of non-ionising radiation from the base stations sited close to Mr Bengtsson's home (see, in particular, by analogy, the orders in Case C-86/00 *HSB-Wohnbau* [2001] ECR I-5353, paragraph 15; in Case C-447/00 *Holto* ECR I-735, paragraph 21; and in Case C-497/08 *Amiraike Berlin* [2010] ECR I-101, paragraph 20).

23 Accordingly, in the context giving rise to this reference for a preliminary ruling, it is not the task of the ECHM to rule on the lawfulness of a decision. Its task is to adopt a position, for the first time, on the complaint made by a citizen in the municipality. In those circumstances, it is not required to decide a legal dispute, within

the meaning of the Court's case-law (see, to that effect, Case C-134/97 *Victoria Film* [1998] ECR I-7023, paragraphs 16 and 18).

24 That finding cannot be called into question by the fact that natural or legal persons may submit observations to the ECHM, for the nature of the function performed remains the same (see, to that effect, Case C-178/99 *Salzmann* [2001] ECR I-4421, paragraph 18).

25 Accordingly, in the context of the investigation of the complaint submitted to it by Mr Bengtsson, the ECHM acts as an administrative authority, and is not at the same time called upon to decide a legal dispute within the meaning of the Court's case-law, with the result that it acts in a non-judicial capacity.

26 In the light of the foregoing, Articles 92(1) and 103(1) of the Rules of Procedure must be applied and it must be held that the Court clearly has no jurisdiction to rule on the question referred by the ECHM.

Costs

27 Since these proceedings are, for Mr Bengtsson, a step in the action pending before the ECHM, the decision on costs is a matter for the latter. Costs incurred in

submitting observations to the Court, other than the costs of Mr Bengtsson, are not recoverable.

On those grounds, the Court (Fifth Chamber) hereby orders:

The Court of Justice of the European Union clearly has no jurisdiction to answer the question referred by the Mora kommun, Miljö- och hälsoskyddsnämnden (Sweden) in its decision of 2 June 2009.

[Signatures]