JUDGMENT OF THE COURT (Grand Chamber)

16 July 2009 *

In Case C-428/07,

REFERENCE for a preliminary ruling under Article 234 EC from the High Court of Justice of England and Wales, Queen's Bench Division (Administrative Court) (United Kingdom), made by decision of 21 July 2006, received at the Court on 14 September 2007, in the proceedings

The Queen, on the application of:

Mark Horvath

v

Secretary of State for Environment, Food and Rural Affairs,

* Language of the case: English.

THE COURT (Grand Chamber),

composed of V. Skouris, President, P. Jann, C.W.A. Timmermans, A. Rosas, K. Lenaerts and T. von Danwitz, Presidents of Chambers, J.N. Cunha Rodrigues, R. Silva de Lapuerta, K. Schiemann, J. Makarczyk, U. Lõhmus (Rapporteur), A. Arabadjiev and C. Toader, Judges,

Advocate General: V. Trstenjak,
Registrar: L. Hewlett, Principal Administrator,

having regard to the written procedure and further to the hearing on 26 November 2008,

after considering the observations submitted on behalf of:

— Mark Horvath, by M. Sheridan, Barrister, and R. Barker, Solicitor, and A. Stanič, Solicitor Advocate,

— the United Kingdom Government, by C. Gibbs and I. Rao, acting as Agents, assisted by Lord Davidson of Glen Clova QC, and D. Wyatt QC,

— the German Government, by M. Lumma, acting as Agent,

— Ireland, by N. Travers, BL,

— the Commission of the European Communities, by K. Banks and F. Erlbacher, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 3 February 2009,

gives the following

Judgment

1 This reference for a preliminary ruling concerns the interpretation of Article 5 and of Annex IV to Council Regulation (EC) No 1782/2003 of 29 September 2003 establishing common rules for direct support schemes under the common agricultural policy and establishing certain support schemes for farmers and amending Regulations (EEC) No 2019/93, (EC) No 1452/2001, (EC) No 1453/2001, (EC) No 1454/2001, (EC) 1868/94, (EC) No 1251/1999, (EC) No 1254/1999, (EC) No 1673/2000, (EEC) No 2358/71 and (EC) No 2529/2001 (OJ 2003 L 270, p. 1).

2 The reference was made in proceedings between Mr Horvath and the Secretary of State for Environment, Food and Rural Affairs ('the Secretary of State'), regarding the legislation adopted in respect of the territory of England defining the minimum requirements for good agricultural and environmental condition ('GAEC') referred to in Article 5 of and Annex IV to Regulation No 1782/2003.

Legal framework

Community legislation

3 Regulation No 1782/2003 was adopted on the basis of Articles 36 EC, 37 EC and 299(2) EC.

4 According to the first recital in the preamble to that regulation, common conditions are to be established for direct payments under the various income support schemes in the framework of the common agricultural policy.

5 As set out in Article 1 of Regulation No 1782/2003, the regulation establishes, inter alia, common rules on direct payments under income support schemes in the framework of the common agricultural policy which are financed by the 'Guarantee' Section of the European Agricultural Guidance and Guarantee Fund (EAGGF), and an income support for farmers, the single payment scheme ('the SPS').

6 Article 2(d) of Regulation No 1782/2003 defines a direct payment as a payment granted directly to farmers under an income support scheme listed in Annex I to the regulation. The SPS is included in that annex.

7 Title II of Regulation No 1782/2003 contains a Chapter 1 entitled 'cross compliance', consisting of Articles 3 to 9. Article 3(1) of the regulation provides that '[a] farmer receiving direct payments shall respect the statutory management requirements referred to in Annex III, according to the timetable fixed in that Annex, and the good agricultural and environmental condition established under Article 5'.

8 Under Article 4(1) of Regulation No 1782/2003, the statutory management requirements referred to in Annex III to the regulation are to be established by Community legislation in various areas, including the environment.

9 Article 5(1) of Regulation No 1782/2003, entitled 'Good agricultural and environmental condition', provides:

'Member States shall ensure that all agricultural land, especially land which is no longer used for production purposes, is maintained in good agricultural and environmental condition. Member States shall define, at national or regional level, minimum requirements for good agricultural and environmental condition on the basis of the framework set up in Annex IV, taking into account the specific characteristics of the areas concerned, including soil and climatic condition, existing farming systems, land use, crop rotation, farming practices, and farm structures. This is without prejudice to the standards governing good agricultural practices as applied in the context of Council Regulation (EC) No 1257/1999 and to agri-environment measures applied above the reference level of good agricultural practices.'

10 Under Article 6 of Regulation No 1782/2003, where GAEC or the other requirements stated in Article 3(1) of the regulation are not complied with, as a result of an action or omission directly attributable to the individual farmer, the total amount of direct payments to be granted in the calendar year in which the non-compliance occurs is to be reduced or cancelled.

11 Annex IV to Regulation No 1782/2003, entitled 'Good agricultural and environmental condition referred to in Article 5', reads as follows:

Issue	Standards
Soil erosion: Protect soil through appropriate measures	— Minimum soil cover — Minimum land management reflecting site-specific conditions — Retain terraces
Soil organic matter: Maintain soil organic matter levels through appropriate practices	— Standards for crop rotations where applicable — Arable stubble management
Soil structure: Maintain soil structure through appropriate measures	— Appropriate machinery use
Minimum level of maintenance: Ensure a minimum level of maintenance and avoid the deterioration of habitats	— Minimum livestock stocking rates or/ and appropriate regimes — Protection of permanent pasture — Retention of landscape features — Avoiding the encroachment of unwanted vegetation on agricultural land

National legislation

12 In 1998, the United Kingdom Parliament passed legislation whereby provision was made for a transfer ('devolution') of powers in certain matters to Scotland, Wales and Northern Ireland. In the matters concerned, the United Kingdom Government generally remains competent only in respect of England. According to both that legislation and a Devolution Memorandum of Understanding which, in the form of a statement of political intent, complements it, it is for the devolved administrations, within their respective powers, to implement Community law obligations and those authorities cannot act or legislate in a way that would be incompatible with it. The

legislation on that transfer of powers confers on United Kingdom Ministers reserve powers to intervene where necessary in order to ensure compliance with those obligations.

13 The common agricultural policy in general and the implementation of Regulation No 1782/2003 in particular are among the devolved matters and fall within the responsibility of each devolved administration.

14 With a view to complying with the requirements of Article 5 of Regulation No 1782/2003, the Secretary of State, in respect of England alone, and each of the devolved administrations, adopted separate rules defining GAEC minimum requirements which partly vary.

15 In England, the relevant rules are the Common Agricultural Policy Single Payment and Support Schemes (Cross Compliance) (England) Regulations 2004 (SI 2004/3196; 'the English rules'). The GAEC standards are defined in the Schedule to the English rules, paragraphs 26 to 29 of which, entitled 'Public rights of way' ('the provisions at issue in the main proceedings'), provide:

'26. A farmer must not:

(a) without lawful authority or excuse, disturb the surface of a visible footpath, a visible bridleway, or any other visible highway which consists of or comprises a carriageway other than a made up carriageway, so as to render it inconvenient for the exercise of a public right of way; or

(b) without lawful authority or excuse, in any way wilfully obstruct the free passage along a visible highway.

27. A farmer must maintain any stile, gate or similar structure, other than a structure to which section 146(5) of the Highways Act 1980 applies, across a visible footpath or bridleway in a safe condition, and to the standard of repair required to prevent unreasonable interference with the rights of persons using the footpath or bridleway.

28. (1) Where a farmer has disturbed the surface of a visible footpath or bridleway (other than a field-edge path) as permitted under section 134 of the Highways Act 1980, he must, within the relevant period under section 134(7) of that Act, or within an extension of that period granted under section 134(8) of that Act,

(a) so make good the surface of the path or bridleway to not less than its minimum width as to make it reasonably convenient for the exercise of a right of way; and

(b) so indicate the line of the path or bridleway on the ground to not less than its minimum width that it is apparent to members of the public wishing to use it.

(2) In this paragraph, "minimum width", in relation to a highway, has the same meaning as in Schedule 12A to the Highways Act 1980.

29. In paragraphs 26, 27 and 28 of this Schedule —

"bridleway", "carriageway", "field-edge path", "footpath" and "made-up carriageway" have the meanings given to them in section 329(1) of the Highways Act 1980; "highway" has the meaning given to it in section 328 of the Highways Act 1980; and "visible" means visible as a route to a person with normal eyesight walking or riding along it.'

16 The rules defining GAEC standards adopted by the devolved administrations of Scotland, Wales and Northern Ireland do not lay down requirements equivalent to those stated in the provisions at issue in the main proceedings.

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

17 According to the order for reference, Mr Horvath, a farmer in England, has SPS payment entitlements. There are public rights of way over his land such as those referred to in the provisions at issue in the main proceedings.

18 Mr Horvath brought an action for judicial review of those provisions before the referring court. He claims, in particular, first, that the Secretary of State did not have the right to include the provisions relating to public rights of way among the minimum requirements for GAEC, the failure to comply with which may lead, under Article 6 of Regulation No 1782/2003, to a reduction of SPS payments. Second, he submits that the inclusion of such provisions in the English rules, when there are no such requirements in the rules adopted for Scotland, Wales and Northern Ireland, amounts to discrimination which renders the provisions at issue in the main proceedings unlawful.

19 The High Court of Justice of England and Wales, Queen's Bench Division (Administrative Court), decided to stay the proceedings and to refer to the Court of Justice two questions concerning those two issues in the proceedings pending before it. Concerning the second issue, the Secretary of State appealed to the Court of Appeal (England and Wales) (Civil Division), which dismissed the appeal. The High Court of Justice of England and Wales, Queen's Bench Division (Administrative Court), then submitted the following questions to the Court of Justice for a preliminary ruling:

'Where a Member State has provided for a system of devolved government, in relation to which powers are retained to the central State authorities to act for the whole territory of the Member State to ensure compliance with that Member State's obligations under Community law, in relation to [Regulation No 1782/2003]:

(1) Can a Member State include requirements relating to the maintenance of visible public rights of way in its standards of [GAEC] under Article 5 of and Annex IV to [Regulation No 1782/2003]?

(2) Where a Member State's internal constitutional arrangements provide that different devolved administrations shall have legislative competence in relation to different constituent parts of that Member State, can it give rise to impermissible discrimination for constituent parts to have different standards of [GAEC] under Article 5 of and Annex IV to [Regulation No 1782/2003]?'

Questions referred for a preliminary ruling

The first question

20 By its first question, the referring court asks, essentially, whether a Member State may include, among the GAEC standards referred to in Article 5 of and Annex IV to Regulation No 1782/2003, requirements relating to the maintenance of visible public rights of way.

Observations submitted to the Court

21 The applicant in the main proceedings proposes that that question be answered in the negative. He submits that the reference, in the first recital of the preamble to Regulation No 1782/2003, to common conditions for direct payments under the income support schemes in the framework of the common agricultural policy means that a basic set of rules is required in this area, with the objective of incorporating the basic standards for, inter alia, GAEC, which must be in principle the same for all farmers across the Community. The GAEC minimum requirements which must be fulfilled in order to receive direct annual payments — the requirements referred to in Article 5 of that regulation — are limited to what is strictly required and the Member States may not legitimately impose supplementary conditions on one or more parties on their territory. The provisions at issue in the main proceedings cannot be considered as minimum requirements because they impose significant supplementary burdens on farmers.

22 According to Mr Horvath, even assuming that the provisions at issue in the main proceedings can be regarded as laying down environmental conditions, they are not GAEC requirements. Since Regulation No 1782/2003 has as its legal basis articles of the EC Treaty concerning agriculture, the environmental component of GAEC must be understood not as an autonomous provision laying down purely environmental standards, but on the contrary as providing only standards which are relevant in the

agricultural sector. According to Article 4(1) of the regulation, only the Community institutions may establish the rules on the environmental requirements linked to the SPS entitlements which are contained in Annex III to the regulation. He claims, in addition, that the provisions at issue in the main proceedings are agri-environment measures which are applied above the reference level of good agricultural practices and are therefore excluded from GAEC under the last sentence of Article 5(1) of that regulation.

23 Finally, he submits that rights of way, such as those referred to in the provisions at issue in the main proceedings, cannot be regarded as landscape features within the meaning of Annex IV to Regulation No 1782/2003 since they lack substance and permanence owing to the fact that, while they must be reinstated as required, they may nevertheless be lawfully destroyed by the farmer at the time of each crop cycle. In addition, the imposition of such rights of way does not help avoid deterioration of habitats within the meaning of that annex.

24 The United Kingdom Government and the Commission of the European Communities submit that the rights of way are capable of constituting landscape features and that their maintenance may, therefore, amount to one of the GAEC minimum requirements referred to in Article 5 of Regulation No 1782/2003.

Answer of the Court

25 As a preliminary point, it must be stated that, according to the very wording of Article 5(1) of Regulation No 1782/2003, it is the Member States which are to ensure that all agricultural land is maintained in good agricultural and environmental condition. To that end, they are to define, at national or regional level, minimum requirements 'on the basis of the framework set up in Annex IV' of that regulation, taking into account the specific characteristics of the areas concerned.

26 While the Member States are therefore bound, when defining those requirements, to comply with that annex, it nevertheless leaves them, by using general concepts and terms, a certain discretion with regard to the actual determination of those requirements.

27 Moreover, it is apparent from the very wording of the phrase 'good agriculture and environmental condition', that the Member States may adopt GAEC requirements for environmental purposes.

28 That finding is not invalidated by the fact that the legal basis for Regulation No 1782/2003 includes Articles 36 EC and 37 EC, which fall under Title II ('Agriculture') of Part Three of the Treaty, and not the articles contained in Title XIX ('Environment') of that part of the Treaty.

29 Since requirements relating to environmental protection, one of the essential objectives of the Community, must, according to Article 6 EC, 'be integrated into the definition and implementation of … Community policies and activities', such protection must be regarded as an objective which also forms part of the common agricultural policy. The Community legislature may therefore, on the basis of Articles 36 EC and 37 EC, decide to promote environmental protection (see, by analogy, Case C-440/05 *Commission* v *Council* [2007] ECR I-9097, paragraph 60). Measures intended to achieve such protection, adopted under a Community act having Articles 36 EC and 37 EC as a legal basis, are therefore not restricted to those pursuing agricultural objectives.

30 Moreover, the fact that, under Article 4(1) of Regulation No 1782/2003, the statutory management requirements are to be fixed by Community legislation on environmental matters does not mean that the GAEC minimum requirements, as defined by the Member States under Article 5(1) of the regulation, cannot also fall within the environmental sector.

31 Furthermore, as is apparent from the last sentence of Article 5(1) of Regulation No 1782/2003, the definition by the Member States of the GAEC minimum requirements has no effect on whether or not those measures are regarded as agri-environment measures.

32 It follows from the above that an obligation to maintain visible public rights of way, such as that contained in the provisions at issue in the main proceedings, may, even if it does not pursue an agricultural objective but concerns the environment, constitute a GAEC minimum requirement inasmuch as it forms part of the framework established in Annex IV to Regulation No 1782/2003.

33 It must, therefore, be examined whether those rights of way may, as the United Kingdom Government and the Commission argue, amount to landscape features, the retention of which is included in the standards laid down in Annex IV to Regulation No 1782/2003.

34 Since the concept of 'landscape features' is not defined in Regulation No 1782/2003, it must be interpreted, as the Advocate General does in point 62 of her Opinion, taking into account its usual meaning and the context in which it is generally used.

35 Also, it is clear from settled case-law that the need for a uniform interpretation of the provisions of Community law means that, in cases of doubt, the text of a provision should not be considered in isolation in one of its versions, but requires, on the contrary, that it should be interpreted and applied in the light of the versions existing in the other official languages (Case C-321/96 *Mecklenburg* [1998] ECR I-3809, paragraph 29, and Case C-311/06 *Consiglio Nazionale degli Ingegneri* [2009] ECR I-415, paragraph 53). The expression '*particularités topographiques*' in the French version of Regulation No 1782/2003 must therefore be compared, for example, with the expression 'landscape features' in the English version of that regulation.

36 In those circumstances, there is nothing to prevent public rights of way such as those contained in the provisions at issue in the main proceedings from being defined as landscape features, since it is only visible rights of way which are referred to in those provisions.

37 That is all the more so since a restrictive interpretation of the concept of 'landscape features' — which, in particular, would exclude features resulting from human intervention — would be inconsistent with the discretion which Member States enjoy when defining the GAEC minimum requirements.

38 The temporary destruction of landscape features, as appears possible, in certain circumstances, in the case of the public rights of way at issue in the main proceedings, cannot in itself adversely affect their permanent character. Natural features of the land such as vegetation or stretches of water may for their part undergo seasonal changes and yet still be perceived as part of the landscape. That finding applies even more so to those rights of way because, according to Paragraph 28(1) of the Schedule to the English rules, a farmer who, in a manner permitted, has disturbed the surface of a visible footpath or bridleway must make good those surfaces within the time-limits laid down by the relevant national legislation.

39 It must, therefore, be examined to what extent an obligation to maintain such rights of way can constitute a measure applying the standard in Annex IV to Regulation No 1782/2003 requiring the retention of landscape features.

40 In that regard, it must be pointed out that that standard may have two environmental components.

41 First, landscape features are physical elements of the environment. The requirements relating to the retention of those features must contribute to their preservation as such.

42 The maintenance obligations are capable of contributing to the retention of such rights of way as physical elements of the environment.

43 Second, the standards concerning the retention of landscape features in Annex IV to Regulation No 1782/2003 are associated, in that annex, with the issue 'Minimum level of maintenance: Ensure a minimum level of maintenance and avoid the deterioration of habitats'. It follows that an obligation deriving from those standards may have the environmental objective of avoiding deterioration of habitats, but, as submitted by the United Kingdom Government in its observations, it is not necessary that the national measures aimed at the retention of landscape features and at ensuring a minimum level of maintenance should also have such an objective.

44 As pointed out by the referring court and by the Advocate General in point 80 of her Opinion, rights of way such as those referred to in the provisions at issue in the main proceedings are capable of helping to preserve habitats.

45 In those circumstances, the requirements concerning the retention of those rights of way must contribute to avoiding the deterioration of habitats. It is apparent that obligations stemming from the objective stated in the provisions at issue in the main proceedings, which is to guarantee the exercise of the public right of way, are capable of contributing to it.

46 Having regard to all of the foregoing, the answer to the first question is that a Member State may include requirements relating to the maintenance of visible public rights of way in its GEAC standards under Article 5 of and Annex IV to Council Regulation

No 1782/2003, inasmuch as those requirements contribute to the retention of those rights of way as landscape features or, as the case may be, to the avoidance of the deterioration of habitats.

Second question

47 By its second question, the referring court wishes to establish in substance whether, where a Member State's constitutional system provides that the devolved administrations are to have legislative competence, the mere adoption by those administrations of different GAEC standards within the meaning of Article 5 of and Annex IV to Council Regulation No 1782/2003 constitutes discrimination contrary to Community law.

48 As a preliminary point, it should be pointed out that, in conferring on Member States the responsibility of defining minimum GAEC requirements, the Community legislature gives them the possibility of taking into account the regional differences which exist on their territory.

49 It should be recalled that, when provisions of the Treaty or of regulations confer power or impose obligations upon the States for the purposes of the implementation of Community law, the question of how the exercise of such powers and the fulfilment of such obligations may be entrusted by Member States to specific national bodies is solely a matter for the constitutional system of each State (Joined Cases 51/71 to 54/71 *International Fruit Company and Others* [1971] ECR 1107, paragraph 4).

50 Thus, it is settled case-law that each Member State is free to allocate powers internally and to implement Community acts which are not directly applicable by means of

measures adopted by regional or local authorities, provided that that allocation of powers enables the Community legal measures in question to be implemented correctly (Case C-156/91 *Hansa Fleisch Ernst Mundt* [1992] ECR I-5567, paragraph 23).

51 The Court has, in addition, held that, where a regulation empowers a Member State to take implementing measures, the detailed rules for the exercise of that power are governed by the public law of the Member State in question (see Case 230/78 *Eridania-Zuccherifici nazionali and Società italiana per l'industria degli zuccheri* [1979] ECR 2749, paragraph 34, and Case C-313/99 *Mulligan and Others* [2002] ECR I-5719, paragraph 48).

52 The possibility for the Member States, to the extent authorised by their constitutional system or public law, to permit regional or local authorities to implement Community law measures is, moreover, expressly recognised in Article 5(1) of Regulation No 1782/2003. That provision states that 'Member States shall define, at national or regional level, minimum requirements for [GAEC] on the basis of the framework set up in Annex IV'.

53 In the light of the power which Member States enjoy to transfer competences to regional authorities for the purposes of defining GAEC minimum requirements within the meaning of Article 5(1) of Regulation No 1782/2003, the rules adopted by those authorities may differ as between the regions concerned, because, in particular, as observed in paragraph 26 of this judgment, the Member States enjoy a discretion with regard to the definition of those requirements.

54 It must nevertheless be examined whether, in those circumstances, the mere fact that the rules establishing GAEC laid down by the regional authorities of the same Member State differ constitutes discrimination contrary to Community law.

55 In that regard, according to settled case-law, the prohibition on discrimination is not concerned with any disparities in treatment which may result, between the Member States, from divergences existing between the legislation of the various Member States so long as that legislation affects equally all persons subject to it (see, to that effect, Joined Cases 185/78 to 204/78 *Van Dam and Others* [1979] ECR 2345, paragraph 10; Case C-177/94 *Perfilli* [1996] ECR I-161, paragraph 17; and Case C-403/03 *Schempp* [2005] ECR I-6421, paragraph 34).

56 With regard to the last condition referred to in the previous paragraph, it must be pointed out that, in Joined Cases 201/85 and 202/85 *Klensch and Others* [1986] ECR 3477, relied on by the applicant in the main proceedings, at issue was indeed discrimination between producers of a Member State resulting from a measure adopted by that Member State implementing a Community obligation concerning them. It was in that context that the Court, in paragraph 11 of that judgment, held that, where there is a choice between a number of ways of implementing the Community legislation in question, the Member States may not choose an option whose implementation in its territory would be liable to create, directly or indirectly, discrimination between the producers concerned within the meaning of Article 40(3) of the EEC Treaty (now Article 34(2) EC).

57 Where, as in the main proceedings, it is the devolved administrations of a Member State which have the power to define the GAEC minimum requirements within the meaning of Article 5 of and Annex IV to Regulation No 1782/2003, divergences between the measures provided for by the various administrations cannot, alone, constitute discrimination. Those measures must, as is clear from paragraph 50 of this judgment, be compatible with the obligations on the Member State in question which stem from that regulation.

58 In the light of the foregoing, the answer to the second question is that, where the constitutional system of a Member State provides that devolved administrations are to have legislative competence, the mere adoption by those administrations of different GAEC standards under Article 5 of and Annex IV to Regulation No 1782/2003 does not constitute discrimination contrary to Community law.

Costs

59 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 (Grand Chamber) hereby rules:

1. **A Member State may include requirements relating to the maintenance of visible public rights of way in its standards for good agricultural and environmental condition under Article 5 of and Annex IV to Council Regulation (EC) No 1782/2003 of 29 September 2003 establishing common rules for direct support schemes under the common agricultural policy and establishing certain support schemes for farmers and amending Regulations (EEC) No 2019/93, (EC) No 1452/2001, (EC) No 1453/2001, (EC) No 1454/2001, (EC) 1868/94, (EC) No 1251/1999, (EC) No 1254/1999, (EC) No 1673/2000, (EEC) No 2358/71 and (EC) No 2529/2001, inasmuch as those requirements contribute to the retention of those rights of way as landscape features or, as the case may be, to the avoidance of the deterioration of habitats.**

2. **Where the constitutional system of a Member State provides that devolved administrations are to have legislative competence, the mere adoption by those administrations of different standards for good agricultural and environmental condition under Article 5 of and Annex IV to Regulation No 1782/2003 does not constitute discrimination contrary to Community law.**

[Signatures]