JUDGMENT OF THE COURT (Fifth Chamber)
13 July 1989 *

In Case 380/87

REFERENCE to the Court under Article 177 of the EEC Treaty by the Tribunale amministrativo regionale per la Lombardia (Regional Administrative Court, Lombardy) for a preliminary ruling in the proceedings pending before that court between

Enichem Base, Montedipe, Solvay, SIPA Industriale, Altene, Neophane and Polyflex Italiana,

and

Comune di Cinisello Balsamo,

on the interpretation of Council Directives 75/442 of 15 July 1975 on waste (Official Journal 1975, L 194, p. 39), 76/403 of 6 April 1976 on the disposal of polychlorinated biphenyls and polychlorinated terphenyls (Official Journal 1976, L 108, p. 41) and 78/319 of 20 March 1978 on toxic and dangerous waste (Official Journal 1978, L 84, p. 43), and on the determination of the principles applicable to compensation for loss caused by an administrative act contrary to Community law,

THE COURT (Fifth Chamber)

composed of: R. Joliet, President of Chamber, Sir Gordon Slynn, J. C. Moitinho de Almeida, G. C. Rodríguez Iglesias and M. Zuleeg, Judges,

Advocate General: F. G. Jacobs
Registrar: H. A. Rühl, Principal Administrator

after considering the observations submitted on behalf of

* Language of the case: Italian.

the Commission of the European Communities by its Legal Advisers Giuliano Marenco and Thomas Van Rijn,

the plaintiffs in the main proceedings by G. Leone, M. Siragusa, L. Simont and G. Scassellati Sforzolini,

the Italian Government by Pier Giorgio Ferri, avvocato dello Stato,

the United Kingdom by H. R. L. Purse, Treasury Solicitor,

the Portuguese Government by Luis Fernandes, Rui Falcão de Campos and Ana Cristina Branco,

having regard to the Report for the Hearing and further to the hearing on 2 March 1989,

after hearing the Opinion of the Advocate General delivered at the sitting on 16 March 1989,

gives the following

Judgment

1 By order of 23 November 1987, which was received at the Court on 21 December 1987, the Tribunale amministrativo regionale per la Lombardia referred to the Court for a preliminary ruling under Article 177 of the EEC Treaty a number of questions on the interpretation of Council Directives 75/442 of 15 July 1975 on waste (Official Journal 1975, L 194, p. 39), 76/403 of 6 April 1976 on the disposal of polychlorinated biphenyls and polychlorinated terphenyls (Official Journal 1976, L 108, p. 41) and 78/319 of 20 March 1978 on toxic and dangerous waste (Official Journal 1978, L 84, p. 43), and on the determination of the principles applicable to compensation for loss caused by an administrative act contrary to Community law.

2 The questions were raised in proceedings brought by several producers of plastic containers, wrappings and bags against the Municipality of Cinisello Balsamo concerning the decision of the Mayor of that municipality of 16 February prohibiting the supply to consumers of non-biodegradable bags and other containers in which to carry away their purchases and the sale or distribution of plastic bags, with the exception of those intended for the collection of waste.

3 The companies Enichem Base, Montedipe, Solvay, SIPA Industriale, Altene, Neophane and Polyflex Italiana (hereinafter referred to as 'the plaintiffs') brought an action before the Tribunale amministrativo regionale for the annulment of that decision. They also asked that the operation of the decision be suspended. Since the plaintiffs had claimed in support of their applications for annulment that the decision in question was contrary to Community law, the national court stayed the proceedings and referred the following four questions to the Court for a preliminary ruling:

'(1) Do Council Directives 75/442 of 15 July 1975 on waste, 78/319/EEC of 20 March 1978 on toxic and dangerous waste and 76/403/EEC of 6 April 1976 on the disposal of polychlorinated biphenyls and polychlorinated terphenyls give EEC nationals the right under Community law, a right which national courts must uphold even as against Member States (and which Member States cannot therefore restrict), to sell or use the products concerned by those directives, since the directives provide for the observance of certain rules regarding the disposal of the products in question, not the prohibition of their sale or use?

(2) (a) Does it follow from the Community directives referred to or from Community law in general that any draft regulation or legislative measure (regarding the sale or use of the products in question) which may give rise to technical difficulties in their disposal or to excessive costs of disposal must be brought to the attention of the Commission before its adoption?

(b) Does that obligation bind the State and municipalities, with the result that they have no power to adopt provisions regarding the sale or use of products other than those included by Directive 76/403 in the exhaustive list of substances considered harmful unless it has first been determined at

Community level that the measure does not create unequal conditions of competition?

(3) Having regard to the first recital in the preambles to the three directives referred to in the first question, in particular where it states that any disparity between the provisions on the disposal of the products in question applicable or in preparation in the various Member States may create unequal conditions of competition and thus directly affect the functioning of the common market:

(a) do that recital and the three directives in general give rise to a right (diritto soggettivo comunitario) on the part of EEC nationals, and a corresponding obligation on the part of all the Member States, under which any draft regulation regarding the use of the products in question which may result in technical difficulties in their disposal or excessive costs of disposal must be brought to the attention of the Commission before its adoption (Article 3(2) of Directive 75/442)?

(b) does that right (concerning the obligation to bring any draft regulation to the attention of the Commission before it is adopted, as set out in part (a)), if it exists, extend to *general* measures issued by municipalities, which are thus limited in their territorial application?

(4) Is the administration required under Community law to pay compensation where an unlawful administration measure taken by it infringes a right under Community law (diritto soggettivo comunitario) which upon its incorporation in the Italian legal system, whilst retaining its Community character, takes the form of a protected interest?'

4 Reference is made to the Report for the Hearing for a fuller account of the facts of the case, the course of the procedure and the written observations submitted to the Court, which are mentioned or discussed hereinafter only in so far as is necessary for the reasoning of the Court.

5 It is apparent from the order for reference that the proceedings before the national court concern products which do not come within the scope of Directives 76/403 and 78/319. Plastic bags contain neither polychlorobiphenyl nor polychloroterphenyl and do not in themselves constitute toxic or dangerous waste. Consequently, the questions submitted by the national court must be considered only in relation to Council Directive 75/442.

The first question

6 The essential purpose of the first question is to determine whether Directive 75/442 gives individuals the right to sell or use plastic bags and other non-biodegradable containers.

7 It must be borne in mind that the purpose of Directive 75/442 is to harmonize the legislation of the various Member States regarding the disposal of waste in order on the one hand to avoid barriers to intra-Community trade and inequality of conditions of competition resulting from disparities between such provisions and on the other to contribute to the attainment of Community objectives concerning protection of health and the environment. It does not prohibit the sale or use of any product whatsoever, but nor can it be inferred that it prevents Member States from imposing such prohibitions in order to protect the environment.

8 There is no basis in the wording of the directive for a different interpretation, and in any case any different interpretation would conflict with its objectives. As is apparent from Article 3, the directive is intended *inter alia* to encourage national measures likely to prevent the production of waste. Limitation or prohibition of the sale or use of products such as non-biodegradable containers is conducive to the attainment of that objective.

9 The plaintiffs have also claimed that an absolute prohibition of the marketing of the products in question constitutes a barrier to trade which cannot be justified by the need to protect the environment and is therefore incompatible with Article 30 of the Treaty.

10 However, the national court has not submitted any question on Article 30 of the Treaty and accordingly there is no reason to interpret that provision.

11 The reply to the first question must therefore be that Directive 75/442, properly construed, does not give individuals the right to sell or use plastic bags and other non-biodegradable containers.

The second question

12 The essential purpose of the second question is to determine whether Article 3(2) of Directive 75/442 requires the Member States to inform the Commission of all draft rules of the kind at issue in the main proceedings before they are definitively adopted.

13 It has been contended that the rules in question do not fall within the scope of Article 3 of the directive because they do not concern products whose disposal constitutes a source of technical difficulties or leads to excessive costs.

14 It need merely be stated in that regard that Article 3(2) requires the Member States to inform the Commission in good time not only of draft rules concerning *inter alia* the use of products which might be a source of technical difficulties as regards disposal or lead to excessive disposal costs but also, by virtue of paragraph 1, of all draft rules designed to encourage *inter alia* the prevention, recycling and processing of waste.

15 Consequently, even if the assertion that the products covered by the rules at issue are not a source of technical difficulties as regards disposal and do not lead to excessive disposal costs were substantiated, it would not follow that the draft rules in question fall outside the scope of Article 3(2) of the directive.

16 It was also contended at the hearing that the obligation under Article 3(2) to inform the Commission beforehand related only to measures of a certain degree of importance and could not cover provisions whose practical effects are extremely limited, such as those adopted by a small municipality. It would not be practical, it was maintained, to inform the Commission of such draft rules.

17 It need merely be stated that the directive does not provide for any derogation or limitation regarding the obligation to inform the Commission of the draft rules referred to in Article 3. Consequently, that obligation extends to draft rules drawn up by all authorities in the Member States, including decentralized authorities such as municipalities.

18 It must therefore be stated in reply to the second question that Article 3(2) of Directive 75/442 must be interpreted as requiring Member States to inform the Commission of any draft rules such as those at issue in the main proceedings, prior to their final adoption.

The third question

19 The purpose of the third question is to determine whether Article 3(2) of Directive 75/442 gives individuals a right which they may enforce before the national courts in order to obtain the annulment or suspension of national rules falling within the scope of that provision on the ground that those rules were adopted without having previously been communicated to the Commission of the European Communities.

20 Article 3(2) merely requires the Member States to inform the Commission in good time of any draft rules within the scope of that provision, without laying down any procedure for Community monitoring thereof or making implementation of the planned rules conditional upon agreement by the Commission or its failure to object.

21 The obligation imposed on the Member States by Article 3(2) is intended to ensure that the Commission is informed of any plans for national measures regarding waste disposal so that it can consider whether Community harmonizing legislation

is called for and whether the draft rules submitted to it are compatible with Community law, and take appropriate measures if necessary.

22 Neither the wording nor the purpose of the provision in question provides any support for the view that failure by the Member States to observe their obligation to give prior notice in itself renders unlawful the rules thus adopted.

23 It follows from the foregoing that the abovementioned provision concerns relations between the Member States and the Commission and does not give rise to any right for individuals which might be infringed by a Member State's breach of its obligation to inform the Commission in advance of draft rules.

24 It must therefore be stated in reply to the third question that Article 3(2) of Directive 75/442, properly construed, does not give individuals any right which they may enforce before national courts in order to obtain the annulment or suspension of national rules falling within the scope of that provision on the ground that the rules were adopted without having been previously communicated to the Commission of the European Communities.

The fourth question

25 In view of the answers given to the first three questions, there is no need to give a ruling on the fourth.

Costs

26 The costs incurred by the United Kingdom, the Italian Government, the Portuguese Government and the Commission of the European Communities, which have submitted observations to the Court, are not recoverable. Since these

proceedings are, in so far as the parties to the main proceedings are concerned, a step in the action pending before the national court, the decision on costs is a matter for that court.

On those grounds,

THE COURT (Fifth Chamber),

in answer to the questions submitted to it by the Tribunale amministrativo regionale per la Lombardia, by order of 23 November 1987, hereby rules:

(1) **Directive 75/442, properly construed, does not give individuals the right to sell or use plastic bags and other non-biodegradable containers.**

(2) **Article 3(2) of Directive 75/442 must be interpreted as requiring Member States to inform the Commission of any draft rules such as those at issue in the main proceedings, prior to their final adoption.**

(3) **Article 3(2) of Directive 75/442, properly construed, does not give individuals any right which they may enforce before national courts in order to obtain the annulment or suspension of national rules falling within the scope of that provision on the ground that the rules were adopted without having been previously communicated to the Commission of the European Communities.**

Joliet Slynn

Moitinho de Almeida Rodríguez Iglesias Zuleeg

Delivered in open court in Luxembourg on 13 July 1989.

J.-G. Giraud
Registrar

R. Joliet
President of the Fifth Chamber