JUDGMENT OF THE COURT

23 February 1994 *

In Case C-236/92,

REFERENCE to the Court under Article 177 of the EEC Treaty by the President of the Tribunale Amminstrativo Regionale (Regional Administrative Court), Lombardy, Italy, for a preliminary ruling in the proceedings pending before that court between

Comitato di Coordinamento per la Difesa della Cava and Others

and

Regione Lombardia and Others

on the interpretation of Community environmental law and in particular Council Directive 75/442/EEC of 15 July 1975 on waste (Official Journal 1975 L 194, p. 39),

* Language of the case: Italian.

THE COURT,

composed of: O. Due, President, G. F. Mancini and D. A. O. Edward (Presidents of Chambers), C. N. Kakouris (Rapporteur), R. Joliet, F. A. Schockweiler, G. C. Rodríguez Iglesias, P. J. G. Kapteyn and J. Murray, Judges,

Advocate General: M. Darmon,
Registrar: H. Von Holstein, Deputy Registrar,

after considering the written observations submitted on behalf of:

— Progesam Ecosistemi Srl and Gesam SpA, by G. F. Ferrari and R. Cafari Panico, of the Pavia Bar,

— the United Kingdom, by J. E. Collins, Treasury Solicitor's Department, acting as Agent,

— the Commission of the European Communities, by L. Gussetti, a member of its Legal Service, acting as Agent,

having regard to the Report for the Hearing,

after hearing the oral observations of Progesam Ecosistemi Srl and Gesam SpA, the United Kingdom, represented by D. Wyatt, Barrister, and the Commission at the hearing on 14 September 1993,

after hearing the Opinion of the Advocate General at the sitting on 17 November 1993,

gives the following

Judgment

1 By judgment of 1 April 1992, which was received at the Court Registry on 7 April 1992, the Tribunale Amminstrativo Regionale, Lombardy, referred to the Court for a preliminary ruling under Article 177 of the EEC Treaty five questions on interpretation of Council Directive 75/442/EEC of 15 July 1975 on waste (Official Journal 1975 L 194, p. 39).

2 Those questions were raised in proceedings between a group known as Comitato di Coordinamento per la Difesa della Cava and several individuals, on the one hand, and the Lombardy Region, on the other, concerning the latter's decision to site a waste tip within its territory.

3 It is apparent from the documents before the Court that the Giunta Regionale of the Lombardy Region approved, by various decisions in 1989 and 1990, a plan for a tip for solid urban waste to be established in a municipality within the region.

4 A number of individuals instituted proceedings against those decisions, claiming that they undermined their rights regarding protection of the environment. The national court before which the action was brought, having found that the national rules implementing the directive (Decree No 915 of the President of the Italian Republic of 10 September 1982, *Gazzetta Ufficiale della Repubblica Italiana* No 343 of 15 December 1982, p. 9071) provided for the disposal of waste almost

exclusively by means of tipping, expressed doubts as to the compatibility of those rules with the directive, which required the Member States to adopt appropriate measures to encourage the prevention, recycling and processing of waste.

5 The national court therefore decided to stay the proceedings pending a preliminary ruling from the Court of Justice on the following questions:

'(1) Does Community environmental law, in particular Article 4 of Council Directive 75/422/EEC of 15 July 1975 on waste, grant to individuals "subjective rights" ("diritti soggettivi") which the national court is required to protect?

(2) Must "Community subjective rights" — when transferred into the Italian legal order and taking the form of "legitimate interests" ("interessi leggittimi") — be protected by the competent administrative court by means of the system laid down for "Italian legitimate interests", that court thus being obliged to seek a report (where such a report is necessary) from the public administration, which is a party; or must they be protected by means of the system laid down for "Italian subjective rights", so that the obligation arises — where such an appointment is necessary — to appoint a third party as expert?

(3) Is a national court, when called on to protect "Community subjective rights" of individuals, under an obligation to disapply internal provisions — that are at variance with Community law — even where such "disapplication" may have disturbing effects on the Community public interest and the national public interest or, in the latter case, is (the national court) required to exercise powers analogous to those vested in the Court of Justice by the second paragraph of Article 174 and therefore entitled to confine itself, for example, to ruling that a particular national statute is unlawful, having regard to possible subsequent claims for damages caused by such unlawfulness, or to such measures as the EEC Commission might consider itself to be under a duty to adopt pursuant to Article 169 et seq. of the EEC Treaty?

(4) Following the judgment of 19 November 1991 in Cases C-6/90 and C-9/90 *Francovich and Bonifaci* v *Italian Republic*), is the national court — at least in the event of its considering that the proceedings pending before it might also end with a ruling as to the "disapplication" of national legislative measures or a ruling as to the "Community illegality" of those legislative measures — required to guarantee to the legislative authorities as well, which adopted the said legislative measures (that are suspected of being contrary to Community law), the exercise of the fundamental right of defence?

(5) If the preceding question is answered in the affirmative, what procedural rules (national rules? Or rules derived from the "general principles of Community law"? Etc) should the national court apply in order to allow — in such cases — the State and regional legislative authorities and the State and regional executive authorities specifically to exercise the (fundamental) right of defence in the proceedings pending before this court?'

6 The first question seeks to establish whether Article 4 of the directive confers on individuals rights which the national courts must safeguard.

7 That provision is worded as follows:

'Member States shall take the necessary measures to ensure that waste is disposed of without endangering human health and without harming the environment, and in particular:

— without risk to water, air, soil and plants and animals,

— without causing a nuisance through noise or odours,

— without adversely affecting the countryside or places of special interest.'

8 The Court has consistently held (see in particular the judgments in Case 8/81 *Becker* v *Finanzamt Münster-Innenstadt* [1982] ECR 53 and Case 103/88 *Fratelli Costanzo* v *Commune di Milano* [1989] ECR 1839) that wherever the provisions of a directive appear, as far as their subject-matter is concerned, to be unconditional and sufficiently precise, those provisions may be relied upon by an individual against the State where the State fails to implement the directive in national law by the end of the period prescribed or where it fails to implement the directive correctly.

9 A Community provision is unconditional where it is not subject, in its implementation or effects, to the taking of any measure either by the institutions of the Community or by the Member States (see in particular the judgment in Case 28/67 *Molkerei-Zentrale Westfalen* v *Hauptzollamt Paderborn* [1968] ECR 143).

10 Moreover, a provision is sufficiently precise to be relied on by an individual and applied by the court where the obligation which it imposes is set out in unequivocal terms (judgments in Case 152/84 *Marshall* v *Southampton and South-West Hampshire Health Authority* [1986] ECR 723 and Case 71/85 *Netherlands* v *Federatie Nederlandse Vakbeweging* [1986] ECR 3855).

11 The provision in question does not display the above characteristics.

12 Considered in its context, Article 4 of the directive, which essentially repeats the terms of the third recital in the preamble, indicates a programme to be followed and sets out the objectives which the Member States must observe in their performance of the more specific obligations imposed on them by Articles 5 to 11 of the directive concerning planning, supervision and monitoring of waste-disposal operations.

13 It must also be noted that the Court has already held, in relation to the Member States' obligations under Article 10 of the directive, that that provision does not lay down any particular requirement restricting the freedom of the Member States regarding the way in which they organize the supervision of the activities referred to therein but that that freedom must be exercised having due regard to the objectives mentioned in the third recital in the preamble to the directive and Article 4 thereof (see the judgment in Joined Cases 372 to 374/85 *Ministère Public* v *Traen* [1987] ECR 2141).

14 Thus, the provision at issue must be regarded as defining the framework for the action to be taken by the Member States regarding the treatment of waste and not as requiring, in itself, the adoption of specific measures or a particular method of waste disposal. It is therefore neither unconditional nor sufficiently precise and thus is not capable of conferring rights on which individuals may rely as against the State.

15 It must therefore be stated in reply to the first question that Article 4 of the directive does not confer on individuals rights which the national courts must safeguard.

16 In view of the answer given to that question, it is unnecessary to answer the other questions submitted.

Costs

17 The costs incurred by the United Kingdom and the Commission of the European Communities, which have submitted observations to the Court, are not recoverable. 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.

On those grounds,

THE COURT,

in answer to the questions referred to it by the President of the Tribunale Amminstrativo Regionale, Lombardy, Italy, by order of 1 April 1992, hereby rules:

Article 4 of Council Directive 75/442/EEC of 15 July 1975 on waste does not confer on individuals rights which the national courts must safeguard.

Due Mancini Edward Kakouris Joliet

Schockweiler Rodríguez Iglesias Kapteyn Murray

Delivered in open court in Luxembourg on 23 February 1994.

R. Grass — Registrar

O. Due — President