Dangerous waste

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Publication date:
1992

European Court of Justice Report

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Case C-45/91, Commission v Greece, (waste, toxic and dangerous waste) 26 February 1992 (not yet reported)

Introduction

At the heart of this case are two waste Directives; Directive 75/442 on waste (OJ 1975 L 194/39) and Directive 78/319 on toxic and dangerous waste (OJ 1978 L 84/43). Both Directives harmonise national laws on the disposal of (toxic and dangerous) waste. Their objective, however, is not only to eliminate unequal conditions or competition but also to protect human health and the environment. The 1978 Directive on toxic and dangerous waste follows the path set out by the 1975 framework Directive. In other words, the two Directives contain a set of parallel provisions.

The core of both Directives consists of the obligation to the effect that Member States shall take the necessary measures to ensure that waste is disposed of without endangering human health and without harming the environment (Article 4 of Directive 75/442, Article 5 of Directive 78/319). The provision in the toxic and dangerous waste Directive on the other hand, contains an additional paragraph 2 stating that "Member States shall in particular take the necessary measures to prohibit the abandonment and uncontrolled discharge, tipping or carriage of toxic and dangerous waste, as well as its consignment to installations, establishments or undertakings other than those referred to in Article 9 (1)".

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Both Directives stipulate that competent authorities must be established to be responsible for the planning, organisation, authorisation and supervision of operations for the disposal of (toxic and dangerous) waste. These authorities are at the same time responsible for the drawing up of plans covering in particular the type and quantity of waste to be disposed of, the methods of disposal, specialised treatment centres where necessary and suitable disposal sites. Crucially, Article 7 of the framework Directive requires Member States to ensure that any holder of waste:

- has it handled by a private or public waste collector or by a disposal undertaking;
- or disposes of it himself in accordance with the measures taken pursuant to Article 4.

Directive 78/319 provides for a permit system for installations, establishments or undertakings which store, treat or deposit dangerous waste (Article 9).

In accordance with Article 145 of the Act of Accession, both Directives should have been implemented by 1 January 1981.

Factual Background

The case was brought to the attention of the Commission in September 1987, after it received an individual complaint. In the complaint, it was alleged that a number of regions, in particular in the north of Crete, dumped (or allowed the dumping of) various types of waste in the river Kouroupitos in the region of Mouzoura Akrotiriou. The site in question is of primary ecological importance and of exceptional natural beauty. The substances included waste emanating from local military bases, hospital waste, waste from salt manufacture, agricultural waste and waste produced by various local industries. As a result, levels of stench had become intolerable whilst rats and various species of insects had created additional nuisance.

It was further pointed out that the uncontrolled incineration of waste created the danger of forest fires, in turn endangering the military bases. In addition, following torrential rains in September 1986, the Kouroupitos had carried tonnes of waste into the sea, heavily polluting the Gulf of Souda. In the complaint, attention was drawn to the fact that, despite the pollution of the Gulf of Souda, fishing had not been prohibited.

In a letter of 27 January 1988 the Greek Government was invited to submit its observations on the complaint. In its response of 15 March 1988, the Greek Government confirmed the practice of the dumping of waste into the Kouroupitos. However, it drew attention to the fact that the competent authorities had drawn up a plan aimed at the termination of this practice and which envisaged the creation of new dumping sites. Until the implementation of this plan, however, dumping into the Kouroupitos was set to continue.

Following the Greek Government's response, the Commission issued a formal letter of compliance on 26 April 1989, asking the Greek Government to furnish information in respect of the measures that had been taken to implement the two Directives. The Commission considered that by not taking any measures to ensure that (toxic and dangerous) waste is disposed of without endangering human health and without harming the environment, Greece had failed to implement, in particular, Article 4 of the framework Directive and Article 5 of Directive 78/319 on toxic and dangerous waste. The Commission further noted the absence of a waste disposal plan (as required by Article 6 of the framework Directive and Article 12 of Directive 78/319) and the fact that none of the measures enumerated in Article 7 of Directive 75/442 had been taken. In summary, the Commission concluded that Greece had failed to implement Articles 4, 5, 6, 7 and 13 of Directive 75/442 and Articles 5, 6, 12 and 21 of Directive 78/319.

The Greek response of 4 August 1989 again detailed the medium- and long-term plans which had been drawn up to dispose of waste in the Canee region. It pointed out, however, that the designation of new disposal sites had met local opposition, complicating the finding of an alternative to the dumping of waste in the Kouroupitos.

Not satisfied with this response, the Commission issued a reasoned opinion in accordance with Article 169 EEC. In response to a question of the Court, the Commission gave to understand that the waste emanated from a number of diverse sources such as military bases, hospitals, pharmacies and small local industries. According to the Commission, the waste contained some of the substances listed on the Annex to Directive 78/319, *inter alia*, mercury, cadmium, lead, chlorides and various other chemical compounds, the effects on the environment of which were not all known.

During the oral procedure, the Greek Government challenged the admissibility of the Commission's complaints in respect of Directive 78/319, pointing out that the Commission had not mentioned this Directive in its letter of 27 January 1988.

The Judgment

The Court first ruled in respect of the admissibility of the Commission's complaints regarding Directive 78/319. In this respect, the Court observed that the letter of 27 January 1988 merely constituted an informal request on the part of the Commission for the Greek Government to submit its observations in respect of the complaint. The letter of formal compliance (which indeed determines the subject matter of the procedure) was sent on 26 April 1989 and contained the necessary details in respect of the alleged infringements of Directive 78/319. It followed that the Commission's complaints relating to Directive 78/319 were admissible.

In respect of the substance of the complaint, the Court focussed on what was the Greek Government's main defence, ie the existence of local opposition which delayed the implementation of the disposal plans. Referring to Article 145 of the Act of Accession, the Court first of all pointed out that Greece should have complied with both Directives by January 1981. Repeating its settled case law, the Court ruled that a Member State cannot invoke internal circumstances to justify failure to implement Community law within the time limits prescribed.

It followed that, by failing to take the necessary measures to ensure that in the Canee region waste and toxic waste is disposed of without endangering human health and without harming the environment, and by failing to draw up waste elimination plans in respect of waste and toxic and dangerous waste for

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that region, Greece had failed to fulfil its obligations under Articles 4 and 6 of Directive 75/442 of 15 July 1975 on waste and Articles 5 and 12 of Directive 78/319 of 20 March 1978 on toxic and dangerous waste.

Conclusion

From a substantive viewpoint, the case would seem to raise few interesting points of law. The Court has never been inclined to accept internal circumstances of the kind advanced by the Greek Government as a defence against failure properly to implement (environmental) directives, and in this respect, the judgment comes as no surprise.

The case does acquire significance however, when it is realised that since the complaint in 1987, it has almost taken five years for the case to be finally settled by way of a judgment by the Court. Even then, it should be noted that, by itself, a ruling by the Court cannot guarantee the ceasing of the infringement. As is well known, the Court does not have the power to impose sanctions on Member States which infringe Community law. Although after the coming into force of the Treaty on European Union, Article 171 will allow financial sanctions to be imposed upon such Member States, the fact remains that an individual complaint is a very cumbersome way for individuals or common interest groups to safeguard their environmental interests.

This conclusion prompts the question whether there are perhaps more direct ways for individuals to protect their rights. Although it is not viable to discuss in any detail the remedies EC law affords to individuals to protect rights emanating from environmental directives, a few brief comments may be appropriate in this respect.

In the first place, it can be argued that Article 4 of Directive 75/442 and Article 5 of Directive 78/319 are sufficiently clear and precise to produce direct effect and therefore can be relied upon directly by individuals before their national courts. Admittedly, at first sight, the obligation that Member States "shall take the necessary steps" to ensure that waste is disposed of in an environmentally sound manner would seem to stand in the way of the direct effectiveness of these provisions. However, it might not be too far-fetched to support the argument that the obligation to dispose of waste without endangering human health and the environment is not conditional upon any action to be taken by Member States. If this line of reasoning is accepted, Kramer may be right in arguing that the provisions are directly effective. (*Journal of Environmental Law Vol 3, No 1* [1991] p 39-56). This, evidently, would mean that individuals (depending on national provisions regarding *locus standi*) are in a position to enforce their Community rights in their courts with much the same expediency as rights emanating from national law.

A second observation regards the possible use of interim measures. Article 186 empowers the European Court of Justice "to prescribe any interim measures". The Commission has once before (unsuccessfully) applied for interim relief in a case involving the implementation of an environmental Directive (Case 57R/89 [1990] 3 CMLR 651). The Court in this instance ruled that the Commission had not shown sufficiently the urgency of the case. In this case, however, the damage resulting from the infringement was quite evident. It is therefore to be regretted that the Commission has not used this opportunity to set an important precedent by successfully applying for interim measures, thus preventing any further harm to the environment.

In the third place, reference should be made to the proposed EC Directive on civil liability for damage caused by waste. (COM (89) 282 final, COM(91) 219 final). Although at the moment of writing the draft is being negotiated, it should be noted that it seems likely that public waste producers are to be excluded from the Directive's scope. However, to the extent that the Directive will cover a case of this kind, it will enable public interest groups to initiate clean-up actions in order to restore the environment to its previous state and thus provide for a much more efficient way to enforce Community rights relating to the environment than does the cumbersome infringement procedure.

A final remark concerns the possible implications of the Francovich case for individuals who suffer damage as a result of the non-implementation of Community environmental Directives. (Case C-6/90 and C-9/90, *Francovich and Bonifaci a o v Italy*, not yet reported). The Court has laid down three conditions which must be satisfied before liability of the State for non-implementation of Directives can arise:

(a) the result laid down by the Directive involves rights conferred upon individuals,

(b) the content of those rights is identifiable on the basis of the provisions of the Directive,

(c) a causal link must exist between the failure by the Member State to fulfil its obligation and the damage caused within the context of national law on liability.

Although the legal issues at stake are very complicated and therefore cannot be examined here, it is submitted that under certain circumstances a State that fails to implement an environmental Directive (especially when this failure has been subject to a ruling by the European Court) may be held liable for damage caused to the environment which has resulted from this failure.

Heavy Goods Vehicles

On 19 May the Court stated that the German law of 30 April 1990 which imposed a road tax on heavy goods vehicles wherever registered, payable on all lorries with a total laden weight exceeding 18 tonnes and varying from DM1,000 to DM9,000 according to weight, was incompatible with the Treaty. The fact that a Community transport policy has not yet been established does not give Member States the right to bring in legislation that is incompatible with Article 76. The German government had failed to prove that the effect of discouraging road traffic worked to the advantage of rail or water transport rather than increasing the market share of German road hauliers. The operation of the tax had been suspended pending this decision of the Court.