Skipulags stofnun

2004120020

Nefndasvið Alþingis
Hlín Lilja Sigfúsdóttir
Austurstræti 8-10
150 Reykjavík

Reykjavík, 7. desember 2004
/--

Efni: Frumvarp til laga um breytingu á lögum um náttúruvernd (eldri námur)

Vegna fyrirliggjandi frumvarps til breytinga á náttúruverndarlögum sem umhverfisnefnd Alþingis hefur nú til umfjöllunar:

Frumvarpið varðar efnistöku sem stunduð er og hafin var fyrir gildistöku náttúruverndarlaga 1. júlí 1999. Frumvarpið felur í sér að þessi efnistaka verði í áföngum háð framkvæmdaleyfi skv. skipulags- og byggingarlögum og ákvæðum laga um mat á umhverfisáhrifum um tilkynningarskyldu og matsskyldu.

Skipulagsstofnun fagnar því að fram skuli vera komið frumvarp sem fjallar um leyfisveitingar og mat á umhverfisáhrifum eldri efnistökusvæða. Vegna efnis og framsetningar frumvarpsins vill stofnunin vekja athygli á eftirfarandi atriðum:

Staðsetning ákvæða um framkvæmdaleyfisskyldu og mats-/tilkynningarskyldu tiltekinna framkvæmda

Ákvæði um framkvæmdaleyfi sveitarstjórna er að finna í skipulags- og byggingarlögum. Í 27. gr. skipulags- og byggingarlaga er kveðið á um hvers konar framkvæmdir séu háðar framkvæmdaleyfi og í greininni er einnig að finna heimild til umhverfisráðherra til að setja reglugerð um framkvæmdaleyfi. Í 9. kafla skipulagsreglugerðar er fjallað um framkvæmdaleyfi. Ákvæði um hvaða framkvæmdir séu matsskyldar eða tilkynningarskyldar til ákvörðunar um matsskyldu er að finna í lögum um mat á umhverfisáhrifum.

Nú er lagt til að í stað þess að tilgreina í skipulags- og byggingarlögum hvaða framkvæmdir eru framkvæmdaleyfisskyldar og tilgreina í lögum um mat á umhverfisáhrifum um matsskyldu og tilkynningarskyldu framkvæmda, sé það að hluta gert í lögum um náttúruvernd. Þetta hefur verið gert áður, þ.e. þegar lög um náttúruvernd voru endurskoðuð 1999 og sett ákvæði um framkvæmdaleyfisskyldu efnistökustaða í 47. gr. þeirra.

Skipulagsstofnun telur að miða skuli að því að lagaákvæði sem varða framkvæmdaleyfisskyldu almennt eða einstakra framkvæmdategunda skuli sett í skipulags- og byggingarlögum fremur en í öðrum lögum. Sama gildir um mats-/tilkynningarskyldu

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framkvæmda og lög um mat á umhverfisáhrifum. Að baki því sjónarmiði liggja tvær ástæður. Annarsvegar er mun erfiðara fyrir borgara og stjórnvöld að átta sig á hvaða reglur gilda um framkvæmdaleyfisskyldu og mats-/tilkynningarskyldu, ef ákvæði þar um er ekki að finna í þeim lögum sem fjalla um framkvæmdaleyfi sveitarfélaga og mat á umhverfisáhrifum framkvæmda. Hinsvegar hefur sú tilhögun sem lögð er til í frumvarpinu í för með sér hugsanlega óvissu um hvaða stjórnvöld fara með eftirlit með framfylgd þeirra. Þannig fer Umhverfisstofnun með eftirlit með framkvæmd náttúruverndarlaga, en Skipulagsstofnun með eftirlit með framkvæmd laga um mat á umhverfisáhrifum og skipulags- og byggingarlaga.

Í ljósi þess sem að framan segir telur Skipulagsstofnun að betur hefði geta átt við að gera umræddar lagabreytingar á skipulags- og byggingarlögum og lögum um mat á umhverfisáhrifum, fremur en lögum um náttúruvernd.

Skilgreining verndarsvæða sem viðmiðs fyrir tilkynningarskyldu og framkvæmdaleyfisskyldu framkvæmda

Í 1. gr., d-lið frumvarpsins er lagt til að tilkynningarskylda og framkvæmdaleyfisskylda efnistökuframkvæmda skuli taka mið af því hvort framkvæmdin er á svæði sem skilgreint er sem verndarsvæði í 3. viðauka laga um mat á umhverfisáhrifum, en auk þess skuli miðað við hvort framkvæmdin sé á svæði á náttúruverndaráætlun.

Ef ástæða þykir til að einnig sé tekið mið af svæðum á náttúruverndaráætlun, auk þeirra verndarsvæða sem skilgreind eru í 3. viðauka laga um mat á umhverfisáhrifum vegna eldri efnistökuframkvæmda, hlýtur það einnig að vera mikilvægt vegna nýrra efnistökuframkvæmda og annarra tilkynningarskyldra framkvæmda skv. lögum um mat á umhverfisáhrifum. Af þeim sökum telur Skipulagsstofnun að betur hefði geta átt við að í stað þess að gerð sé breyting á náttúruverndarlögum (þ.e. "eða á svæði sem fyrirhugað er að verði friðlýst samkvæmt náttúruverndaráætlun sem samþykkt hefur verið á Alþingi.") verði gerð svohljóðandi breyting á 3. viðauka laga um mat á umhverfisáhrifum: "Við 2. iii.(a) í 3.viðauka laga um mat á umhverfisáhrifum bætist: þ.m.t. svæða sem fyrirhugað er að verði friðlýst samkvæmt náttúruverndaráætlun."

Kostnaður

Í fylgiskjali með frumvarpinu kemur fram að um 100 námur geti orðið tilkynningarskyldar til Skipulagsstofnunar verði frumvarpið að lögum, og að reiknað sé með að kostnaður við þá málsmeðferð rúmist innan núverandi fjárhagsramma stofnunarinnar.

Vegna þessa vísar Skipulagsstofnun til minnisblaðs stofnunarinnar til umhverfisnefndar dags. 15. nóvember sl. vegna fjárlagafrumvarps 2005.

Túlkun tilskipunar 85/337 um mat á umhverfisáhrifum framkvæmda

Að lokum er vakin athygli á að fyrir liggur nýlegur dómur Evrópudómstólsins um túlkun tilskipunar 85/337 m.t.t. eldri efnistökustaðar (dómur dags. 7. janúar 2004 í máli nr. C-201/02 Delena Wells). Afrit af dómnum er hjálagt til fróðleiks.

Ásdís Hlökk Theodórsdóttir

JUDGMENT OF THE COURT (Fifth Chamber)

7 January 2004 (1)

(Directive 85/337/EEC - Assessment of the effects of certain projects on the environment - National measure granting consent for mining operations without an environmental impact assessment being carried out - Direct effect of directives - Triangular situation)

In Case C-201/02,

REFERENCE to the Court under Article 234 EC by the High Court of Justice of England and Wales, Queen's Bench Division (Administrative Court), for a preliminary ruling in the proceedings pending before that court between

The Queen on the application of **Delena Wells**

and

Secretary of State for Transport, Local Government and the Regions,

on the interpretation of Council Directive 85/337/EEC of 27 June 1985 on the assessment of the effects of certain public and private projects on the environment,

THE COURT (Fifth Chamber),

composed of: P. Jann (Rapporteur), acting for the President of the Fifth Chamber, D.A.O. Edward and A. La Pergola, Judges,

Advocate General: P. Léger,

Registrar: L. Hewlett, Principal Administrator,

after considering the written observations submitted on behalf of:

- Mrs Wells, by R. Gordon QC and J. Pereira, barrister, instructed by R. Buxton, solicitor,

- the United Kingdom Government, by P. Ormond, acting as Agent, D. Elvin QC and J. Maurici, barrister,

- the Commission of the European Communities, by X. Lewis, acting as Agent, and N. Khan, barrister,

having regard to the Report for the Hearing,

after hearing the oral observations of Mrs Wells, represented by R. Gordon and J. Pereira, instructed by S. Ring, solicitor; the United Kingdom Government, represented by R. Caudwell, acting as Agent, and D. Elvin; and the Commission, represented by X. Lewis and N. Khan, at the hearing on 12 June 2003

after hearing the Opinion of the Advocate General at the sitting on 25 September 2003,

gives the following

Judgment

1. By order of 12 February 2002, received at the Court on 6 May 2002, the High Court of Justice of England and Wales, Queen's Bench Division (Administrative Court), referred to the Court for a

preliminary ruling under Article 234 EC five questions on the interpretation of Council Directive 85/337/EEC of 27 June 1985 on the assessment of the effects of certain public and private projects on the environment (OJ 1985 L 175, p. 40).

2. Those questions were raised in proceedings between Mrs Wells and the Secretary of State for Transport, Local Government and the Regions (hereinafter the Secretary of State) concerning the grant of a new consent for mining operations at Conygar Quarry without an environmental impact assessment having first been carried out.

Legal context

Community legislation

3. As stated in the fifth recital in its preamble, Directive 85/337 is intended to introduce general principles for the assessment of environmental effects with a view to supplementing and coordinating development consent procedures for public and private projects likely to have a major effect on the environment.

4. Article 1(2) of the directive defines development consent as the decision of the competent authority or authorities which entitles the developer to proceed with the project.

5. Article 2(1) of the directive states:

Member States shall adopt all measures necessary to ensure that, before consent is given, projects likely to have significant effects on the environment by virtue, inter alia, of their nature, size or location are made subject to an assessment with regard to their effects.

These projects are defined in Article 4.

6. In Article 4, the directive divides projects into two wide categories: those likely by their nature to give rise to significant effects on the environment and those which will not necessarily do so in all cases. Article 4(2) thus provides:

Projects of the classes listed in Annex II shall be made subject to an assessment, in accordance with Articles 5 to 10, where Member States consider that their characteristics so require.

To this end Member States may inter alia specify certain types of projects as being subject to an assessment or may establish the criteria and/or thresholds necessary to determine which of the projects of the classes listed in Annex II are to be subject to an assessment in accordance with Articles 5 to 10.

7. Point 2(c) of Annex II to the directive refers to projects for extraction of minerals other than metalliferous and energy-producing minerals, such as marble, sand, gravel, shale, salt, phosphates and potash.

National legislation

8. Prior to the Town and Country Planning Act 1947, the Town and Country Planning (General Interim Development) Order 1946 empowered the competent authorities to grant, by interim development orders, consents for mineral extraction (old mining permissions) in order to respond to the need for construction materials which arose during the period immediately following World War II.

9. Since then, the Town and Country Planning Act, as enacted in 1947 and in its subsequent versions, has constituted the principal legal instrument relating to land planning in the United Kingdom.

10. The Act lays down general rules concerning both the grant of planning permission and the modification or revocation of such permission.

11. Thus, under sections 97 and 100 of the Town and Country Planning Act 1990, the competent authorities have the power to revoke or modify any permission on planning grounds. The power to revoke a permission may be exercised at any time before the operations authorised have been

completed.

12. By virtue of paragraphs 1 and 11 of Schedule 9 to the Town and Country Planning 1990, the competent authorities may by order require discontinuance of the use of land for the winning and working of minerals or impose certain conditions on the continuance of such use.

13. Section 22 of the Planning and Compensation Act 1991 lays down a special set of rules for old mining permissions.

14. Section 22(3) of the Planning and Compensation Act 1991 provides that if no development has, at any time in the period of two years ending on 1 May 1991, been carried out to any substantial extent, operations may not resume until the conditions to which the [old mining] permission is to be subject have been determined and registered in accordance with section 22(2). On the other hand, if no application for registration is made before 25 March 1992, the old mining permission will cease to have effect (section 22(4) of the Act and paragraph 1(3) of Schedule 2 thereto).

15. Schedule 2 to the Planning and Compensation Act 1991 describes in detail the procedures for determining the registration conditions.

16. Under paragraphs 1 and 2 of Schedule 2 to the Planning and Compensation Act 1991, applications for registration and for determination of planning conditions are to be made to the competent mineral planning authority (hereinafter MPA).

17. If the conditions determined by the MPA differ from those set out in the application, the applicant may appeal to the Secretary of State (paragraph 5(2) of Schedule 2 to the Planning and Compensation Act 1991).

18. In accordance with section 22(7) of the Planning and Compensation Act 1991, the provisions relating to old mining permissions are to have effect as if they were included in the Town and Country Planning Act 1990. That presumption has the effect of integrating the provisions relating to old mining permissions into the general land use planning regime, in so far as no specific provision was adopted in the Planning and Compensation Act 1991.

19. Under the Town and Country Planning (Assessment of Environmental Effects) Regulations 1988, mining permissions granted pursuant to the Town and Country Planning Act 1990 are subject to environmental impact assessment in accordance with Directive 85/337. The regime prescribed in section 22 of the Planning and Compensation Act 1991 for old mining permissions was not, on the other hand, considered to be subject to such an environmental impact assessment procedure.

The main proceedings and the questions referred for a preliminary ruling

20. In 1947 an old mining permission was granted for Conygar Quarry by interim development order under the Town and Country Planning (General Interim Development) Order 1946.

21. Conygar Quarry is divided into two sections, of slightly more than 7.5 hectares each, separated by a road on which Mrs Wells's house is situated. Mrs Wells bought her house in 1984, that is to say 37 years after the permission had been granted, but at a time when the quarry had long since been dormant. However, in June 1991 operations recommenced for a short period.

22. The site is recognised to be environmentally extremely sensitive. The area in or adjacent to which the quarry lies is subject to several designations of nature and environmental conservation importance.

23. At the beginning of 1991, the owners of Conygar Quarry applied to the competent MPA for registration of the old mining permission under the Planning and Compensation Act 1991.

24. Registration was granted by a decision of 24 August 1992, which stated that no development could lawfully be carried out unless and until an application for the determination of new planning conditions had been made to the MPA and finally determined (the registration decision).

25. The owners of Conygar Quarry therefore applied to the competent MPA for determination of new planning conditions.

26. After the MPA, by decision of 22 December 1994, had imposed more stringent conditions than those submitted by the owners of Conygar Quarry, the latter exercised their right of appeal to the Secretary of State.

27. By decision of 25 June 1997 (hereinafter, together with the decision of 22 December 1994, the decision determining new conditions), the Secretary of State imposed 54 planning conditions, leaving some matters to be decided by the competent MPA.

28. Those matters were approved by the competent MPA by decision of 8 July 1999 (hereinafter the *decision approving matters reserved by the new conditions*).

29. Neither the Secretary of State nor the competent MPA examined whether it was necessary to carry out an environmental impact assessment pursuant to Directive 85/337. At no time was a formal environmental statement considered.

30. By letter of 10 June 1999, Mrs Wells requested the Secretary of State to take appropriate action, namely revocation or modification of the planning permission, to remedy the lack of an environmental impact assessment in the consent procedure. Since she received no reply to her request, she brought proceedings before the High Court of Justice.

31. Pursuant to an undertaking given to the High Court at the first hearing, the Secretary of State, by letter of 28 March 2001, provided a reasoned response to Mrs Wells's letter, in which he declined to revoke or modify the planning permission. Mrs Wells then amended her initial application to include a challenge to the decision contained in the letter of 28 March 2001.

32. Since the High Court of Justice of England and Wales, Queen's Bench Division (Administrative Court), considered that interpretation of Community law was needed in the case before it, it decided to stay proceedings and refer the following questions to the Court of Justice for a preliminary ruling:

[1.] Whether an approval of a new set of conditions on an existing permission granted by an Interim Development Order (old mining permission) pursuant to section 22 and Schedule 2 of the Planning and Compensation Act 1991 is a development consent for the purposes of the EIA [Environmental Impact Assessment] Directive.

[2.] Whether, following the approval of a new scheme of conditions on an IDO old mining permission under the Planning and Compensation Act 1991, the approval of further matters required under the new scheme of conditions is itself capable of being a development consent for the purposes of the EIA Directive.

[3.] If the answer to [1.] is yes but [2.] is no, is the Member State nevertheless under a continuing duty to remedy its failure to require EIA, and if so, how?

[4.] Whether (i) it is open to individual citizens to challenge the State's failure to require EIA, or whether (ii) that may be prohibited under the limitations imposed by the Court on the doctrine of direct effect e.g. by horizontal direct effect or by the imposition of burdens or obligations on individuals by an emanation of the State.

[5.] If the answer to [4.](ii) is yes what are the limits of such prohibitions on direct effect in the present circumstances and what steps may the UK lawfuliy take consistent with the EIA Directive?

Consideration of the questions referred for a preliminary ruling

The first and second questions: the obligation to carry out an environmental impact assessment

33. By its first two questions, which it is appropriate to consider together, the referring court essentially asks whether Article 2(1) of Directive 85/337, read in conjunction with Article 4(2) thereof, is to be interpreted as meaning that, in the context of applying provisions such as section 22 of the Planning and Compensation Act 1991 and Schedule 2 to that Act, the decisions adopted by the competent authorities, whose effect is to permit the resumption of mining operations, involve a development consent within the meaning of Article 1(2) of that directive, so that the competent authorities are obliged, where appropriate, to carry out an assessment of the environmental effects of such operations.

Classification as a development consent

- Admissibility

34. While recognising that Community law favours giving an autonomous interpretation to concepts used in Community measures, the Commission contends that in Case C-81/96 *Gedeputeerde Staten van Noord-Holland* [1998] ECR I-3923 the Court held that the question of when development consent is granted is a question of national law. In the Commission's submission, the Court did not resile from that position in Case C-435/97 *WWF and Others* [1999] ECR I-5613 and Case C-287/98 *Linster* [2000] ECR I-6917. The question whether certain procedural measures in national law are development consents for the purpose of Directive 85/337 is therefore inadmissible.

35. As to that, a question referred by a national court for a preliminary ruling is inadmissible only if it is quite obvious that the question does not concern the interpretation of Community law or that it is hypothetical (see, inter alia, Case C-83/91 *Meilicke* [1992] ECR I-4871, paragraphs 25 and 32, Case C-62/93 *BP Supergas* [1995] ECR I-1883, paragraph 10, and Case C-143/94 *Furlanis* [1995] ECR I-3633, paragraph 12).

36. That is not the case here.

37. The question whether the decision determining new conditions and the decision approving matters reserved by the new conditions constitute development consent within the meaning of Article 1(2) of Directive 85/337 is a question concerning the interpretation of Community law. The Court has consistently held that, in light of both the principle that Community law should be applied uniformly and the principle of equality, the terms of a provision of Community law which makes no express reference to the law of the Member States for the purpose of determining its meaning and scope is normally to be given throughout the Community an autonomous and uniform interpretation which must take into account the context of the provision and the purpose of the legislation in question (Case 327/82 *Ekro* [1984] ECR 107, paragraph 11, and *Linster*, cited above, paragraph 43).

38. Accordingly, the question whether the decision determining new conditions and the decision approving matters reserved by the new conditions constitute development consent within the meaning of Article 1(2) of Directive 85/337 is admissible.

- Substance

39. The United Kingdom Government contends that neither the decision determining new conditions nor the decision approving matters reserved by the new conditions constitutes development consent within the meaning of Article 1(2) of Directive 85/337.

40. It states with regard to the decision determining new conditions that development was authorised many years before Directive 85/337 created obligations for the Member States. The determination of conditions under the Planning and Compensation Act 1991 involves merely the detailed regulation of activities for which the principal consent has already been given. In the United Kingdom Government's submission, the reasoning with regard to the decision determining new conditions and the decision approving matters reserved by the new conditions is therefore the same as in pipeline cases (see paragraph 43 of this judgment). For reasons of legal certainty, the directive does not apply to such projects.

41. As regards the decision approving matters reserved by the new conditions, the United Kingdom Government observes that the decision likely to affect the environment had already been taken and the approval of details may not extend beyond the parameters set by the initial determination of the scheme of planning conditions.

42. As to those submissions, under Article 2(1) of Directive 85/337 projects likely to have significant effects on the environment, as referred to in Article 4 of the directive read in conjunction with Annexes I and II thereto, must be made subject to an assessment with regard to such effects before consent is given.

43. This does not apply only where consent was granted before 3 July 1988 (an old consent), that is to say before the time-limit laid down for implementation of Directive 85/337, or where consent was granted after 3 July 1988 but the consent procedure was initiated before that date (pipeline projects) (see, to this effect, Case C-431/92 *Commission* v *Germany* [1995] ECR I-2189, paragraph

32, and *Gedeputeerde Staten van Noord-Holland*, cited above, paragraph 23). The directive thus requires an assessment of the environmental effects of the project in question in the case of new consents.

44. In the main proceedings, the owners of Conygar Quarry were obliged under the Planning and Compensation Act 1991, if they wished to resume working of the quarry, to have the old mining permission registered and to seek decisions determining new planning conditions and approving matters reserved by those conditions. Had they not done so, the permission would have ceased to have effect.

45. Without new decisions such as those referred to in the previous paragraph, there would no longer have been consent, within the meaning of Article 2(1) of Directive 85/337, to work the quarry.

46. It would undermine the effectiveness of that directive to regard as mere modification of an existing consent the adoption of decisions which, in circumstances such as those of the main proceedings, replace not only the terms but the very substance of a prior consent, such as the old mining permission.

47. Accordingly, decisions such as the decision determining new conditions and the decision approving matters reserved by the new conditions for the working of Conygar Quarry must be considered to constitute, as a whole, a new consent within the meaning of Article 2(1) of Directive 85/337, read in conjunction with Article 1(2) thereof.

48. It should be added that, since those decisions were adopted on 25 June 1997 and 8 July 1999 respectively, an old consent granted before 3 July 1988 is not in issue. Nor is this a pipeline case since the applications leading to the decisions were submitted in 1993 or 1994 and in 1997 or 1998 respectively.

The time at which the environmental impact assessment must be carried out

49. Given that, in the context of a consent procedure comprising several stages, merely establishing that there is a development consent within the meaning of Directive 85/337 cannot provide the referring court with a complete answer as regards the obligation on Member States to carry out an assessment of the environmental effects of the project at issue, it is necessary to consider the question as to when such an assessment must be carried out.

50. As provided in Article 2(1) of Directive 85/337, the environmental impact assessment must be carried out before consent is given.

51. According to the first recital in the preamble to the directive, the competent authority is to take account of the environmental effects of the project in question at the earliest possible stage in the decision-making process.

52. Accordingly, where national law provides that the consent procedure is to be carried out in several stages, one involving a principal decision and the other involving an implementing decision which cannot extend beyond the parameters set by the principal decision, the effects which the project may have on the environment must be identified and assessed at the time of the procedure relating to the principal decision. It is only if those effects are not identifiable until the time of the procedure relating to the implementing decision that the assessment should be carried out in the course of that procedure.

53. The answer to the first two questions must therefore be that Article 2(1) of Directive 85/337, read in conjunction with Article 4(2) thereof, is to be interpreted as meaning that, in the context of applying provisions such as section 22 of the Planning and Compensation Act 1991 and Schedule 2 to that Act, the decisions adopted by the competent authorities, whose effect is to permit the resumption of mining operations, comprise, as a whole, a development consent within the meaning of Article 1(2) of that directive, so that the competent authorities are obliged, where appropriate, to carry out an assessment of the environmental effects of such operations.

In a consent procedure comprising several stages, that assessment must, in principle, be carried out as soon as it is possible to identify and assess all the effects which the project may have on the environment.

The fourth and fifth questions: the ability of individuals to invoke the provisions of Directive 85/337

54. By its fourth and fifth questions, which it is appropriate to consider together, the referring court essentially asks whether, in circumstances such as those of the main proceedings, an individual may, where appropriate, rely on Article 2(1) of Directive 85/337, read in conjunction with Articles 1 (2) and 4(2) thereof, or whether the principle of legal certainty precludes such an interpretation.

The direct effect of Article 2(1) of Directive 85/337, read in conjunction with Articles 1(2) and 4(2)

55. According to the United Kingdom Government, acceptance that an individual is entitled to invoke Article 2(1) of Directive 85/337, read in conjunction with Articles 1(2) and 4(2) thereof, would amount to inverse direct effect directly obliging the Member State concerned, at the request of an individual, such as Mrs Wells, to deprive another individual or individuals, such as the owners of Conygar Quarry, of their rights.

56. As to that submission, the principle of legal certainty prevents directives from creating obligations for individuals. For them, the provisions of a directive can only create rights (see Case 152/84 *Marshall* [1986] ECR 723, paragraph 48). Consequently, an individual may not rely on a directive against a Member State where it is a matter of a State obligation directly linked to the performance of another obligation falling, pursuant to that directive, on a third party (see, to this effect, Case C-221/88 *Busseni* [1990] ECR I-495, paragraphs 23 to 26, and Case C-97/96 *Daihatsu Deutschland* [1997] ECR I-6843, paragraphs 24 and 26).

57. On the other hand, mere adverse repercussions on the rights of third parties, even if the repercussions are certain, do not justify preventing an individual from invoking the provisions of a directive against the Member State concerned (see to this effect, in particular, Case 103/88 *Fratelli Costanzo* [1989] ECR 1839, paragraphs 28 to 33, *WWF and Others*, cited above, paragraphs 69 and 71, Case C-194/94 *CIA Security International* [1996] ECR I-2201, paragraphs 40 to 55, Case C-201/94 *Smith & Nephew and Primecrown* [1996] ECR I-5819, paragraphs 33 to 39, and Case C-443/98 *Unilever* [2000] ECR I-7535, paragraphs 45 to 52).

58. In the main proceedings, the obligation on the Member State concerned to ensure that the competent authorities carry out an assessment of the environmental effects of the working of the quarry is not directly linked to the performance of any obligation which would fall, pursuant to Directive 85/337, on the quarry owners. The fact that mining operations must be halted to await the results of the assessment is admittedly the consequence of the belated performance of that State's obligations. Such a consequence cannot, however, as the United Kingdom claims, be described as inverse direct effect of the provisions of that directive in relation to the quarry owners.

The period that elapsed between the decision determining new conditions and Mrs Wells's request that the situation be remedied

59. The United Kingdom Government further submits that the considerable period which has elapsed since the decision determining new conditions in 1997 renders revocation of that decision contrary to the principle of legal certainty. The claimant in the main proceedings should have challenged the decision in due time before the competent court.

60. As to that submission, the final stage of the planning consent procedure was not completed when the claimant in the main proceedings submitted her request to the Secretary of State. It cannot therefore be contended that revocation of the consent would have been contrary to the principle of legal certainty.

61. Accordingly, the answer to the fourth and fifth questions must be that, in circumstances such as those of the main proceedings, an individual may, where appropriate, rely on Article 2(1) of Directive 85/337, read in conjunction with Articles 1(2) and 4(2) thereof.

The third question: the obligation to remedy the failure to carry out an environmental impact assessment

62. By its third question, the referring court essentially seeks to ascertain the scope of the obligation to remedy the failure to carry out an assessment of the environmental effects of the project in question.

63. The United Kingdom Government contends that, in the circumstances of the main proceedings, there is no obligation on the competent authority to revoke or modify the permission issued for the working of Conygar Quarry or to order discontinuance of the working.

64. As to that submission, it is clear from settled case-law that under the principle of cooperation in good faith laid down in Article 10 EC the Member States are required to nullify the unlawful consequences of a breach of Community law (see, in particular, Case 6/60 *Humblet* [1960] ECR 559, at 569, and Joined Cases C-6/90 and C-9/90 *Francovich and Others* [1991] ECR I-5357, paragraph 36). Such an obligation is owed, within the sphere of its competence, by every organ of the Member State concerned (see, to this effect, Case C-8/88 *Germany* v *Commission* [1990] ECR I-2321, paragraph 13).

65. Thus, it is for the competent authorities of a Member State to take, within the sphere of their competence, all the general or particular measures necessary to ensure that projects are examined in order to determine whether they are likely to have significant effects on the environment and, if so, to ensure that they are subject to an impact assessment (see, to this effect, Case C-72/95 *Kraaijeveld and Others* [1996] ECR I-5403, paragraph 61, and *WWF and Others*, cited above, paragraph 70). Such particular measures include, subject to the limits laid down by the principle of procedural autonomy of the Member States, the revocation or suspension of a consent already granted, in order to carry out an assessment of the environmental effects of the project in question as provided for by Directive 85/337.

66. The Member State is likewise required to make good any harm caused by the failure to carry out an environmental impact assessment.

67. The detailed procedural rules applicable are a matter for the domestic legal order of each Member State, under the principle of procedural autonomy of the Member States, provided that they are not less favourable than those governing similar domestic situations (principle of equivalence) and that they do not render impossible in practice or excessively difficult the exercise of rights conferred by the Community legal order (principle of effectiveness) (see to this effect, inter alia, Case C-312/93 *Peterbroeck* [1995] ECR I-4599, paragraph 12, and Case C-78/98 *Preston and Others* [2000] ECR I-3201, paragraph 31).

68. So far as the main proceedings are concerned, if the working of Conygar Quarry should have been subject to an assessment of its environmental effects in accordance with the requirements of Directive 85/337, the competent authorities are obliged to take all general or particular measures for remedying the failure to carry out such an assessment.

69. In that regard, it is for the national court to determine whether it is possible under domestic law for a consent already granted to be revoked or suspended in order to subject the project in question to an assessment of its environmental effects, in accordance with the requirements of Directive 85/337, or alternatively, if the individual so agrees, whether it is possible for the latter to claim compensation for the harm suffered.

70. The answer to the third question must therefore be that under Article 10 EC the competent authorities are obliged to take, within the sphere of their competence, all general or particular measures for remedying the failure to carry out an assessment of the environmental effects of a project as provided for in Article 2(1) of Directive 85/337.

The detailed procedural rules applicable in that context are a matter for the domestic legal order of each Member State, under the principle of procedural autonomy of the Member States, provided that they are not less favourable than those governing similar domestic situations (principle of equivalence) and that they do not render impossible in practice or excessively difficult the exercise of rights conferred by the Community legal order (principle of effectiveness).

In that regard, it is for the national court to determine whether it is possible under domestic law for a consent already granted to be revoked or suspended in order to subject the project to an assessment of its environmental effects, in accordance with the requirements of Directive 85/337, or alternatively, if the individual so agrees, whether it is possible for the latter to claim compensation for the harm suffered.

Costs

71. The costs incurred by the United Kingdom Government and the Commission, 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 action pending before the referring court, the decision on costs is a matter for that court.

On those grounds,

THE COURT (Fifth Chamber),

in answer to the questions referred to it by the High Court of Justice of England and Wales, Queen's Bench Division (Administrative Court), by order of 12 February 2002, hereby rules:

1. Article 2(1) of Council Directive 85/337/EEC of 27 June 1985 on the assessment of the effects of certain public and private projects on the environment, read in conjunction with Article 4(2) thereof, is to be interpreted as meaning that, in the context of applying provisions such as section 22 of the Planning and Compensation Act 1991 and Schedule 2 to that Act, the decisions adopted by the competent authorities, whose effect is to permit the resumption of mining operations, comprise, as a whole, a development consent within the meaning of Article 1(2) of that directive, so that the competent authorities are obliged, where appropriate, to carry out an assessment of the environmental effects of such operations.

In a consent procedure comprising several stages, that assessment must, in principle, be carried out as soon as it is possible to identify and assess all the effects which the project may have on the environment.

2. In circumstances such as those of the main proceedings, an individual may, where appropriate, rely on Article 2(1) of Directive 85/337, read in conjunction with Articles 1 (2) and 4(2) thereof.

3. Under Article 10 EC the competent authorities are obliged to take, within the sphere of their competence, all general or particular measures for remedying the failure to carry out an assessment of the environmental effects of a project as provided for in Article 2(1) of Directive 85/337.

The detailed procedural rules applicable in that context are a matter for the domestic legal order of each Member State, under the principle of procedural autonomy of the Member States, provided that they are not less favourable than those governing similar domestic situations (principle of equivalence) and that they do not render impossible in practice or excessively difficult the exercise of rights conferred by the Community legal order (principle of effectiveness).

In that regard, it is for the national court to determine whether it is possible under domestic law for a consent already granted to be revoked or suspended in order to subject the project to an assessment of its environmental effects, in accordance with the requirements of Directive 85/337, or alternatively, if the individual so agrees, whether it is possible for the latter to claim compensation for the harm suffered.

Jann
Edward
La Pergola

Delivered in open court in Luxembourg on 7 January 2004.

R. Grass

Registrar

V. Skouris

President

1: Language of the case: English.