JUDGMENT OF THE COURT (Fourth Chamber)

7 June 2007 *

In Joined Cases C-222/05 to C-225/05,

REFERENCES for a preliminary ruling under Article 234 EC by the College van Beroep voor het bedrijfsleven (Netherlands), made by decisions of 17 May 2005, received at the Court on 20 May 2005, in the proceedings

J. van der Weerd,

Maatschap Van der Bijl,

J.W. Schoonhoven (C-222/05),

H. de Rooy, sen.,

H. de Rooy, jun. (C-223/05),

Maatschap H. en J. van 't Oever,

Maatschap F. van 't Oever en W. Fien,

* Language of the case: Dutch.

B. van 't Oever,

Maatschap A. en J. Fien,

Maatschap K. Koers en J. Stellingwerf,

H. Koers,

Maatschap K. en G. Polinder,

G. van Wijhe (C-224/05),

B.J. van Middendorp (C-225/05),

v

Minister van Landbouw, Natuur en Voedselkwaliteit,

THE COURT (Fourth Chamber),

composed of K. Lenaerts, President of the Chamber, E. Juhász, R. Silva de Lapuerta, J. Malenovský (Rapporteur) and T. von Danwitz, Judges,

Advocate General: M. Poiares Maduro,
Registrar: M. Ferreira, Principal Administrator,

having regard to the written procedure and further to the hearing on 7 December 2006,

after considering the observations submitted on behalf of:

— Mr van der Weerd, Maatschap Van der Bijl and M. Schoonhoven, Maatschap H. en J. van 't Oever, Maatschap F. van 't Oever en W. Fien, Mr van 't Oever, Maatschap A. en J. Fien, Maatschap K. Koers en J. Stellingwerf, Ms Koers, Maatschap K. en G. Polinder and Mr van Wijhe, by A. van Beek and G. de Jager, advocaten,

— the Netherlands Government, by H.G. Sevenster and C. ten Dam, acting as Agents,

— the French Government, by G. de Bergues and R. Loosli-Surrans, acting as Agents,

— the Commission of the European Communities, by F. Erlbacher, M. van Heezik and T. van Rijn, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 1 March 2007,

gives the following

Judgment

1 The references for a preliminary ruling concern, first, the interpretation of Community law as regards the power of a national court to consider of its own motion the compatibility of an administrative measure with Council Directive 85/511/EEC of 18 November 1985 introducing Community measures for the control of foot-and-mouth disease (OJ 1985 L 315, p. 11), as amended by Council Directive 90/423/EEC of 26 June 1990 (OJ 1990 L 224, p. 13), ('Directive 85/511') and, secondly, the interpretation of that directive.

2 Those questions were raised in proceedings between Mr van der Weerd, Maatschap Van der Bijl, Mr Schoonhoven, Mr de Rooy, sen., and Mr de Rooy, jun., Maatschap H. en J. van 't Oever, Maatschap F. van 't Oever en W. Fien, Mr van 't Oever, Maatschap A. en J. Fien, Maatschap K. Koers en J. Stellingwerf, Ms Koers, Maatschap K. en G. Polinder, Mr van Wijhe and Mr van Middendorp, on the one hand, and the Minister van Landbouw, Natuur en Voedselkwaliteit (Minister for Agriculture, Nature and Food Quality), on the other, concerning the slaughter of animals belonging to the appellants.

Legal framework

Community legislation

3 Directive 85/511 lays down Community measures for controlling foot-and-mouth disease. Article 4 of the directive requires Member States to ensure inter alia that,

where a holding contains one or more animals suspected of being infected or of being contaminated with foot-and-mouth disease, official means of investigation to confirm or rule out the presence of the disease are set in motion immediately and, in particular, that the official veterinarian takes the necessary samples, or has them taken, for laboratory examination.

4 In addition, Article 5 of the directive provides that as soon as it has been confirmed that one or more infected animals are on a holding, the competent authority is to introduce the measures laid down in that article, in particular the measure which requires that all animals of susceptible species on the holding are to be slaughtered on the spot under official supervision in such a way as to avoid all risk of spreading the foot-and-mouth virus.

5 Article 11(1) and Article 13(1) of the directive state that Member States are to ensure that laboratory testing to detect the presence of foot-and-mouth disease and the manipulation of foot-and-mouth virus for research, diagnosis and/or manufacture of vaccines are carried out only in approved establishments and laboratories listed in the annex to the directive.

6 At the time of the facts in the main proceedings, Annex B to Directive 85/511, entitled 'National laboratories dealing with foot-and-mouth disease', referred, under the heading 'Netherlands', to the 'Centraal Diergeneeskundig Instituut, Lelystad'.

National legislation

7 Article 8:69 of the General Law on administrative law (Algemene Wet Bestuursrecht) provides:

'1. The court before which proceedings are brought shall give its ruling on the basis of the application, the documents produced, the preliminary investigation and the consideration of the case at the hearing.

2. The court shall supplement the pleas in law of its own motion.

3. The court may supplement the facts of its own motion.'

8 That provision is applicable to the procedures followed before the College van Beroep voor het bedrijfsleven (Administrative court for trade and industry) by virtue of Article 19(1) of the Law on appeals in administrative matters (Wet rechtspraak bedrijfsorganisatie).

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

9 In February 2001, an epidemic of foot-and-mouth disease was declared in the Netherlands. At that time, the appellants in the main proceedings were in charge of cattle-breeding holdings in which biungulate animals were kept. Their holdings were situated less than two kilometres from the holdings which had been declared to be

infected by foot-and-mouth disease by the Director of the Rijksdienst voor de keuring van Vee en Vlees (national cattle and meat inspection service) ('the RVV'). The latter had relied in that regards on the result of tests carried out by the ID-Lelystad BV laboratory ('ID-Lelystad'), which had been communicated by facsimile and according to which the samples taken in the infected holdings had been found to be positive.

10 Following that finding of foot-and-mouth disease, the Director of the RVV took decisions concerning the appellants in the main proceedings, in terms of which all biungulate animals on their holdings were to be treated as under suspicion of being infected by foot-and-mouth disease, on the ground that, since a case of foot-and-mouth disease had been ascertained in the vicinity of their holdings, the possibility could not be ruled out that the animals on those holdings might have been infected by that disease.

11 By the same decisions, the Director of the RVV informed the appellants in the main proceedings of a number of measures designed to control the foot-and-mouth virus and to prevent it from spreading, including the vaccination, followed by the slaughter, of all biungulate animals on their holdings. Accordingly, those animals were vaccinated and then slaughtered.

12 After having lodged objections to those decisions with the Director of the RVV, who rejected them as unfounded, the appellants in the main proceedings brought proceedings before the national court challenging the decisions taken by the Director against them.

13 For the purposes of contesting the validity of the statement that foot-and-mouth disease was suspected and, accordingly, the decisions of the Director of the RVV, the

appellants in the main proceedings have put forward pleas in law claiming, in particular, that the authorities misinterpreted the definition of 'animal suspected of being infected', the clinical signs of the presence of foot-and-mouth disease and the procedures applying when blood samples are taken.

14 The national court rejected all of those pleas. However, it pointed out that, in the related cases before it which gave rise to the judgment of the Court in Case C-28/05 *Dokter and Others* [2006] ECR I-5431, the validity of similar decisions had been challenged on the basis of different pleas in law, which had not been raised by the appellants in the main proceedings.

15 Those pleas in law had claimed that the Director of the RVV was not entitled to take measures to control foot-and-mouth disease based on the result of tests carried out by ID-Lelystad, because the latter had not been authorised by Directive 85/511 to carry them out. Moreover, the Director was not entitled to base measures to control foot-and-mouth disease solely on the content of the facsimile sent by ID-Lelystad intimating the results of the laboratory testing. He ought to have asked for the file drawn up by the laboratory to be sent to him, have studied it and verified whether the tests had been correctly carried out.

16 The College van Beroep voor het bedrijfsleven held that those pleas in law could also have an influence on the resolution of the current disputes in the main proceedings. However, because those pleas were not raised before it, the national rules of procedure prevent their being taken into account. Article 8:69 of the General Law on administrative judicial procedure provides that the court is to give its ruling solely on the basis of the issues which are put before it. While it is true that paragraph 2 of that article states that the court is to supplement the pleas in law of its own motion, that provision means, however, that the court is to put the objections made by the applicant against the contested administrative measure into legal form. A distinction falls to be made between that duty to supplement those pleas in law of the court's own motion and the analysis which the court is required to

make on its own initiative. Such an analysis is required only in cases involving the application of rules of public policy, that is to say rules relating to the powers of administrative bodies and those of the court itself, and provisions as to admissibility.

17 However, the national court is uncertain as to whether Community law requires it to take into consideration arguments based on that law which have not been put forward by the appellants in the main proceedings. The question arises whether a national procedural provision which means that the court cannot examine pleas in law which go beyond the ambit of the dispute renders the exercise of rights conferred by Community law virtually impossible or excessively difficult.

18 In those circumstances, the College van Beroep voor het bedrijfsleven decided to stay the four actions comprising the main proceedings and to refer to the Court for a preliminary ruling the following questions:

'(1) Does Community law require the courts of their own motion to conduct an examination, that is to say, an examination of grounds which are outside the terms of the dispute, by reference to criteria based on Directive 85/511?

(2) If the answer to Question 1 is in the affirmative, does the obligation on Member States under the first indent of Article 11(1) of Directive 85/511, read in conjunction with the second indent of Article 13(1) thereof, to ensure that laboratory testing to detect the presence of foot-and-mouth disease is carried out by a laboratory listed in Annex B to Directive 85/511 have direct effect?

(3) (a) Must Article 11(1) of Directive 85/511 be interpreted as meaning that legal consequences must be attached to the fact that the presence of foot-and-mouth disease is found by a laboratory which is not listed in Annex B to Directive 85/511?

(b) If the answer to Question 3(a) is in the affirmative:

Is the purpose of Article 11(1) of Directive 85/511 to protect the interests of individuals, such as the appellants in the main proceedings? If not, can individuals, such as the appellants in the main proceedings, plead possible failure to fulfil the obligations which this provision places on the authorities of the Member States?

(c) If the answer to Question 3(b) means that individuals can rely on Article 11(1) of Directive 85/511:

What legal consequences must be attached to a finding of the presence of foot-and-mouth disease by a laboratory which is not listed in Annex B to Directive 85/511?

(4) Must Annex B to Directive 85/511 be interpreted, having regard to Articles 11 and 13 thereof, as meaning that the reference in Annex B to Directive 85/511 to "Centraal Diergeneeskundig Instituut, Lelystad" can or must refer also to [ID-Lelystad]?

(5) If it follows from the above answers that the presence of foot-and-mouth disease can be found by a laboratory which is not listed in Annex B to Directive 85/511 or that Annex B to Directive 85/511 must be interpreted as meaning that the mention of the "Centraal Diergeneeskundig Instituut, Lelystad" can or must refer also to [ID-Lelystad]:

Must Directive 85/511 be interpreted as providing that the national administrative authority authorised to adopt decisions is bound by the outcome of an examination by a laboratory which is listed in Annex B to Directive 85/51 or — if the answer to Question 3(a) means that the administrative authority may base its foot-and-mouth disease control measures also on results obtained by a laboratory which is not listed in Annex B to Directive 85/511 — by the results of the latter laboratory, or does the determination of final authority in that regard fall within the procedural autonomy of the Member State, so that the court before which the main proceedings are pending must examine whether the rules in that respect apply irrespective of whether the laboratory examination is carried out by virtue of a Community or national legal obligation and whether or not the application of the provisions of national procedural law renders the implementation of the Community rules excessively difficult or virtually impossible?

(6) If the answer to Question 5 means that the issue of whether national authorities are bound by the laboratory result is governed by Directive 85/511:

Are the national authorities bound unconditionally by the result of a foot-and-mouth disease examination carried out by a laboratory? If not, what margin of discretion does Directive 85/511 leave these national authorities?'

19 By order of the President of the Court of 7 July 2005, Cases C-222/05 to C-225/05 were joined for the purposes of the written and oral procedure and the judgment.

The questions referred for a preliminary ruling

Question 1

20 By this question, the national court essentially asks whether Community law requires a national court, in actions such as the main proceedings, to conduct an examination of its own motion of the validity of an administrative measure by having regard to pleas in law which allege that Articles 11 and 13 of Directive 85/511 have been infringed.

Admissibility

21 Mr van der Weerd, Maatschap Van der Bijl, Mr Schoonhoven, Maatschap H. en J. van 't Oever, Maatschap F. van 't Oever en W. Fien, Mr van 't Oever, Maatschap A. en J. Fien, Maatschap K. Koers en J. Stellingwerf, Ms Koers, Maatschap K. en G. Polinder and Mr van Wijhe ('Mr van der Weerd and Others') dispute the narrative which has been given of the course of the proceedings before the national court. They argue that they have raised Directive 89/511 as an issue before it and that the Court cannot accordingly consider Question 1.

22 According to settled case-law, questions on the interpretation of Community law referred by a national court in the factual and legislative context which that court is

responsible for defining and the accuracy of which is not a matter for the Court to determine, enjoy a presumption of relevance (see Case C-300/01 *Salzmann* [2003] ECR I-4899, paragraphs 29 and 31). The Court may refuse to rule on a question referred by a national court only where it is quite obvious that the interpretation of Community law that is sought bears no relation to the actual facts of the main action or its purpose, where the problem is hypothetical, or where the Court does not have before it the factual or legal material necessary to give a useful answer to the questions submitted to it (see, inter alia, Case C-379/98 *PreussenElektra* [2001] ECR I-2099, paragraph 39, and Joined Cases C-94/04 and C-202/04 *Cipolla and Others* [2006] ECR I-11421, paragraph 25).

23 That presumption of relevance cannot be rebutted by the simple fact that one of the parties to the main proceedings contests certain facts, the accuracy of which is not a matter for the Court to determine and on which the delimitation of the subject-matter of those proceedings depends (*Cipolla and Others*, paragraph 26).

24 In the present case, Mr van der Weerd and Others claim that the national court wrongly took the view that pleas in law based on infringement of Directive 85/511 had not been raised before it. This is plainly a fact, the accuracy of which is not a matter for the Court to determine.

25 The argument advanced by Mr van der Weerd and Others cannot therefore be accepted.

26 The same is true of the arguments put forward at the hearing by the Commission, which called into question the necessity for the national court to raise Question 1, having regard to the conclusions reached by the Court in the judgment in *Dokter and Others*. That judgment does not manifestly lead to the result that the answer of

the Court in the present cases is irrelevant having regard to the decision which the national court is called upon to take.

27 The Court must therefore give an answer to Question 1.

Substance

28 It is clear from the case-law that, in the absence of Community rules in the field, it is for the domestic legal system of each Member State to designate the courts and tribunals having jurisdiction and to lay down the detailed procedural rules governing actions for safeguarding rights which individuals derive from Community law, provided, first, that such rules are not less favourable than those governing similar domestic actions (principle of equivalence) and, secondly, that they do not render virtually impossible or excessively difficult the exercise of rights conferred by Community law (principle of effectiveness) (Joined Cases C-430/93 and C-431/93 *Van Schijndel and van Veen* [1995] ECR I-4705, paragraph 17, and Case C-129/00 *Commission* v *Italy* [2003] ECR I-14637, paragraph 25).

29 As regards the principle of equivalence, it is clear from the order for reference that the College van Beroep voor het bedrijfsleven is competent to raise of its own motion issues relating to the infringement of rules of public policy, which are construed in Dutch law as meaning issues concerning the powers of administrative bodies and those of the court itself, and provisions as to admissibility. Those rules lie at the very basis of the national procedures, since they define the conditions in which those procedures may be initiated and the authorities which have the power, within their area of responsibility, to determine the extent of the rights and obligations of individuals.

30 The provisions of Directive 85/511 which are at issue do not occupy a similar position within the Community legal order. They govern neither the conditions in which procedures relating to the control of foot-and-mouth disease may be initiated nor the authorities which have the power, within their area of responsibility, to determine the extent of the rights and obligations of individuals.

31 Those provisions cannot therefore be considered as being equivalent to the national rules of public policy referred to above. As a result, the application of the principle of equivalence does not mean, as regards the present cases, that the national court is obliged to conduct of its own motion an examination of the validity of the administrative measures in question by having regard to criteria based on Directive 85/511.

32 Moreover, were those provisions to form part of public health policy, they would have been put forward in the main proceedings essentially in order to take account of the private interests of individuals who had been the object of measures to control foot-and-mouth disease.

33 As regards the principle of effectiveness, it is clear from the Court's case-law that each case which raises the question whether a national procedural provision renders the exercise of rights conferred by the Community legal order on individuals impossible or excessively difficult must be analysed by reference to the role of that provision in the procedure, its progress and its special features, viewed as a whole, before the various national instances. In that context, it is necessary to take into consideration, where relevant, the principles which lie at the basis of the national legal system, such as the protection of the rights of the defence, the principle of legal certainty and the proper conduct of the proceedings (see, to that effect, Case C-312/93 *Peterbroeck* [1995] ECR I-4599, paragraph 14, and *Van Schijndel and van Veen*, paragraph 19).

34 In the cases which gave rise to the judgment in *Van Schijndel and van Veen*, the Court examined the compatibility with the principle of effectiveness of a principle of national law which provided that the power of the court to raise pleas of its own motion in domestic proceedings was limited by its obligation to keep to the subject-matter of the dispute and to base its decision on the facts put before it.

35 The Court held that that limitation on the power of the national court was justified by the principle that, in a civil suit, it is for the parties to take the initiative, and that, as a result, the court is able to act of its own motion only in exceptional cases involving the public interest. That principle safeguards the rights of the defence and ensures the proper conduct of proceedings by, in particular, protecting them from the delays inherent in examination of new pleas (see, to that effect, *Van Schijndel and van Veen*, paragraph 21).

36 On the basis of that reasoning, the Court held that the principle of effectiveness does not preclude a national provision which prevents national courts from raising of their own motion an issue as to whether the provisions of Community law have been infringed, where examination of that issue would oblige them to abandon the passive role assigned to them by going beyond the ambit of the dispute defined by the parties themselves and relying on facts and circumstances other than those on which the party with an interest in application of those provisions has based his claim (see *Van Schijndel and van Veen*, paragraph 22).

37 In the present case, the College van Beroep voor het bedrijfsleven indicates that the procedure followed before it does not differ, in that regard, from the procedure at issue in *Van Schijndel and van Veen*. In particular, to examine of the court's own motion issues not put forward by the appellants in the main proceedings would go beyond the ambit of the dispute as put before it. Those two procedures differ only in so far as, in the present case, the College van Beroep voor het bedrijfsleven is not ruling as a court of last instance, as in that judgment, but as a court of first and last instance.

38 That matter alone does not place the parties to the main proceedings in a special situation which is capable of calling into question the principles referred to above. Accordingly, it cannot lead to a different conclusion from that reached by the Court in *Van Schijndel and van Veen*. That point does not affect the fact that, in the context referred to in the preceding paragraph, the taking into consideration by the national court of its own motion of issues not put forward by the parties to the main proceedings is, as in that judgment, capable of infringing the rights of the defence and the proper conduct of proceedings and, in particular, of leading to the delays inherent in the examination of new pleas.

39 That result is not called into question by the case-law in *Peterbroeck*; Case C-126/97 *Eco Swiss* [1999] ECR I-3055; Joined Cases C-240/98 to C-244/98 *Océano Grupo Editorial and Salvat Editores* [2000] ECR I-4941; Case C-473/00 *Cofidis* [2002] ECR I-10875; and Case C-168/05 *Mostaza Claro* [2006] ECR I-10421.

40 The case-law cited in the previous paragraph is not relevant in the present case. One of those cases can be distinguished by reason of circumstances peculiar to the dispute, which led to the applicant in the main proceedings being deprived of the opportunity to rely effectively on the incompatibility of a domestic provision with Community law (see *Peterbroeck*, paragraph 16 et seq.). In other cases, the Court's findings are justified by the need to ensure that consumers are given the effective protection which Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts (OJ 1993 L 95, p. 29) seeks to achieve (see *Océano Grupo Editorial and Salvat Editores*, paragraph 26; *Cofidis*, paragraph 33; and *Mostaza Claro*, paragraph 29). Moreover, that case-law cannot be properly invoked in an analysis of an infringement of the principle of effectiveness, since it seeks to determine whether equal treatment is given to pleas based on national law and those based on Community law (see *Eco Swiss*, paragraph 37).

41 It follows that the principle of effectiveness does not, in circumstances such as those which arise in the main proceedings, impose a duty on national courts to raise a plea

based on a Community provision of their own motion, irrespective of the importance of that provision to the Community legal order, where the parties are given a genuine opportunity to raise a plea based on Community law before a national court. Since the appellants in the main proceedings have had a genuine opportunity to raise pleas based on Directive 85/511, the principle of effectiveness does not require the national court to examine of its own motion a plea based on Articles 11 and 13 of that directive.

42 In the light of the foregoing, the answer to Question 1 should be that Community law does not require the national court, in an action of the kind which forms the basis of the main proceedings, to raise of its own motion a plea alleging infringement of the provisions of Community legislation, since neither the principle of equivalence nor the principle of effectiveness require it to do so.

The other questions

43 In view of the answer to the first question, it is not necessary to answer the other questions, which were asked only to cover the possibility that the national court might be required to take into account of its own motion pleas not raised by the appellants in the main proceedings.

Costs

44 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 (Fourth Chamber) hereby rules:

Community law does not require the national court, in an action of the kind which forms the basis of the main proceedings, to raise of its own motion a plea alleging infringement of the provisions of Community legislation, since neither the principle of equivalence nor the principle of effectiveness require it to do so.

[Signatures]