

2. For a carrier to be exempted from the obligation to pay compensation under Article 5(3) of Regulation (EC) No 261/2004 of the European Parliament and of the Council of 11 February 2004 establishing common rules on compensation and assistance to passengers in the event of denied boarding and of cancellation or long delay of flights, in conjunction with recital 14 of that regulation, is it sufficient to make out a probable case, or is it also necessary to prove, that the employees' strike constitutes an extraordinary circumstance which could not have been avoided even if all reasonable measures at the carrier's disposal had been taken?

⁽¹⁾ OJ 2004 L 46, p. 1.

Action brought on 18 August 2017 — European Commission v Republic of Slovenia

(Case C-506/17)

(2017/C 357/08)

Language of the case: Slovene

Parties

Applicant: European Commission (represented by: E. Sanfrutos Cano, M. Žebre)

Defendant: Republic of Slovenia

Form of order sought

The applicant claims that the Court should:

- declare that the Republic of Slovenia, by failing to adopt, in respect of the landfill sites Dragonja, Dvori, Rakek — Pretržje, Bukovžlak — Cinkarna, Suhadole, Lokovica, Mislinjska Dobrava, Izola, Mozelj, Dolga Poljana, Dolga vas, Jelšane, Volče, Stara gora, Stara vas, Dogoše, Mala gora, Tuncovec — steklarna, Tuncovec — OKP, and Bočna — Podhom, the necessary measures, in accordance with Articles 7(g) and 13 of that directive, to close down as soon as possible the sites which had not been granted, in accordance with Article 8 of the directive, a permit to continue to operate, has failed to fulfil its obligations under Article 14(b) of Directive 1999/31/EC;
- declare that the Republic of Slovenia, [by failing] to adopt, with regard to the Ostri Vrh landfill site, the necessary measures authorising the necessary works and fixing a transition period for completely implementing the conditioning plan and bringing the facility into compliance with the requirements of Directive 1999/31/EC, with the exception of the requirements in Annex I, point 1, within eight years of the date stipulated in Article 18(1) of that directive, has failed to fulfil its obligations under Article 14(c) of Directive 1999/31/EC;
- order the Republic of Slovenia to pay the costs.

Pleas in law and main arguments

1. In accordance with Article 14 of Directive 1999/31/EC ('the directive'), Member States were required to take measures in order that existing landfill sites — ie, 'landfills which [had] been granted a permit, or which [were] already in operation at the time of transposition of [the] Directive', that being 16 July 2001 (in Slovenia's case 1 May 2004, the date of its accession to the EU) — were examined in the light of the requirements of the directive and, on the basis of such an evaluation, were closed down as soon as possible or were guaranteed to comply with the requirements of the directive within a transitional period of eight years, which expired on 16 July 2009. That deadline applied also to Slovenia, which, in that respect, was not given a transitional period under the Accession Treaty.
2. In the light of the Republic of Slovenia's declarations in the pre-litigation phase, and taking into account the decisions of the Slovenian administrative bodies as set out in the individual permits authorising the operation of the facilities during the closure and after-care procedures, the Commission correctly observes that, as regards seven landfill sites (Mislinjska Dobrava, Volče, Izola, Dragonja, Dvori, Mozelj, Tuncovec — OKP), the closure works are still being carried out. This is why the Commission concludes that, as regards those landfill sites, the Republic of Slovenia has not yet fulfilled its obligations under Article 14(b) of the directive.

3. After analysing all the information available, and taking into consideration the Republic of Slovenia's declarations in the pre-litigation phase and the lack of any evidence to the contrary, it appears that five landfill sites (Bočna — Podhom, Dogoše, Mala gora, Tuncovec — steklarna and Stara vas) — despite the Republic of Slovenia's claims that closure is largely complete — have not yet received a definitive decision on closure, as required by Article 14(b) read in conjunction with Article 13(b) of the directive. The Commission deduces from this, therefore, that the Republic of Slovenia, as regards those five landfill sites, has not yet fulfilled its obligations under Article 14(b) of the directive.
 4. After analysing all the information available, and taking into consideration the Republic of Slovenia's declarations in the pre-litigation phase and the lack of any evidence to the contrary, it appears that eight landfill sites (Dolga vas, Jelšane, Stara gora, Rakek — Pretržje, Lokovica, Dolga Poljana, Bukovžlak Cinkarna, Suhadole), have not yet received a definitive decision on closure, as required by Article 14(b) read in conjunction with Article 13(b) of the directive. It also appears that the closure works are still ongoing. The Commission deduces from this, therefore, that the Republic of Slovenia, as regards those eight landfill sites also, has not yet fulfilled its obligations under Article 14(b) of the directive.
 5. The Republic of Slovenia has never provided any evidence to demonstrate that an environmental permit for the continued operation of the Ostri Vrh landfill site was issued within the deadline for replying to the additional reasoned opinion (that is, before the day on which the present action was commenced), so that the Member State would have fulfilled its obligations under Article 14(c). In addition, the Commission notes that the permit subsequently obtained, granting permission to operate during the closure procedure and afterwards, shows that the closure works are still ongoing and must be completed by 30 May 2019, which indicates that the Republic of Slovenia has in no way fulfilled its obligations under Article 14 of the directive.
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