

Action brought on 23 May 2002 by Commission of the European Communities against Federal Republic of Germany

(Case C-191/02)

(2002/C 180/20)

An action against the Federal Republic of Germany was brought before the Court of Justice of the European Communities on 23 May 2002 by Commission of the European Communities, represented by Götz zur Hausen, legal advisor of the Commission, acting as Agent, with an address for service in Luxembourg at the office of Luis Escobar Guerrero, of the Legal Service, Wagner Centre C 254, Kirchberg, Luxembourg.

The applicant claims that the Court should:

1. Declare that, by failing to ensure equivalence of the monitoring methods in accordance with Annex I Part D.1 of Council Directive 91/271/EEC⁽¹⁾ of 21 May 1991 concerning urban waste water treatment, the Federal Republic of Germany has failed to fulfil its obligations under the directive and in particular under Article 15(1) thereof.
2. Order the Federal Republic of Germany to pay the costs of the proceedings.

Pleas in law and main arguments

The application of the monitoring methods used in Germany ('2-hours-mixed sample' and 'qualified random sample')⁽²⁾ instead of the methods required by the directive in Annex I part D, numbers 2, 3 and 4, has the result that the limits laid down by the Directive can be exceeded without objection. This is proved by the results of a study commissioned by the Umweltbundesamt (Federal Environment Office) in 1996: 'Expert opinion as to the equivalence of the requirements of the Framework Waste Water Regulations and the EU Directive as regards the discharge concentration of urban waste water treatment plants and the degree of nitrogen elimination'.

The Commission rejects the objection that, on account of Article 5(4) of the directive, it is not necessary to appraise the equivalence of the monitoring methods for individual plants. Article 5 governs an area different from Article 15 and Annex I part D. Article 5 governs quality requirements, exceptions from which are admitted subject to a quite specific requirement. Article 15 and Annex I part D govern monitoring methods by which compliance with limits is reviewed. It is quite clear that

the overall reduction of 75 % to which the Federal Republic refers with regard to the nitrogen load must have been measured according to the monitoring methods applied in Germany. That level of nitrogen reduction cannot therefore substantiate the equivalence of monitoring method applied in Germany.

⁽¹⁾ OJ L 135 of 30.5.1971, p. 40. Annex I of the Directive was amended by Commission Directive 98/15/EC of 27 February 1998, OJ L 67 of 7.3.98, p. 29.

⁽²⁾ Verordnung über Anforderungen an das Einleiten von Abwasser in Gewässer of 21 March 1991, BGBl. 1997 I-566, as amended by the notice of 20.9.2001, BGBl. 2001 I-2240.

Reference for a preliminary ruling by the Immigration Appellate Authority, by order of that court dated 27 May 2002, in the case of Man Lavette Chen and Kunqian Catherine Zhu against Secretary of State for the Home Department

(Case C-200/02)

(2002/C 180/21)

Reference has been made to the Court of Justice of the European Communities by an order of the Immigration Appellate Authority dated 27 May 2002, which was received at the Court Registry on 30 May 2002, for a preliminary ruling in the case of Man Lavette Chen and Kunqian Catherine Zhu against Secretary of State for the Home Department, on the following questions:

1. On the facts of the present case, does Article 1 of Council Directive 73/148/EEC⁽¹⁾ or in the alternative of Article 1 of Council Directive 90/364/EEC⁽²⁾:
 - a) confer the right on the First Appellant, who is a minor and a citizen of the Union, to enter and reside in the host Member State?
 - b) and if so, does it consequently confer the right on the Second Appellant, a third country national who is the First Appellant's mother and primary carer, to reside with the First Appellant (i) as her dependent relative, or (ii) because she lived with the First Appellant in her country of origin, or (iii) on any other special basis?
2. If and to the extent that the First Appellant is not a 'national of a member state' for purposes of exercising Community Rights pursuant to Council Directive 73/148/EEC or Article 1 of Council Directive 90/364/EEC, what then are the relevant criteria for identifying whether a child, who is a citizen of the Union, is a national of a member state for purposes of exercising Community rights?

3. In the circumstances of the present case, does the receipt of child care by the First Appellant constitute services for purposes of Council Directive 73/148/EEC?
4. In the circumstances of the present case, is the First Appellant precluded from residing in the host state pursuant to Article 1 of Council Directive 90/364/EEC because her resources are provided exclusively by her third country national parent who accompanies her?
5. On the special facts of this case does Article 18(1) EC give the First Appellant the right to enter and reside in the host member state even when she does not qualify for residence in the host state under any other provision of EU law?
6. If so, does the Second Appellant consequently enjoy the right to remain with the First Appellant, during that time in the host state?
7. In this context, what is the effect of the principle of respect for fundamental human rights under Community law claimed by the Appellants, in particular where the Appellants rely on Article 8 ECHR that everyone has the right to respect for his private and family life and his home in conjunction with Art 14 ECHR given that the First Appellant cannot live in China with the Second Appellant and her father and brother?
- of Justice (England and Wales), Queen's Bench Division (Administrative Court) dated 28 March 2002, which was received at the Court Registry on 6 May 2002, for a preliminary ruling in the case of *The Queen against Secretary of State for Transport, Local Government and the Regions, Ex parte: Delena Wells*, on the following questions:
- (a) 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 Directive⁽¹⁾?
- (b) 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?
- (c) If the answer to (a) is 'yes' but (b) is 'no', is the member state nevertheless under a continuing duty to remedy its failure to require EIA, and if so, how?
- (d) 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?
- (e) If the answer to (d)(ii) is 'yes' what are the limits of such prohibitions on direct effect in the present circumstances and what steps may the UK lawfully take consistently with the EIA Directive?

(1) Council Directive 73/148/EEC of 21 May 1973 on the abolition of restrictions on movement and residence within the Community for nationals of Member States with regard to establishment and the provision of services, OJ L 172, 28.6.1973, p. 14.

(2) Council Directive 90/364/EEC of 28 June 1990 on the right of residence. OJ L 180, 13.7.1990, p. 26.

Reference for a preliminary ruling by the High Court of Justice (England and Wales), Queen's Bench Division (Administrative Court), by order of that court dated 28 March 2002, in the case of *The Queen against Secretary of State for Transport, Local Government and the Regions, Ex parte: Delena Wells*

(Case C-201/02)

(2002/C 180/22)

(1) 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 L 175, 5.7.1985, p. 40.