



## Reports of Cases

JUDGMENT OF THE COURT (Fourth Chamber)

24 May 2012\*

(Environment — Landfill of waste — Directive 1999/31/EC — Special levy on the disposal of solid waste in landfills — Landfill operator subject to that levy — Operating costs of a landfill — Directive 2000/35/EC — Default interest — Obligations of the national court)

In Case C-97/11,

REFERENCE for a preliminary ruling under Article 267 TFEU from the Commissione tributaria provinciale di Palermo (Italy), made by decision of 14 October 2010, received at the Court on 28 February 2011, in the proceedings

**Amia SpA**, in liquidation

v

**Provincia Regionale di Palermo**,

THE COURT (Fourth Chamber),

composed of J.-C. Bonichot, President of the Chamber, K. Schiemann, L. Bay Larsen, C. Toader and E. Jarašiūnas (Rapporteur), Judges,

Advocate General: E. Sharpston,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

- the Italian Government, by G. Palmieri, acting as Agent, assisted by S. Varone, avvocato dello Stato,
- the European Commission, by A. Marghelis and A. Aresu, acting as Agents,

having decided, after hearing the Advocate General, to proceed to judgment without an Opinion,

gives the following

\* Language of the case: Italian.

## Judgment

- 1 This reference for a preliminary ruling concerns the question whether, in the light of the judgment in Case C-172/08 *Pontina Ambiente* [2010] ECR I-1175, the referring court must refrain from applying the national provisions which it considers to be contrary to Article 10 of Council Directive 1999/31/EC of 26 April 1999 on the landfill of waste (OJ 1999 L 182, p. 1), as amended by Regulation (EC) No 1882/2003 of the European Parliament and of the Council of 29 September 2003 (OJ 2003 L 284, p. 1, 'Directive 1999/31'), as well as Articles 1 to 3 of Directive 2000/35/EC of the European Parliament and of the Council of 29 June 2000 on combating late payment in commercial transactions (OJ 2000 L 200, p. 35).
- 2 The reference has been made in proceedings between Amia SpA, in liquidation ('Amia'), and the Provincia Regionale di Palermo (regional province of Palermo) concerning a demand for payment of a special levy on the disposal of solid waste in landfill.

### Legal context

#### *European Union legislation*

- 3 Article 10 of Directive 1999/31 provides:

'Member States shall take measures to ensure that all of the costs involved in the setting up and operation of a landfill site, including as far as possible the cost of the financial security or its equivalent referred to in Article 8(a)(iv), and the estimated costs of the closure and after-care of the site for a period of at least 30 years shall be covered by the price to be charged by the operator for the disposal of any type of waste in that site. Subject to the requirements of Council Directive 90/313/EEC of 7 June 1990 on the freedom of access to information on the environment [(OJ 1990 L 158, p. 56)] Member States shall ensure transparency in the collection and use of any necessary cost information.'

- 4 Article 1 of Directive 2000/35 provides that its provisions are to apply to all payments made as remuneration for commercial transactions.
- 5 According to Article 2(1) of Directive 2000/35, 'commercial transactions' means transactions between undertakings or between undertakings and public authorities which lead to the delivery of goods or the provision of services for remuneration.
- 6 Article 3 of Directive 2000/35, entitled 'Interest in case of late payment', provides, inter alia, that the Member States are to ensure that interest is payable in the case of late payment and may be claimed by the creditor if he has fulfilled his contractual and legal obligations and has not received the amount due on time, unless the debtor is not responsible for the delay.

#### *Italian legislation*

- 7 Law No 549 of 28 December 1995 on measures to rationalise public finances (Ordinary Supplement to GURI No 302 of 29 December 1995, 'Law No 549/95') introduced a special levy on the disposal of solid waste in landfills in order to promote a reduction in the amount of waste produced and the recycling of raw materials and energy from such waste.
- 8 Pursuant to Article 3(25) of Law No 549/95, the event which gives rise to the levy is the disposal of solid waste in landfills.

- 9 It is apparent from Article 3(26) of Law No 549/95 that the person liable for the levy is the operator of the final storage undertaking and that he is under an obligation to seek reimbursement from the authority providing the waste to be deposited.
- 10 Article 3(27) of Law No 549/95 provides that the levy is payable to the regions.
- 11 Article 3(30) of Law No 549/95 lays down that the operator of a landfill site must pay the levy to the region in which the landfill is situated. That payment must be made by the end of the month following the end of the quarter during which the waste was disposed of.
- 12 Article 3(31) of Law No 549/95 provides that financial penalties are imposed on the operator of a landfill site in the event of failure to register or incorrect registration of landfill operations, failure to declare or incorrect declaration and failure to pay or late payment of the levy.

### **The dispute in the main proceedings and the question referred for a preliminary ruling**

- 13 Amia operates a landfill site situated in Palermo, in the Bellolampo district, where it is engaged in the disposal of waste deposited regularly by the local authorities.
- 14 Pursuant to Law No 549/95 and the regional implementing law, Amia was liable to pay quarterly, to the Provincia Regionale di Palermo, the special levy on the disposal of solid waste in landfills, and had to seek reimbursement from the local authorities which brought their waste to landfill.
- 15 Amia made only a partial payment of the levy relating to the first and second quarters of 2007 and did not pay the levy relating to the third and fourth quarters of the same year. That situation led the competent authorities of the Provincia Regionale di Palermo to send it a demand for payment, in order to recover the outstanding levy of EUR 3 574 205.19, plus interest, as well as a fine equal to 30% of the amount of that levy.
- 16 On 22 March 2010, Amia brought proceedings before the Commissione tributaria provinciale di Palermo against that demand for payment.
- 17 According to the order for reference, late payment of the levy in the case in the main proceedings is closely related to the delay, on the part of the local authorities providing the waste for landfill, in reimbursing the levy at issue to the operator of the landfill. According to the referring court, Law No 549/95 introduces a special levy on the disposal of solid waste in landfills and sets the time-limits for the collection of that levy from the operator of the landfill site, without however providing for reimbursement of the levy to that operator within a reasonable period by the local authority which sends the waste for disposal or providing for an effective procedure for obtaining that reimbursement. The referring court adds that Law No 549/95 does not provide for the possibility for the operator of a landfill site of seeking reimbursement, from the body providing the waste for disposal, of the administrative penalty imposed on it for late payment of that levy.
- 18 In those circumstances, the Commissione tributaria provinciale di Palermo decided to stay proceedings and to refer the following question to the Court:

‘In the light of the judgment [in Case C-172/08 *Pontina Ambinete*], may [paragraphs 26 and 31 of Article 3 of Law No 549 [...]], be treated as not to be applied because they are contrary to Article 10 of Directive 1999/31 and similarly because they are contrary to Articles 1 [to] 3 of Directive 2000/35?’

### The question referred for a preliminary ruling

- 19 By its question the national court asks, in essence, whether, in circumstances such as those in issue in the case in the main proceedings and in the light of the judgment in *Pontina Ambiente*, national provisions such as those in question should not be applied, since the conditions listed in that judgment under which those national provisions may be considered to comply with Article 10 of Directive 1999/31 and with Articles 1 to 3 of Directive 2000/35 are not met.

#### *Admissibility*

- 20 The Italian Government disputes the admissibility of the question referred. First, it is not relevant to the outcome of the dispute in the main proceedings in so far as the referring court has no jurisdiction to hear the proceedings for an indemnity brought against the local authorities which disposed the waste in landfill. That government points out that, in accordance with Italian legislation, it is the administrative courts and tribunals which have jurisdiction to hear such proceedings. Second, the question referred for a preliminary ruling was raised without first examining whether the conditions set out in *Pontina Ambiente* were in fact fulfilled in the case in the main proceedings and, in particular, whether appropriate legal instruments already generally existed in Italian law.
- 21 However, it must be noted that it is apparent from the order for reference, which contains a sufficient account of the facts of the case and of the applicable national law, that the question raised by the referring court, which has to assess the need for the reference, is manifestly related to the subject-matter of the main proceedings.
- 22 Consequently, the order for reference must be considered to be admissible, any questions raised by the Italian Government concerning the jurisdiction of the referring court to hear proceedings for an indemnity brought against a local authority and the existence in Italian law of legal instruments fulfilling the conditions set out in *Pontina Ambiente* having no bearing on the admissibility of this order for reference.

#### *Substance*

- 23 In *Pontina Ambiente*, the Court ruled that Article 10 of Directive 1999/31 must be interpreted as meaning that it does not preclude a national provision, such as that at issue in the case in the main proceedings, which makes the operator of a landfill site subject to a levy to be reimbursed by the local authority depositing the waste for landfill and which provides for financial penalties to be imposed on that operator for late payment of that levy, on condition however that those rules are accompanied by measures to ensure that that levy is actually reimbursed within a short time and that all the costs of recovery, and in particular, the costs resulting from late payment of amounts which that authority owes to that operator on that account, including any financial penalties which might be imposed on that operator for late payment, are passed on in the price to be paid by the authority to the operator. The Court stated that it is for the national court to ascertain whether those conditions have been satisfied.
- 24 Moreover, the Court ruled in the same judgment that Articles 1 to 3 of Directive 2000/35 must be interpreted as meaning that the sums owed to the operator of a landfill site by a local authority which has deposited waste in the landfill, such as the sums due by way of reimbursement of a levy, come within the scope of that directive and that the Member States must therefore ensure, in accordance with Article 3 thereof, that, in the case of late payment of those sums by the local authority, the landfill operator may charge interest.
- 25 According to the referring court, the provisions of Law No 549/95 appear, from their wording and from the way in which they are applied in practice, to be incompatible with Article 10 of Directive 1999/31 and Articles 1 to 3 of Directive 2000/35.

- 26 The Italian Government submits, for its part, that the Italian legislation contains legal instruments which ensure that all of the costs incurred by the operator of a landfill site are reimbursed within a reasonable period by local authorities using the landfill site. It states, in particular, that it is open to the operator of a landfill site to bring an action for indemnity before the administrative court which has exclusive jurisdiction to hear those proceedings.
- 27 In that regard, it must first be borne in mind that the question whether a national provision must be disapplied in as much as it conflicts with European Union law arises only if no compatible interpretation of that provision proves possible (judgment of 24 January 2012 in Case C-282/10 *Dominguez*, paragraph 23).
- 28 The Court has consistently held that when national courts apply domestic law they are bound to interpret it, so far as possible, in the light of the wording and the purpose of the directive concerned in order to achieve the result sought by the directive and consequently to comply with the third paragraph of Article 288 TFEU. This obligation to interpret national law in conformity with European Union law is inherent in the system of the Treaty on the Functioning of the European Union, since it permits national courts, for the matters within their jurisdiction, to ensure the full effectiveness of European Union law when they determine the disputes before them (*Dominguez*, paragraph 24 and the case-law cited).
- 29 The principle that national law must be interpreted in conformity with European Union law also requires national courts to do whatever lies within their jurisdiction, taking the whole body of domestic law into consideration and applying the interpretative methods recognised by domestic law, with a view to ensuring that the directive in question is fully effective and achieves an outcome consistent with the objective pursued by it (see *Dominguez*, paragraph 27 and the case-law cited).
- 30 Consequently, in a case such as that at issue in the main proceedings, before disapplying national provisions, the national court must establish whether, in taking not only those provisions but also the whole body of domestic law into consideration and applying the interpretative methods recognised by that law, it can arrive at an interpretation of that national law which is consistent with the wording and purpose of the directive at issue.
- 31 It follows that, in this case, it is for the referring court, first, before disapplying the relevant provisions of Law No 549/95, to establish whether, taking into consideration the whole body of domestic law, both substantive and procedural, there is no possibility of reaching an interpretation of its national law which is consistent with the wording and purpose of Directives 1999/31 and 2000/35.
- 32 In the event that such an interpretation is not possible, it is necessary to consider whether Article 10 of Directive 1999/31 and Articles 1 to 3 of Directive 2000/35 have direct effect, and, if so, whether Amia may rely on that direct effect against the Provincia Regionale di Palermo.
- 33 In that regard, it is clear from the settled case-law of the Court that, whenever the provisions of a directive appear, so far as their subject-matter is concerned, to be unconditional and sufficiently precise, they may be relied upon before the national courts by individuals against the State where the latter has failed to implement the directive in domestic law by the end of the period prescribed or where it has failed to implement the directive correctly (*Dominguez*, paragraph 33 and the case-law cited).
- 34 In the present case, Article 10 of Directive 1999/31 fulfils those criteria as it imposes on Member States, in unequivocal terms, a precise obligation as to the result to be achieved that is not coupled with any condition regarding application of the rule laid down by it. That provision requires the Member States to take measures to ensure that the price charged for waste disposal in a landfill covers all the costs involved in the setting up and operation of the facility (*Pontina Ambiente*, paragraph 35).

- 35 Even if Article 10 of Directive 1999/31 does not impose on the Member States any specific method of financing the cost of a landfill, that does not alter the precise and unconditional nature of the obligation laid down in that article.
- 36 As regards Articles 1 to 3 of Directive 2000/35, it is necessary to point out that Article 3 of that directive provides that the Member States are to ensure that interest is payable in the case of late payment and may be claimed by the creditor if he has fulfilled his contractual and legal obligations and has not received the amount due on time, unless the debtor is not responsible for that delay.
- 37 This obligation which is imposed on Member States is unconditional and sufficiently precise to have direct effect. Since the sums owed to the operator of a landfill site by a local authority which has deposited waste in the landfill, such as the sums due by way of reimbursement of a levy, come within the scope of Directive 2000/35, it follows that, in the case of late payment, the landfill operator may charge the local authority interest on those sums for which the local authority is liable (see, to that effect, *Pontina Ambinete*, paragraph 48).
- 38 Since Article 10 of Directive 1999/31 and Articles 1 to 3 of Directive 2000/35 have direct effect, they are binding on all the authorities of the Member States, that is to say, not merely the national courts but also all administrative bodies, including decentralised authorities, and those authorities are required to apply them (see, to that effect, Case 103/88 *Costanzo* [1989] ECR 1839, paragraphs 30 to 33 and Case C-243/09 *Fuß* [2010] ECR I-9849, paragraph 61 and the case-law cited).
- 39 Consequently, an authority such as the Provincia Regionale di Palermo is an entity against which the provisions of a directive that are capable of having direct effect may be relied upon.
- 40 It follows that, in the case in the main proceedings, Article 10 of Directive 1999/31 and Articles 1 to 3 of Directive 2000/35 may be relied on by Amia before the referring court against the Provincia Regionale di Palermo.
- 41 Therefore, if an interpretation consistent with national law is not possible, the referring court should disapply in the main proceedings any national provision contrary to Article 10 of Directive 1999/31 and to Articles 1 to 3 of Directive 2000/35.
- 42 Consequently, the answer to the question referred is that, in circumstances such as those of the case in the main proceedings:
- it is for the referring court, first, before disapplying the relevant provisions of Law No 549/95, to establish whether, taking into consideration the whole body of domestic law, both substantive and procedural, there is no possibility of reaching an interpretation of its national law with which to resolve the case in the main proceedings in a manner consistent with the wording and purpose of Directives 1999/31 and 2000/35;
  - if such an interpretation is not possible, the referring court should disapply, in the main proceedings, any national provision contrary to Article 10 of Directive 1999/31 and Articles 1 to 3 of Directive 2000/35.

### Costs

- 43 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:

**In circumstances such as those in the main proceedings:**

- **It is for the referring court, first, before disapplying the relevant provisions of Law No 549 of 28 December 1995 on measures to rationalise public finances, to establish whether, taking into consideration the whole body of domestic law, both substantive and procedural, there is no possibility of reaching an interpretation of its national law with which to resolve the case in the main proceedings in a manner consistent with the wording and purpose of Council Directive 1999/31/EC of 26 April 1999 on the landfill of waste, as amended by Regulation (EC) No 1882/2003 of the European Parliament and of the Council of 29 September 2003, and Directive 2000/35/EC of the European Parliament and of the Council of 29 June 2000 on combating late payment in commercial transactions;**
- **If such an interpretation is not possible, it is for the referring court to disapply, in the main proceedings, any national provision contrary to Article 10 of Directive 1999/31 as amended by Regulation No 1882/2003 and Articles 1 to 3 of Directive 2000/35.**

[Signatures]