



1 May 2013

PRESS SUMMARY

R (on the application of ClientEarth) (Appellant) v Secretary of State for the Environment, Food and Rural Affairs (Respondent) [2013] UKSC 25
On appeal from [2012] EWCA Civ 897

JUSTICES: Lord Hope (Deputy President), Lord Mance, Lord Clarke, Lord Sumption, Lord Carnwath

BACKGROUND TO THE APPEAL

This case concerns the Government's obligations under Directive 2008/50/EC ("the Air Quality Directive") to reduce the levels of nitrogen dioxide in outdoor air in the United Kingdom. Nitrogen dioxide is a gas formed by combustion at high temperatures which, when concentrated above a certain level, poses risks to human health. The main sources of nitrogen dioxide are road traffic and domestic heating.

The Air Quality Directive sets limits to the level of various pollutants, including nitrogen dioxide, and sets corresponding margins of tolerance and time limits for compliance. The deadline for compliance with the limits for nitrogen dioxide was 1 January 2010. Each Member State was required by the Air Quality Directive to define "zones" and "agglomerations" to which the pollutant limits would apply. Article 13 imposes an absolute obligation on Member States to ensure that the limits and margins of tolerance for nitrogen dioxide are not exceeded in any zone or agglomeration after the deadline.

Article 22 of the Air Quality Directive provides that "[w]here, in a given zone or agglomeration, conformity with the limit values for nitrogen dioxide ... cannot be achieved by [1 January 2010], a Member State may postpone those deadlines by a maximum of five years for that particular zone or agglomeration, on condition that an air quality plan is established ... for the zone or agglomeration to which the postponement would apply". The directive sets out the information required to be included in an air quality plan under article 22. Such plans are to be submitted to, and approved by, the European Commission.

Article 23 of the Air Quality Directive provides that where, in any given zone or agglomeration, the level of nitrogen dioxide in the outside air exceeds the limits set by that directive, the Member State must submit an air quality plan for approval by the Commission indicating how the limits, margin of tolerance and deadlines are to be met. Article 23 further provides that, where the limits have been exceeded and the deadline for compliance has already passed, "the air quality plan shall set out appropriate measures, so that the exceedance period can be kept as short as possible". Less information is required to be included in an air quality plan under article 23 than in an air quality plan under article 22.

In 2010, the limits for nitrogen dioxide set by the Air Quality Directive had been exceeded in 40 of the 43 zones and agglomerations in the United Kingdom. Air quality plans under article 22 of the Air Quality Directive relating to 24 of those zones and agglomerations, including applications for extensions of the deadline for compliance with the nitrogen dioxide limits until 1 January 2015 at the latest, were submitted by the Secretary of State to the European Commission.

However, the Secretary of State indicated that the limits relating to 16 zones and agglomerations in the UK, including Greater London, could not realistically be met by 1 January 2015. Compliance with the limits in Greater London was not expected to be achieved prior to 2025. No application for an extension of time under article 22 was made in relation to those zones and agglomerations. Instead, the Secretary of State submitted air quality plans under article 23 to the European Commission in order to demonstrate that the exceedance periods for those 16 zones and agglomerations would be kept as short as possible.

ClientEarth brought a claim for judicial review of the nitrogen dioxide air quality plans submitted by the Secretary of State to the European Commission. The Secretary of State accepts that there has been a breach of article 13 of the Air Quality Directive. However, it was argued by the Secretary of State that article 22 was not mandatory. The claim was dismissed by the High Court and by the Court of Appeal.

JUDGMENT

The Supreme Court allows the appeal to the extent that it grants a declaration that there has been a breach of article 13 of the Air Quality Directive. The proceedings are stayed whilst the other issues concerning the Air Quality Directive are referred to the Court of Justice of the European Union (“CJEU”). The parties are requested to file submissions as to the precise form of the questions to be referred. Lord Carnwath gives the only judgment.

REASONS FOR THE JUDGMENT

- It is appropriate to grant a declaration that the UK is in breach of article 13. The fact that the breach has been conceded is not a sufficient reason to decline to grant such a declaration, where the breach is clearly established and there are no other discretionary bars to relief. [37].
- The proper interpretation of articles 22 and 23 of the Air Quality Directive raises difficult issues of EU law, the determination of which requires the guidance of the CJEU. Accordingly, the Supreme Court as the final national court is required to refer the matter to the CJEU [38].
- The parties are invited to make submissions as to precise form of the questions to be referred to the CJEU. Subject to those submissions, the following questions appear to be appropriate [39-40]:
 - Where in a given zone or agglomeration conformity with the limit values for nitrogen dioxide cannot be achieved by the deadline of 1 January 2010 specified in annex XI of Directive 2008/50/EC (the Directive), is a Member State obliged pursuant to the Directive and/or article 4 of the Treaty on the European Union (TEU) to seek postponement of the deadline in accordance with article 22 of the Directive?
 - If so, in what circumstances (if any) may a Member State be relieved of that obligation?
 - If the answer to (i) is no, to what extent (if at all) are the obligations of a Member State which has failed to comply with article 13, and has not made an application under article 22, affected by article 23 (in particular its second paragraph)?
 - In the event of non-compliance with article 13, and in the absence of an application under article 22, what (if any) remedies must a national court provide as a matter of European law in order to comply with article 30 of the Directive and/or article 4 or 19 TEU?

References in square brackets are to paragraphs in the judgment

NOTE

This summary is provided to assist in understanding the Court’s decision. It does not form part of the reasons for the decision. The full judgment of the Court is the only authoritative document.

Judgments are public documents and are available at: www.supremecourt.gov.uk/decided-cases/index.html