

The Right to be Consulted

In a Judgment (Case C-435/97) handed down on 16 September 1999, the European Court of Justice held that a member State may not remove a project likely to have significant effects on the environment from the scope of the Community Directive on the *Assessment of the Effects of Certain Public and Private Projects on the Environment* (85/337/EEC of 27 June 1985).

The case concerned the Bolzano-St. Jacob restructuring project to transform an airport, used since 1925/1926 for military purposes and for some private flying, into an airport which can be used commercially – *i.e.*, for regular scheduled flights as well as for charter and cargo flights.

The works envisaged were as follows: renewal of the existing runway, construction of access roads and car parks, construction of a control tower with air traffic control installations, the carrying out of the necessary connections and diversions and so forth, the construction of a departure building and of a hangar, and extension of the runway from 1,040 to 1,400 metres.

This restructuring was part of the development plan approved by a Law of the Autonomous Province of Bolzano (Italy), which requires in particular that an environmental impact study be carried out. That study, which the developer entrusted to a team of experts, was drawn up in June 1996. In addition, various bodies including the agency responsible for the environment, were consulted, the municipalities concerned were informed and opinions were sought.

On that basis, the project was granted consent by a decision of the Government of the Autonomous Province of Bolzano, dated 27 March 1997 and by a letter of the Landeshauptmann (Regional Prime Minister) of 11 April 1997.

Citizens claiming to live near the airport, together with the World Wildlife Fund (WWF) and another environmental protection association, brought an action before the competent national court to have those two decisions set aside as illegal, on the ground that the procedure followed to grant consent for the project was not in conformity with the requirements of Community Directive 85/337 on the assessment of the effects on the environment of certain public and private projects.

The procedure under which the contested measures were adopted, with the exception of the extension of the runway which remained unapproved, was not in fact that laid down by the Directive. In the opinion of the local authorities, the Directive was not applicable to the project at issue.

The provincial government for its part, took the view that the Directive did not apply to the project in question because i) it involved nothing more than a small improvement to an existing airport; ii) the runway was less than 2,100 metres in length; and iii) the airport was also used by military aircraft.

The Administrative Court turned to the European Court of Justice for guidance. The latter held that the authorities of an EU member State cannot refrain from applying the EU Directive to a project which could have significant impact on the environment. The European Court added that it is for the national court to review whether the competent authorities correctly assessed, in accordance with the Directive, the significance of the effects of the project on the environment.

This is the task now facing the Bolzano administrative court. □