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JUDGMENT OF THE COURT (Sixth Chamber)

7 December 2016 (*)

(Reference for a preliminary ruling — Environment — Directive 2000/60/EC — Framework for an EU water policy — Recovery of the costs of services connected with water use — Calculation of the amount due from the consumer — Variable component related to actual consumption and fixed component independent of that consumption)

In Case C-686/15,

REQUEST for a preliminary ruling under Article 267 TFEU from the Općinski sud u Velikoj Gorici (Municipal Court, Velika Gorica, Croatia), made by decision of 10 December 2015, received at the Court on 18 December 2015, in the proceedings

Vodoopskrba i odvodnja d.o.o.

v

Željka Klafurić,

THE COURT (Sixth Chamber),

composed of J.C. Bonichot (Rapporteur), acting as President of the Chamber,
A. Arabadjiev and C.G. Fernlund, Judges,

Advocate General: M. Szpunar,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

– Vodoopskrba i odvodnja d.o.o., by D. Crnković, avocat,

- the Croatian Government, by A. Metelko-Zgombić, acting as Agent,
- the Italian Government, by G. Palmieri, acting as Agent, and by F. Varrone, avvocato dello Stato,
- the European Commission, by E. Manhaeve and M. Mataija, acting as Agents,

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

gives the following

Judgment

1 The request for a preliminary ruling concerns the interpretation of Directive 2000/60/EC of the European Parliament and of the Council of 23 October 2000 establishing a framework for Community action in the field of water policy (OJ 2000 L 327, p. 1).

2 The request has been made in proceedings between Vodoopskrba i odvodnja d.o.o. and Ms Željka Klafurić concerning the latter's refusal to pay the fixed component included in the price of her water consumption.

Legal context

EU law

3 Recitals 1, 11, 19 and 38 of Directive 2000/60 state:

‘(1) Water is not a commercial product like any other but, rather, a heritage which must be protected, defended and treated as such.

...

(11) As set out in Article 174 of the Treaty, the Community policy on the environment is to contribute to pursuit of the objectives of preserving, protecting and improving the quality of the environment, in prudent and rational utilisation of natural resources, and to be based on the precautionary principle and on the principles that preventive action should be taken, environmental damage should, as a priority, be rectified at source and that the polluter should pay.

...

(19) This directive aims at maintaining and improving the aquatic environment in the Community. This purpose is primarily concerned with the quality of the waters concerned. Control of quantity is an ancillary element in securing good water quality and

therefore measures on quantity, serving the objective of ensuring good quality, should also be established.

...

(38) The use of economic instruments by Member States may be appropriate as part of a programme of measures. The principle of recovery of the costs of water services, including environmental and resource costs associated with damage or negative impact on the aquatic environment should be taken into account in accordance with, in particular, the polluter-pays principle. An economic analysis of water services based on long-term forecasts of supply and demand for water in the river basin district will be necessary for this purpose.

...’

4 Article 2 of Directive 2000/60, entitled ‘Definitions’, provides:

‘For the purposes of this directive, the following definitions shall apply:

...

(38) “water services” means all services which provide, for households, public institutions or any economic activity:

(a) abstraction, impoundment, storage, treatment and distribution of surface water or groundwater;

(b) waste-water collection and treatment facilities which subsequently discharge into surface water;

(39) “water use” means water services together with any other activity identified under Article 5 and Annex II having a significant impact on the status of water.

This concept applies for the purposes of Article 1 and of the economic analysis carried out according to Article 5 and Annex III, point (b).

...’

5 Article 9 of Directive 2000/60, entitled ‘Recovery of costs for water services’, provides:

‘1. Member States shall take account of the principle of recovery of the costs of water services, including environmental and resource costs, having regard to the economic analysis conducted according to Annex III, and in accordance in particular with the polluter pays principle.

Member States shall ensure by 2010:

- that water-pricing policies provide adequate incentives for users to use water resources efficiently, and thereby contribute to the environmental objectives of this Directive,
- an adequate contribution of the different water uses, disaggregated into at least industry, households and agriculture, to the recovery of the costs of water services, based on the economic analysis conducted according to Annex III and taking account of the polluter pays principle.

Member States may in so doing have regard to the social, environmental and economic effects of the recovery as well as the geographic and climatic conditions of the region or regions affected.

2. Member States shall report in the river basin management plans on the planned steps towards implementing paragraph 1 which will contribute to achieving the environmental objectives of this directive and on the contribution made by the various water uses to the recovery of the costs of water services.
3. Nothing in this article shall prevent the funding of particular preventive or remedial measures in order to achieve the objectives of this directive.
4. Member States shall not be in breach of this directive if they decide in accordance with established practices not to apply the provisions of paragraph 1, second sentence, and for that purpose the relevant provisions of paragraph 2, for a given water-use activity, where this does not compromise the purposes and the achievement of the objectives of this directive. Member States shall report the reasons for not fully applying paragraph 1, second sentence, in the river basin management plans.’

6 Annex III to Directive 2000/60, entitled ‘Economic analysis’, is worded as follows:

‘The economic analysis shall contain enough information in sufficient detail (taking account of the costs associated with collection of the relevant data) in order to:

- (a) make the relevant calculations necessary for taking into account under Article 9 the principle of recovery of the costs of water services, taking account of long term forecasts of supply and demand for water in the river basin district and, where necessary:
 - estimates of the volume, prices and costs associated with water services, and
 - estimates of relevant investment including forecasts of such investments;
- (b) make judgments about the most cost-effective combination of measures in respect of water uses to be included in the programme of measures under Article 11 based on estimates of the potential costs of such measures.’

Croatian law

The ZOV

7 Under Article 197(5) of the Zakon o vodama (Law on water) (Narodne novine, 153/09, 63/11, 130/11, 56/13 and 14/14; 'the ZOV'):

'The prices of water services are determined in accordance with the principle of recovery in full of the costs as defined by the Law governing the financing of water management, the principle of the social acceptability of the price of water and the principle of protection against monopoly.

...'

8 Under Paragraph 205(1) and (2) of the ZOV:

'The means necessary to the functioning of the public water distribution service and public sewage service shall be paid for out of the price of water services.

The price of water services shall constitute the revenue of the water services supplier and the obligation to pay shall lie with the owner or any other person lawfully in possession of the immovable property in which the service is used (the user).

...'

9 Article 206(1), (2) and (7) of the ZOV states:

'The amount of the price of water services shall be set by decision of the water service supplier in agreement with the local authority.

The price of water services shall not be lower than that determined by application of the criteria referred to in paragraph 7 of this article.

...

The Government of the Republic of Croatia, acting on a proposal from the Water Services Council, shall, by a regulation, set the criteria for calculating the minimum basic price of water services and the types of costs covered by the price of those services. The minimum quantity of water supplied which is necessary to meet the basic needs of a household shall also be set by a regulation.

...'

The regulation concerning the minimum basic price of water services and the types of costs covered by that price

10 Article 6 of the Uredba o najnižoj osnovnoj cijeni vodnih usluga i vrsti troškova koje cijena vodnih usluga pokriva (the regulation concerning the minimum basic price of water services and the types of costs covered by that price) of 16 September 2010 (*Narodne novine*, No 112/10) provides that the minimum basic price of water services is to be made up of a variable component and a fixed component relating to the connection of buildings to the municipal water supply works, which includes the costs of reading meters, handling the data obtained, calibration and maintenance of the meters, regular and long-term upkeep of the connection of buildings to those municipal works, regular checks on the proper functioning of those municipal works and analysis and maintenance of the cleanliness of drinking water.

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

11 Vodoopskrba i odvodnja is the municipal water distribution services supplier for the area of a number of cities in Croatia, in particular Zagreb.

12 It brought default proceedings before the referring court against Ms Klafurić, who disputes part of the amount of the invoices relating to the water service for the period between December 2013 and June 2014.

13 Ms Klafurić disputes that she owes the fixed component of the price of water services, which is calculated independently of the actual water consumption.

14 The referring court is of the view that the consumer must pay only for her water consumption according to the readings taken from her meter, which corresponds to the variable component of her invoice. It states that the national legislation applicable ‘has not been harmonised’ with Directive 2000/60 as regards the determination of the price and payment methods for water.

15 In those circumstances, the Općinski sud u Velikoj Gorici (Municipal Court, Velika Gorica, Croatia) decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

‘1. How is water supplied, which is invoiced by apartment in a residential building or by individual house, calculated under EU law?’

2. Do EU citizens pay the invoices concerning their water consumption by paying only for the consumption actually shown on the meter or do they pay other fees or charges in addition?’

Consideration of the questions referred

16 It must be borne in mind that, under the procedure laid down by Article 267 TFEU, providing for cooperation between referring courts and the Court of Justice, it is for the latter to provide the referring court with an answer which will be of use to it and enable it

to determine the case before it. To that end, the Court may have to reformulate the questions referred to it. In that regard, it is for the Court to extract from all the information provided by the national court, in particular from the grounds of the decision referring the questions, the points of EU law which require interpretation, having regard to the subject matter of the dispute (see, inter alia, judgment of 14 April 2016, *Cervati and Malvi*, C-131/14, EU:C:2016:255, paragraph 26).

17 In the present case, having regard to the reasons for its decision, the referring court asks, in essence, by its two questions, which it is appropriate to examine together, whether Directive 2000/60 must be interpreted as precluding national legislation which provides that the price of water services invoiced to a consumer is to include not only a variable component calculated according to the volume of water actually consumed by the person concerned, but also a fixed component covering the charges for the connection of buildings to the water supply works and, in particular, the costs inherent in their upkeep, reading the meter, processing the data obtained, calibration and upkeep of the meters and the analysis of the drinking water and maintenance of its cleanliness.

18 As the Court has already noted, Directive 2000/60 is a framework directive adopted on the basis of Article 175(1) EC (now Article 192 TFEU). It establishes common principles and an overall framework for action in relation to water protection and coordinates, integrates and, in a longer perspective, develops the overall principles and the structures for protection and sustainable use of water in the European Union. The common principles and overall framework for action which it lays down are to be developed subsequently by the Member States, which are to adopt a series of individual measures in accordance with the timescales laid down in the directive. However, the directive does not seek to achieve complete harmonisation of the rules of the Member States concerning water (see, inter alia, judgments of 30 November 2006, *Commission v Luxembourg*, C-32/05, EU:C:2006:749, paragraph 41, and of 11 September 2014, *Commission v Germany*, C-525/12, EU:C:2014:2202, paragraph 50).

19 As is apparent from recital 19 of Directive 2000/60, it aims at maintaining and improving the aquatic environment in the European Union. This purpose is primarily concerned with the quality of the waters concerned. Control of quantity is an ancillary element in securing good water quality and therefore measures on quantity, serving the objective of ensuring good quality, should also be established.

20 In that perspective, Article 9 of Directive 2000/60 provides that the Member States are to take account of the principle of recovery of the costs of water services, including environmental and resource costs, having regard to the economic analysis conducted in accordance with Annex III, and in accordance, in particular, with the polluter-pays principle. Member States must ensure, inter alia, that water-pricing policies provide adequate incentives for users to use water resources efficiently and thereby contribute to the environmental objectives of Directive 2000/60.

21 The methods enabling the objective set of ensuring that water-pricing policies provide adequate incentives for users to use water resources efficiently are thus left to the

discretion of the Member States. In that context, it cannot be disputed that the setting of the price of water services according to the volume of water actually consumed constitutes one of the methods providing incentives for users to use water resources efficiently.

22 Nonetheless, in order to comply with the obligation to recover the costs of the services connected with water use, laid down in EU law, the Member States may adopt other water-pricing methods which enable recovery of, inter alia, the costs borne by water distribution services in making it available to users in sufficient quantity and of sufficient quality, irrespective of their actual consumption of that water.

23 Provided that they fulfil the obligation to recover the costs of services connected with water use, including the environmental and resource costs, as referred to in paragraph 20 of this judgment, the Member States may choose between various pricing methods best suited to their own situation as part of the discretion left to them under Directive 2000/60, since that directive does not require them to use any specific pricing method.

24 In that regard, it does not follow either from Article 9 of Directive 2000/60 nor from any of the other provisions thereof that the EU legislature intended to preclude the Member States adopting a water-pricing policy which is based on a price for water charged to users including a variable component connected with the volume of water actually consumed and a fixed component not connected therewith.

25 Furthermore, it is clear from an examination of the various national legislations that, as the Commission, referring, in that regard, to its Communication to the Council, the European Parliament and the Economic and Social Committee of 26 July 2000, entitled ‘Pricing policies for enhancing the sustainability of water resources (COM(2000) 477 final)’ and to the technical report of the European Environment Agency (EEA 16/2013), entitled ‘Assessment of cost recovery through water pricing’, points out, it is common practice in the Member States that the price of water services is composed of a fixed component and a variable component.

26 In that regard, it is apparent from the relevant provisions of the national legislation at issue in the main proceedings that that legislation takes account of the principle of recovery in full of the costs connected with the availability and protection of water and the construction, management and upkeep of the water supply systems. They provide, specifically, that the fixed component of the price of the services connected with water use seeks in particular to cover the costs involved in the upkeep of the municipal water supply works and the analysis and maintenance of the cleanliness of drinking water.

27 Having regard to the foregoing, the answer to the questions referred is that Directive 2000/60 must be interpreted as not precluding national legislation, such as that at issue in the main proceedings, which provides that the price of water services invoiced to the consumer includes not only a variable component calculated according to the

volume of water actually consumed by the person concerned, but also a fixed component which is not connected with that volume.

Costs

28 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 (Sixth Chamber) hereby rules:

Directive 2000/60/EC of the European Parliament and of the Council of 23 October 2000 establishing a framework for Community action in the field of water policy must be interpreted as not precluding national legislation, such as that at issue in the main proceedings, which provides that the price of water services invoiced to the consumer includes not only a variable component calculated according to the volume of water actually consumed by the person concerned, but also a fixed component which is not connected with that volume.

[Signatures]

* Language of the case: Croatian.
