

**In the House of Lords**

## **Secretary of State for the Environment - v - Parsons**

In May 1996 the Directorate General for the Environment of the European Commission began to receive complaints from residents of Downsalla, a small town in the north of England. In particular, the Downsallans were concerned about an intolerable stench emanating from their local rubbish tip, and by the fact that the authorities in London had failed to answer letters drawing their attention to the problem. Frustrated by this lack of interest, Downsallan residents engaged the services of a local solicitor, who wrote to the Directorate General for the Environment of the European Commission inquiring about the legal effect of Article 4 of Council Directive 75/442/EEC of 1 July 1975 on waste (OJ 1975 I. 194/39), which provides as follows:

“Member States shall take the necessary measures to ensure that waste is disposed of without endangering human health and without harming the environment, and in particular:

- without risk to water, air, soil, and plants and animals
- without causing a nuisance through noise or odours
- without adversely affecting the countryside or places of special interest.”

The Commission made no formal response to the solicitor’s inquiries. However, it assured all individuals who had made a complaint that the matter would be investigated.

In July 1996 Hermann Greenman, a Commission official, travelled to London to give a seminar at the Department of the Environment. Given the complaints that had been made by residents of Downsalla concerning the rubbish tip, Mr Greenman was also charged with the responsibility of raising the matter during his visit, and was instructed by his superiors at the Commission to visit the Downsalla site if the responses given to him were not satisfactory.

Mr Greenman’s visit was a great success. He struck up a strong rapport with members of the Department of the Environment, who entertained him in the finest restaurants in London. As Greenman was leaving the offices of the Department of the Environment on the last day of his visit, he mentioned the problem of the Downsalla rubbish tip. He was told by the officials of the Department that Downsallans were famous for their moaning. The same officials informed him that the Department had received complaints about the Downsalla site, and that they would be dealt with. An official of the Department handed Mr Greenman a copy of the Waste Act 1977, a statute enacted by the United Kingdom parliament.<sup>1</sup>

Mr Greenman was duly impressed by the act. Section 5 established a Committee of Experts who were charged with responsibility for designing standards for the treatment of waste. Under section 6 the Committee, in formulating the standards, was required to draw inspiration from the latest scientific findings from both home and abroad. Under section 7 these standards were to be updated every three years. Further, under section 8, a member of the Committee and a delegate from the Department of the Environment were to carry out annual inspections of each rubbish site in the United Kingdom to ensure compliance with the Committee’s standards.

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<sup>1</sup> The Waste Act 1977 is a hypothetical measure.

Having satisfied himself that there was little to fear over the handling of the Downsalla tip by the United Kingdom authorities, Greenman reported to his superiors that no breach of EC environmental law had occurred. As a result, in August 1996 a senior official of the Commission wrote to the Department of the Environment confirming that, in the Commission's view, the United Kingdom regime for monitoring rubbish tips complied with Article 4 of Directive 75/442. A copy of this letter was also forwarded to all of the residents who had made a complaint, and a Commission decision reflecting the same was published in the Official Journal of the European Community.

In September 1996 disaster struck. Some 500 residents of Downsalla fell ill with a mysterious fever, with the elderly among them veering dangerously close to death. Local health authorities in Downsalla were able to trace the source of the illness to the Downsalla tip, in which lethal bacteria had developed in the heat of an exceptionally hot summer.

The people of Downsalla were outraged, and, in the public outcry that followed, several distinguished scientists pointed an accusing finger at both the Committee of Experts and the United Kingdom Department of the Environment. It was argued that the Waste Act 1977 was hopelessly out-of-date. In particular it was contended by several scientists that the cycle for consideration of new scientific evidence was too long. It failed to ensure adequate protection for public health, because discoveries made in the three year period prior to the update would not be taken into account by the Committee. Indeed, it was argued that if section 7 had obliged the Committee to be apprised of annual scientific discoveries, the illness might never have broken out. This was so because a research team in Italy had discovered early in 1995 that the hot conditions that had been experienced in recent years in many Member States of the EC meant that changes would need to be made to the treatment of waste. This discovery was reported in scientific journals in that year. In addition, a journalist based in Downsalla was able to show that the Committee and the Department had breached their section 8 duty to inspect the Downsalla tip once a year, providing unequivocal proof that the last inspection had taken place in 1993.

Peter Parsons, one of the victims of "Downsalla fever", brought a test case before the English courts, seeking compensation for damage suffered as a result of the illness. Counsel for Mr Parsons conceded that as a matter of domestic law he had no cause of action. However, counsel further contended that under European Community law the Department of the Environment was liable to compensate for loss sustained as a result of breach of obligations incumbent on the United Kingdom government under the EC Treaty. Ramsay J. gave judgment for Mr Parsons, which judgment was upheld in the Court of Appeal. The Secretary of State now appeals to the House of Lords on the following grounds:

1. it was *act claire* that State liability under European Community law could not be triggered by a breach of Article 4 of Council Directive 75/442;
2. the plaintiff's proper remedy was, in any event, against the Commission of the European Union under Article 173 and 215(2) of the EC Treaty.

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