JUDGMENT OF THE COURT
17 June 1987 *

In Case 1/86

Commission of the European Communities, represented by its Legal Adviser, J. Amphoux, acting as Agent, with an address for service in Luxembourg at the office of G. Kremlis, a member of the Commission's Legal Department, Jean Monnet Building, Kirchberg,

applicant,

v

Kingdom of Belgium, represented by the Minister for Foreign Affairs, whose office is at 2 rue des Quatre Bras, 1000-Brussels, with R. Hoebaer, Director at the Ministry of Foreign Relations, Foreign Trade and Cooperation with Developing Countries, acting as Agent with an address for service in Luxembourg at the Belgian Embassy, résidence Champagne, 4 rue des Girondins,

defendant,

APPLICATION for a declaration that, by failing to adopt the measures necessary to comply with Council Directive 80/68/EEC of 17 December 1979 on the protection of groundwater against pollution caused by certain dangerous substances, the Kingdom of Belgium has failed to fulfil its obligations under that directive and under the EEC Treaty,

THE COURT

composed of: C. Kakouris, President of Chamber, acting as President, F. Schockweiler, President of Chamber, T. Koopmans, O. Due, K. Bahlmann, R. Joliet and G. C. Rodríguez Iglesias, Judges,

Advocate General: J. Mischo
Registrar: B. Pastor, Administrator

having regard to the Report for the Hearing and further to the hearing on 25 March 1987,

* Language of the Case: French.

after hearing the opinion of the Advocate General delivered at the sitting on the same day,

gives the following

Judgment

1 By application lodged at the Court Registry on 7 January 1986, the Commission of the European Communities brought an action under Article 169 of the EEC Treaty for a declaration that by failing to adopt the measures necessary to comply with Council Directive 80/68/EEC of 17 December 1979 on the protection of groundwater against pollution caused by certain dangerous substances (Official Journal 1980, L 20, p. 43), the Kingdom of Belgium has failed to fulfil its obligations under the EEC Treaty.

2 Reference is made to the Report for the Hearing for the background to the case and the submissions and arguments of the parties which are mentioned or discussed hereinafter only in so far as is necessary for the reasoning of the Court.

3 Under Article 21 (1) of Directive 80/68, notified to the Kingdom of Belgium on 19 December 1979, the Member States were to bring into force the laws, regulations and administrative provisions necessary to comply with that directive within two years of its notification and, under Article 21 (2), they were to communicate to the Commission the texts of the main provisions of national law adopted for that purpose.

4 On 8 September 1982, the Belgian Government communicated to the Commission the national legislative and regulatory provisions in force which it considered were such as to implement Directive 80/68. The Commission considered that the measures communicated to it did not implement the directive and, by letter of 9 July 1984, it gave the Belgian Government an opportunity to submit its observations, in accordance with Article 169 of the EEC Treaty.

5 In a letter of 26 September 1984, the Belgian Government communicated to the Commission a decree of the Flemish region of 24 January 1984 on the

management of groundwater and certain orders of the Flemish Executive of 22 March 1984 adopted pursuant to the said decree.

6 The Commission considered that those measures, which it also regarded as failing to implement completely the provisions of Directive 80/68, concerned only the Flemish region and that no measures had been adopted transposing the directive in regard to the Walloon region and the Brussels region. Consequently, in a reasoned opinion dated and notified on 22 February 1985, the Commission called on the Belgian Government to adopt the necessary measures within two months.

7 No reply was received to that reasoned opinion. However, the Commission learned of an order of the Flemish Executive of 27 March 1985 regulating operations likely to pollute groundwater (*Moniteur belge* of 20. 7. 1985), upon the entry into force of which the main provisions of Directive 80/68 were implemented in respect of the Flemish region. However, since the Kingdom of Belgium had adopted no measures to comply with Directive 80/68 in respect of the Walloon and Brussels regions, the Commission brought the present action.

8 The Belgian Government has explained that the delay in transposing the directive in respect of the entire country is due to the fact that, as a result of the institutional reforms of 8 August 1980, the national government's powers in regard to the environment have been transferred to the regions, which involved the creation and organization of new institutions, such as the Brussels region, established in 1985. Furthermore, it has pointed out that a draft decree has been approved by the Walloon Executive for the purpose of implementing the directive in the Walloon region and is shortly to be submitted to the Conseil d'Etat (State Council) before being submitted to the Conseil régional wallon (Walloon Regional Council), and that for the Brussels region a draft royal decree is in preparation.

9 It must be stated that the fact that the procedure for the adoption of implementing measures has been initiated in respect of the Walloon region and the Brussels region does not put an end to the failure to fulfil obligations. Furthermore, according to settled case-law, a Member State may not plead provisions, practices or circumstances existing in its internal legal system in order to justify a failure to comply with obligations resulting from Community directives.

10 Accordingly, it must be held that, by failing to adopt within the prescribed period all the measures necessary to comply with Council Directive 80/68 of 17 December 1979, the Kingdom of Belgium has failed to fulfil its obligations under the EEC Treaty.

Costs

11 Under Article 69 (2) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs. Since the defendant has failed in its submissions it must be ordered to pay the costs.

On those grounds,

THE COURT

hereby:

(1) Declares that, by failing to adopt within the prescribed period all the measures necessary to comply with Council Directive 80/68 of 17 December 1979 on the protection of groundwater against pollution caused by certain dangerous substances, the Kingdom of Belgium has failed to fulfil its obligations under the EEC Treaty;

(2) Orders the Kingdom of Belgium to pay the costs.

Kakouris Schockweiler Koopmans

Due Bahlmann Joliet Rodríguez Iglesias

Delivered in open court in Luxembourg on 17 June 1987.

P. Heim
Registrar

C. Kakouris
President of Chamber
acting as President