Case 1/86

Commission of the European Communities
v
Kingdom of Belgium

(Failure of a Member State to fulfil its obligations — Protection of groundwater)

Report for the Hearing 2797
Opinion of Mr Advocate General Mischo delivered on 25 March 1987 2801
Judgment of the Court, 17 June 1987 2803

Summary of the Judgment

Member States — Obligations — Implementation of directives — Failure to fulfil obligations — Justification — Unacceptable
(EEC Treaty, Art. 169)

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.

REPORT FOR THE HEARING
delivered in Case 1/86 *

I — Facts and written procedure

1. 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) requires the Member States to take the necessary steps to:

* Language of the Case: French.

(a) prevent the introduction into groundwater of substances in list I; and

(b) limit the introduction into groundwater of substances in list II.

According to Article 21 (1) of Directive 80/68/EEC, the Member States are to bring those measures into force within two years of its notification and, according to Article 21 (2) to communicate to the Commission the texts of the main provisions of national law which they adopt in the field covered by the directive.

The directive was notified to the Kingdom of Belgium on 19 December 1979.

On 8 September 1982, the Belgian Government transmitted to the Commission the national legislative and regulatory provisions in force which it considered were such as to transpose Directive 80/68/EEC into national law. Those provisions consisted of the Law of 26 March 1971 on the protection of groundwater (*Moniteur belge* of 1. 5. 1971), the Royal Decree of 3 October 1975 on the prevention of the pollution of surface water by used oil (*Moniteur belge* of 5. 11. 1975) and various Royal Decrees of 3 August 1976, one laying down general rules on the discharge of waste water in ordinary surface water, in public drains and in artificial drainage systems and rainwater, and the others laying down conditions in respect of certain sectors on the discharge of waste water from various sources into ordinary surface water (*Moniteur belge* of 29. 9. 1976).

The Commission considered that those measures did not ensure the transposition of the directive because:

(a) the Law of 26 March 1971 merely authorized the King to 'adopt measures to protect groundwater in order to make it usable for human consumption and domestic purposes', which was not followed by detailed measures such as to implement the directive. Furthermore, the scope of the authorization was more restricted than that of the directive which covered the protection of the environment, the improvement of the quality of life and, in particular, protection against the danger of pollution of all groundwater and not merely water likely to be used for human consumption and domestic purposes;

(b) the Royal Decrees of 3 October 1975 and 3 August 1976, as can be seen from their titles, concern only discharges into surface water and not those into groundwater.

By letter of 9 July 1984, the Commission gave the Belgian Government an opportunity under Article 169 of the EEC Treaty to submit its observations on the alleged failure to fulfil its obligations.

By letter of 26 September 1984, the Belgian Government sent to the Commission the text of a decree of the Flemish region of 24 January 1984 on measures for the management of groundwater and certain orders of the Flemish Executive of 22 March 1984 adopted in implementation of the said decree.

The Commission found that those measures, which did not completely implement all the provisions of the directive, concerned only the Flemish region and that no measure had been adopted transposing the directive in respect of the Walloon region and the Brussels region.

Consequently, the Commission, in a reasoned opinion dated and notified on 22 February 1985, called upon the Belgian Government to adopt the necessary measures within two months.

No reply was received to the reasoned opinion. However, the Commission learned of the existence 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, in the Commission's view, the main provisions of Directive 80/68/EEC were implemented in respect of the Flemish region. However, in the absence of measures applying to the Walloon and Brussels regions, the Commission brought the present action on 7 January 1986.

2. The written procedure followed the normal course. Upon hearing the report of the Judge-Rapporteur and the views of the Advocate General, the Court decided to open the oral procedure without any preparatory enquiry.

II — Conclusions of the parties

1. The *Commission* claims that the Court should:

(1) Declare that by failing to adopt within the prescribed period the laws, regulations and administrative provisions necessary in order 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 the EEC Treaty.

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

2. The *government of the Kingdom of Belgium* has not submitted any formal conclusions to the Court.

III — Submissions and arguments of the parties

3. The *Commission* relies on the general obligation imposed on the Member States by the third paragraph of Article 189 and the first paragraph of Article 5 of the EEC Treaty and the specific obligation flowing from Article 21 (1) of Directive 80/68/EEC. It claims that Belgium's failure to fulfil its obligations is established in view of the absence of measures transposing the directive in respect of the Walloon and Brussels regions.

4. The *Belgian Government* explains that the delay in implementing the directive 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 were transferred to the regions, which involved the creation and organization of new institutions which were set up subsequently, such as, for example, the Brussels region created in 1985. It emphasizes that Directive 80/68/EEC has been adequately implemented in the Flemish region and states that, as far as the Walloon region is concerned, a draft decree was submitted to the Regional Executive before 30 June 1986 and that for the Brussels region a draft royal decree is in preparation.

IV — Information given at the oral procedure

At the hearing on 25 March 1987, the Belgian Government has indicated that the decree covering the Walloon region has been approved by the Walloon Executive and will be submitted to the Conseil d'Etat (State Council) and thereafter to the Conseil régional wallon (Walloon Regional Council) and the Assemblée législative wallonne (Walloon Legislative Assembly). With regard to the Brussels region, the Belgian Government has indicated that the royal decree to which it had previously referred is ready and will also be submitted to the Conseil d'Etat; subject to any problems that may arise, it should be brought into force during the coming months.

C. Kakouris
Judge-Rapporteur