JUDGMENT OF THE COURT (Sixth Chamber)

8 March 2001 *

In Case C-266/99,

Commission of the European Communities, represented by M. Nolin, acting as Agent, with an address for service in Luxembourg,

applicant,

v

French Republic, represented by K. Rispal-Bellanger and D. Colas, acting as Agents, with an address for service in Luxembourg,

defendant,

APPLICATION for a declaration that, by failing to take the necessary measures to ensure that the quality of surface water intended for the abstraction of drinking

* Language of the case: French.

water complied with the standards laid down under Article 3 of Council Directive 75/440/EEC of 16 June 1975 concerning the quality required of surface water intended for the abstraction of drinking water in the Member States (OJ 1975 L 194, p. 26), the French Republic failed to fulfil its obligations under that directive, and in particular Article 4 thereof,

THE COURT (Sixth Chamber),

composed of: C. Gulmann, President of the Chamber, V. Skouris, J.-P. Puissochet, R. Schintgen and F. Macken (Rapporteur), Judges,

Advocate General: C. Stix-Hackl,
Registrar: L. Hewlett, Administrator,

having regard to the Report for the Hearing,

after hearing oral argument from the parties at the hearing on 26 October 2000,

after hearing the Opinion of the Advocate General at the sitting on 14 December 2000,

gives the following

Judgment

1 By application lodged at the Registry of the Court on 16 July 1999, the Commission of the European Communities brought an action under Article 226 EC for a declaration that, by failing to adopt the laws, regulations and administrative provisions necessary to ensure that the quality of surface water intended for the abstraction of drinking water complied with the standards laid down under Article 3 of Council Directive 75/440/EEC of 16 June 1975 concerning the quality required of surface water intended for the abstraction of drinking water in the Member States (OJ 1975 L 194, p. 26; hereinafter 'the Directive'), the French Republic had failed to fulfil its obligations under that directive, and in particular Article 4 thereof.

2 According to Article 1 thereof, the purpose of the Directive is to fix the requirements which surface fresh water used or intended for use in the abstraction of drinking water must meet after application of appropriate treatment.

3 Article 2 of the Directive subdivides surface water into three groups of limiting values, 'A1', 'A2' and 'A3', which correspond to various methods of treatment for transforming surface water into drinking water fit for human consumption. The characteristics of those methods of treatment are defined in Annex I to the Directive.

4 Article 3(1) and (2) of the Directive provide:

'1. Member States shall set, for all sampling points, or for each individual sampling point, the values applicable to surface water for all the parameters given in Annex II.

...

2. The values set pursuant to paragraph 1 may not be less stringent than those given in the "I" columns of Annex II.'

5 In respect of the nitrates parameter, the imperative maximum limiting value laid down in column I of Annex II to the Directive is 50 mg/l for each of the three categories A1, A2 and A3.

6 Pursuant to Article 3(3) of the Directive and Annex II thereto, Member States are to endeavour to comply with the guideline of 25 mg/l for nitrate content.

7 Article 4 of the Directive provides:

'1. Member States shall take all necessary measures to ensure that surface water conforms to the values laid down pursuant to Article 3. Each Member State shall apply this Directive without distinction to national waters and waters crossing its frontiers.

2. In line with the objectives of this Directive, Member States shall take the necessary measures to ensure continuing improvement of the environment. To this end, they shall draw up a systematic plan of action including a timetable for the improvement of surface water and especially that falling within category A3. In this context, considerable improvements are to be achieved under the national programmes over the next 10 years.

The timetable referred to in the first subparagraph will be drawn up in the light of the need to improve the quality of the environment, and of water in particular, and the economic and technical constraints which exist or which may arise in the various regions of the Community.

The Commission will carry out a thorough examination of the plans referred to in the first subparagraph, including the timetables, and will, if necessary, submit appropriate proposals to the Council.

3. Surface water having physical, chemical and microbiological characteristics falling short of the mandatory limiting values corresponding to treatment type A3 may not be used for the abstraction of drinking water. However, such lower quality water may, in exceptional circumstances, be utilised provided suitable processes — including blending — are used to bring the quality characteristics of the water up to the level of the quality standards for drinking water. The Commission must be notified of the grounds for such exceptions, on the basis of a water resources management plan within the area concerned, as soon as possible, in the case of existing installations, and in advance, in the case of new installations. The Commission will examine these grounds in detail and, where necessary, submit appropriate proposals to the Council.'

8 Article 10 of the Directive provided that Member States were to bring into force the laws, regulations and administrative provisions needed in order to comply

with the Directive within two years of its notification. Notification to the French Republic took place on 18 June 1975.

The pre-litigation procedure

9 Following numerous complaints concerning the nitrate content of surface water intended for the abstraction of drinking water in Brittany, the Commission sent a request for information to the French Government on 1 April 1992, to which the latter replied on 11 May 1993.

10 Finding that reply unsatisfactory, the Commission sent a letter of formal notice to the French Republic on 30 November 1993, indicating that it considered that the French Republic had failed to fulfil its obligations under the Directive, and more particularly under Article 4 thereof.

11 By letters of 1 February 1994, 28 November 1994 and 1 March 1995, the French authorities replied to the Commission's letter of formal notice.

12 On 28 October 1997, the Commission sent the French Republic a reasoned opinion, reiterating the complaints set forth in the letter of formal notice. The Commission set a deadline of two months for compliance with the directive, as from the notification of the reasoned opinion.

13 The French authorities replied to the reasoned opinion by letters of 2 January and 18 June 1998.

14 Being unconvinced by that reply, the Commission brought the present action.

Substance

15 The Commission makes three complaints against the French Republic.

16 In its first complaint, the Commission maintains that, by allowing the limiting values for nitrates to be exceeded in water used for the abstraction of drinking water in Brittany, the French Republic infringed Article 4(1) of the Directive.

17 Under Article 4(1) of the Directive, read in conjunction with Article 3 and Annex II, Member States are required, at the expiry of the transposition period, to ensure a nitrate content of less than 50 mg/l for all surface water intended for the abstraction of drinking water.

18 The procedural documents show that, at the expiry of the period laid down in the reasoned opinion, the nitrate content in the water of certain basins in Brittany did not comply with the requirements of the Directive, as the French Republic itself has recognised.

19 In those circumstances, the Commission's first complaint must be upheld.

20 In its second complaint, the Commission charges the French Republic with infringing Article 4(2) of the Directive.

21 First, the Commission criticises the French authorities for the fact that their systematic plan of action, required under Article 4(2) of the Directive, does not in practice meet the objective of an improvement in the environment. It argues that that provision imposes on the Member States, *inter alia*, an obligation as to the result to be achieved, namely a continuing improvement of the environment. The Commission contends that the measures taken to that end by the French authorities concerning Brittany were taken only belatedly, and it challenges the effectiveness of those measures. It maintains that the measures are at the same time too general and too localised for it to be possible to expect an effect on water pollution.

22 Moreover, the Commission does not accept the assertion of the French Government that, in any event, the measures taken by it satisfy the obligation as to the measures to be taken contained in Article 4(2) of the Directive. It argues that those measures are not yet in force in Brittany or are applicable in only part of that region. The measures taken do not therefore constitute the comprehensive and coherent approach, in the nature of a practical plan for reducing pollution, required by Article 4(2) of the Directive.

23 The French Government contends, in relation to the alleged failure to fulfil an obligation as to the result to be achieved, that the obligations in relation to a continuing and substantial improvement of the environment laid down in Article 4(2) of the Directive, like the guideline of 25 mg/l referred to in Article 3(3) of the Directive and Annex II thereto, are not sufficiently absolute to constitute obligations as to the result to be achieved. It argues that the Commission's second complaint, in so far as it implies that the plans of systematic action must achieve a result, has no independent content in relation to the first complaint, which concerned Article 4(1) of the Directive. In that respect, the

French Government recognises that the situation revealed by certain samples in Brittany does not comply with the Directive.

24 Concerning the alleged failure to fulfil the obligation as to the measures to be taken laid down in Article 4(2) of the Directive, the French Government argues that the measures for improving water quality in Brittany, which it took and communicated to the Commission, constitute 'a systematic plan of action including a timetable' within the meaning of that provision.

25 As regards the first limb of the second complaint, it should be emphasised that Member States are required under Article 4(2) of the Directive to achieve actual reductions in the content in harmful substances, including nitrates, in order to improve the quality of surface water intended for the abstraction of drinking water. Member States must devote appropriate means to achieving that end.

26 Whilst it is true that Article 4(2) of the Directive does not contain any express qualitative or quantitative prescription in relation to those improvements, it is nevertheless clear that that provision requires Member States, within the 10-year period which it lays down, to achieve quantitative values lower than the limiting values which they are required to attain before the expiry of the transposition period of two years laid down by Article 4(1) of the Directive.

27 Member States are therefore under an obligation, during the 10-year period laid down in Article 4(2) of the Directive, to achieve nitrate contents which are in any event lower than the limiting value of 50 mg/l.

28 As stated in paragraph 18 of this judgment, at the expiry of the period laid down in the reasoned opinion, the nitrate content in the water of certain basins in Brittany did not comply with the requirements of the Directive. The French Republic has therefore also infringed Article 4(2) of the Directive in relation to the areas of Brittany which have been subject to investigations by the Commission and in which the limiting value of 50 mg/l for nitrates has not been complied with.

29 Concerning the second limb of the Commission's second complaint, it should be recalled that, although many purification plans limited to the regional level may in principle constitute a 'plan' within the meaning of Article 4(2) of the Directive, the sum of the documents submitted by a Member State must in any event reveal an overall plan that reflects a comprehensive and coherent approach (see, to that effect, Case C-58/89 *Commission* v *Germany* [1991] ECR I-4983, paragraph 25; Case C-207/97 *Commission* v *Belgium* [1999] ECR I-275, paragraph 40).

30 It should also be emphasised that, by contrast, incomplete practical measures and fragmentary legislation cannot discharge the obligation of a Member State to draw up a comprehensive programme with a view to attaining certain objectives (see, to that effect, Case C-298/97 *Commission* v *Spain* [1998] ECR I-3301, paragraph 16).

31 In this case, the measures communicated by the French Government to the Commission have a restricted area of application from the practical or geographic point of view, or are in the nature of a merely localised operation.

32 The programme 'Bretagne Eau Pure' (BEP) I concerned the improvement of the quality of coastal waters rather than that of the surface water referred to in Article 1(1) of the Directive, so that that programme cannot constitute a 'plan' within the meaning of Article 4(2).

33 As for the national programme for dealing with pollution of agricultural origin, which was negotiated between the Ministries of Agriculture and the Environment and bodies representing farmers, came into force in 1994 and in principle covers the whole of the territory of metropolitan France, it should be noted that it extends only to agricultural undertakings above a certain size and concerns only a relatively small proportion of Breton agricultural holdings.

34 Taking account of such a limitation, that programme cannot be regarded as fulfilling the obligation as to the measures to be taken laid down in Article 4(2) of the Directive.

35 The reduction programmes for areas of structural surplus (zones d'excédent structurel; hereinafter 'ZES') and the programme 'Bretagne Eau Pure' BEP II, relate only to geographical areas of Brittany that are particularly polluted, and not to all surface water with worrying nitrate levels. The ZES concept is aimed at reducing excess nitrogen in the districts of France which are most affected, whilst the 'BEP II' programme applies to Breton territory in only a limited way, given that it extends only to the 20 most problematic catchment basins.

36 In such circumstances, those measures cannot be regarded as constituting a 'plan' within the meaning of Article 4(2) of the Directive.

37 Finally, concerning the water management schemes (schémas d'aménagement et de gestion des eaux; hereinafter 'SAGE's) intended to be drawn up within the context of the water management plan for Brittany for various catchment basins, the French Government has itself acknowledged that, at the end of the period laid down in the reasoned opinion, no SAGE was yet in operation.

38 It is settled case-law that the question whether a Member State has failed to fulfil its obligations must be determined by reference to the situation in the Member State as it stood at the end of the period laid down in the reasoned opinion, and that the Court cannot take account of any subsequent changes (see, *inter alia*, Case C-69/99 *Commission* v *United Kingdom* [2000] ECR I-10979, paragraph 22).

39 It follows that the SAGEs cannot be taken into account in this case.

40 It follows from paragraphs 31 to 39 of this judgment that the measures on which the French Government relies lack the necessary coherence for them to constitute a systematic plan of action within the meaning of Article 4(2) of the Directive.

41 In the light of the above, the Commission's second complaint must be upheld.

42 In its third complaint, the Commission charges the French Republic with using poor-quality surface water for the abstraction of drinking water in Brittany, without notifying to the Commission either the justification for that use or a management plan for water resources, despite the obligation laid down by Article 4(3) of the Directive.

43 The French Government does not deny having, at least partially, used surface water whose nitrate content exceeded the maximum value laid down by the Directive for the purposes of abstracting drinking water in Brittany. However, it

challenges the Commission's assertion that it did not notify it of a water resources management plan within the meaning of Article 4(3) of the Directive.

44 It should be noted that it was only by a letter of 18 June 1998, thus after the expiry of the period laid down by the reasoned opinion, that the French authorities submitted to the Commission a synopsis of all the surface water in Brittany laden with nitrates, together with full information concerning the mixing of that water with surface water not laden with harmful substances, in order to enable it to supervise the use made of surface water as required by Article 4(3) of the Directive.

45 In those circumstances, the Commission's third complaint must be upheld.

46 It must therefore be held that, by failing to take the necessary measures to ensure that the quality of surface water intended for the abstraction of drinking water conforms to the values laid down pursuant to Article 3 of the Directive, the French Republic has failed to fulfil its obligations under Article 4 of that directive.

Costs

47 Under Article 69(2) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings. Since the Commission has applied for costs and the French Republic has been unsuccessful, the latter must be ordered to pay the costs.

On those grounds,

THE COURT (Sixth Chamber)

hereby:

1. Declares that, by failing to take the necessary measures to ensure that the quality of surface water intended for the abstraction of drinking water conforms to the values laid down pursuant to Article 3 of Council Directive 75/440/EEC of 16 June 1975 concerning the quality required of surface water intended for the abstraction of drinking water in the Member States, the French Republic has failed to fulfil its obligations under Article 4 of that directive;

2. Orders the French Republic to pay the costs.

Gulmann Skouris Puissochet

Schintgen Macken

Delivered in open court in Luxembourg on 8 March 2001.

R. Grass

Registrar

C. Gulmann

President of the Sixth Chamber