JUDGMENT OF THE COURT (Sixth Chamber)

25 April 2002 *

In Case C-396/00,

Commission of the European Communities, represented by G. Valero Jordana and R. Amorosi, acting as Agents, with an address for service in Luxembourg,

applicant,

v

Italian Republic, represented by U. Leanza, acting as Agent, and by M. Fiorilli, avvocato dello Stato, with an address for service in Luxembourg,

defendant,

APPLICATION for a declaration that, by not ensuring that by 31 December 1998 at the latest the discharges of urban waste water of the city of Milan, located within a catchment area draining into areas of the delta of the River Po and the north-west coast of the Adriatic Sea defined by Decree-Law No 152 of

* Language of the case: Italian.

the Italian Republic of 11 May 1999, enacting provisions on the prevention of water pollution and implementing Directive 91/271/EEC concerning urban waste-water treatment and Directive 91/676/EEC of 12 December 1991 concerning the protection of waters against pollution caused by nitrates from agricultural sources (GURI of 29 May 1999, ord. suppl.) as sensitive, within the meaning of Article 5 of Council Directive 91/271/EEC of 21 May 1991 concerning urban waste-water treatment (OJ 1991 L 135, p. 40), were subjected to more stringent treatment than secondary treatment or an equivalent treatment prescribed by Article 4 of that directive, the Italian Republic has failed to fulfil its obligations under Article 5(2) of the aforementioned directive, as specified in Article 5(5),

THE COURT (Sixth Chamber),

composed of: F. Macken (Rapporteur), President of the Chamber, N. Colneric, C. Gulmann, R. Schintgen and V. Skouris, Judges,

Advocate General: F.G. Jacobs,
Registrar: R. Grass,

having regard to the report of the Judge-Rapporteur,

after hearing the Opinion of the Advocate General at the sitting on 11 December 2001,

gives the following

Judgment

1 By application lodged with the Registry of the Court on 26 October 2000, the Commission of the European Communities brought an action under Article 226 EC for a declaration that, by not ensuring that by 31 December 1998 at the latest the discharges of urban waste water of the city of Milan, located within a catchment area draining into areas of the delta of the River Po and the north-west coast of the Adriatic Sea defined by Decree-Law No 152 of the Italian Republic of 11 May 1999, enacting provisions on the prevention of water pollution and implementing Directive 91/271/EEC concerning urban waste-water treatment and Directive 91/676/EEC of 12 December 1991 concerning the protection of waters against pollution caused by nitrates from agricultural sources (GURI of 29 May 1999, ord. suppl., hereinafter 'the Decree') as sensitive, within the meaning of Article 5 of Council Directive 91/271/EEC of 21 May 1991 concerning urban waste-water treatment (OJ 1991 L 135, p. 40, hereinafter 'the Directive'), were subjected to more stringent treatment than secondary treatment or an equivalent treatment prescribed by Article 4 of that directive, the Italian Republic has failed to fulfil its obligations under Article 5(2) of the aforementioned directive, as specified in Article 5(5).

Legal background

2 According to Article 1 of the directive, it concerns the collection, treatment and discharge of urban waste water and the treatment and discharge of waste water from certain industrial sectors, and has as its objective the protection of the environment from the adverse effects of waste water discharges.

3 Article 2 of the directive defines 'urban waste water' as 'domestic waste water or the mixture of domestic waste water with industrial waste water and/or run-off rain water'.

4 The second subparagraph of Article 3(1) of the directive provides that, for urban waste water discharging into receiving waters which are considered 'sensitive areas' as defined under Article 5, Member States are to ensure that collection systems are provided at the latest by 31 December 1998 for agglomerations with a population equivalent of more than 10 000. In Article 2, the directive defines one population equivalent (hereinafter 'p.e.') as 'the organic biodegradable load having a five-day biochemical oxygen demand (BOD5) of 60 g of oxygen per day'.

5 The general rules applicable to urban waste water are contained in Article 4 of the directive, which provides in the first indent of Article 4(1):

'Member States shall ensure that urban waste water entering collecting systems shall before discharge be subjected to secondary treatment or an equivalent treatment as follows:

— at the latest by 31 December 2000 for all discharges from agglomerations of more than 15 000 p.e.'

6 Article 5 of the directive provides:

'1. For the purposes of paragraph 2, Member States shall by 31 December 1993 identify sensitive areas according to the criteria laid down in Annex II.

2. Member States shall ensure that urban waste water entering collecting systems shall before discharge into sensitive areas be subjected to more stringent treatment than that described in Article 4, by 31 December 1998 at the latest for all discharges from agglomerations of more than 10 000 p.e.

...

4. Alternatively, requirements for individual plants set out in paragraphs 2 and 3 above need not apply in sensitive areas where it can be shown that the minimum percentage of reduction of the overall load entering all urban waste water treatment plants in that area is at least 75% for the total phosphorus and at least 75% for total nitrogen.

5. Discharges from urban waste water treatment plants which are situated in the relevant catchment areas of sensitive areas and which contribute to the pollution of these areas shall be subjected to paragraphs 2, 3 and 4.

...'

7 Article 18(2)(b) and (c) of the Decree identify as sensitive areas 'the Po delta' and 'the coastal areas of the north-west Adriatic from the mouth of the Adige to Pesaro and the water courses which flow into them over a distance of 10 kilometres from the coast'.

Pre-litigation procedure

8 By letter of 18 November 1997, the Commission asked the Italian Government to provide it with information on progress in the collection and treatment of urban waste water for the agglomeration of Milan.

9 On 29 January 1998, the Italian Government replied that there were plans to build three waste water treatment plants intended to cover 95% of discharges. It attached to its reply a note from the Ministry of the Environment and a technical report on the progress of collection and treatment of urban waste water in the Milan area.

10 The Commission concluded from that reply that the agglomeration of Milan did not have a waste water treatment plant, so that the waste from a population of roughly 2.7 million was being discharged without prior treatment into the Lambro-Olona river system, a tributary of the Po, which drains into an area of the Adriatic which is very polluted and susceptible to eutrophication.

11 Taking the view that the Italian Republic had not adopted any concrete measures, the Commission sent a letter of formal notice dated 30 April 1999 to that Member State, asking it to submit its observations on a possible infringement of its obligations under the directive. It drew particular attention to the fact that the failure to subject to more stringent treatment than the secondary treatment prescribed by Article 4 of the directive the urban waste water of the city of Milan, which discharges into a catchment area of an area which should have been identified, by 31 December 1998, as sensitive within the meaning of Article 5(1) of the directive, constituted a infringement of Article 5(2) of the directive.

12 By letters of 9 July and 27 October 1999, the Italian authorities contested that allegation, arguing *inter alia* that they were not required to subject the waste in question to more stringent treatment in so far as it did not, at least not directly, discharge into an area identified as sensitive by the Decree.

13 Not satisfied with that response, the Commission issued a reasoned opinion on 21 January 2000, calling upon the Italian Republic to take the measures necessary to comply with the opinion within two months of notification thereof.

14 In its reply of 6 April 2000, the Italian Government maintained its position, but stated that it had asked for a state of emergency to be declared, which would allow for the adoption of a simplified procedure to enable the city of Milan to proceed rapidly with the construction of the three planned treatment plants.

15 It was in those circumstances that the Commission brought the present action.

Merits of the case

16 The Commission is asking the Court to declare that the Italian Republic has failed to fulfil its obligations under Article 5(2) of the directive and to order it to pay the costs.

17 Anticipating the arguments of the Italian Government in its defence, the Commission considers that it is contrary to the legislative content of the directive to exclude any treatment of urban waste water originating from a city such as Milan on the sole ground that it does not discharge directly into a sensitive area.

18 The Commission argues that it is evident from Article 5(2) and 5(5) of the directive that all urban waste water originating from agglomerations having a p.e. of more than 10 000 and which discharges into sensitive areas was to be made subject, by 31 December 1998 at the latest, to more stringent treatment than that prescribed in Article 4 of the Directive.

19 The implication of Article 5 is that if the catchment areas which discharge into sensitive areas receive urban waste water originating from agglomerations of more than 10 000 p.e., this contributes to the pollution of those areas, and they should be equipped with treatment plants whose discharges meet the same requirements as discharges which reach sensitive areas directly.

20 Thus, according to the Commission, all urban waste water from agglomerations of more than 10 000 p.e. and which reaches sensitive areas, either directly or by passing through catchment areas, had to be treated using the more stringent treatment method by 31 December 1998 at the latest.

21 The Italian Government asks the Court to dismiss the action and to order the Commission to pay the costs.

22 Although the Italian Government indicates that it accepts responsibility for the urgency and gravity of the situation and will implement all possible measures to hasten the construction of the treatment facilities for the urban waste water of the city of Milan, it nevertheless points out that the city area is not part of either a sensitive area or a relevant catchment area of a sensitive area.

23 It emphasises that the Decree has not defined all of Italy as a sensitive area. Furthermore, since the definition of sensitive areas under the Decree has not been contested by the Commission, it should be accepted as an adequate criterion by which to verify the performance of the obligations under Article 5 of the directive.

24 According to the Italian Government, the area of the city of Milan is not in any of the sensitive areas identified directly by the Decree or designated as such by the Lombardy region.

25 It maintains that the fact that all of the urban waste water of the city of Milan is discharged into the Lambro-Olona river system, a tributary of the Po, which drains into an area of the Adriatic which is very polluted and susceptible to eutrophication is of no relevance to the alleged infringement.

26 It points out that not all of the Po has been identified as a sensitive area, but rather only the delta, more than three hundred kilometres away from Milan. Moreover, no part of the Po has been defined as a sensitive area by the Lombardy region.

27 That argument cannot be accepted.

28 It is clear from Article 5(2) of the directive that all urban waste water originating from agglomerations having, like Milan, a p.e. of more than 10 000, and which discharges into a sensitive area, had to be subjected to treatment more stringent than that mentioned in Article 4 of the directive, by 31 December 1998 at the latest.

29 Contrary to the arguments put forward by the Italian Government, it makes no difference in this regard whether the waste water discharges directly or indirectly into a sensitive area.

30 The second subparagraph of Article 3(1) of the directive, which deals with discharges of urban waste water into receiving waters considered sensitive areas, and Article 5(2) of the directive, which requires urban waste water entering collecting systems to be subjected to more stringent treatment before discharge into sensitive areas, make no distinction between direct and indirect discharges into sensitive areas.

31 That interpretation is, moreover, supported by the objective of the directive, which is, according to Article 1, the protection of the environment, and by Article 174(2) EC, which provides that Community policy on the environment is to aim at a high level of protection.

32 That objective would be undermined if only waste water which discharges directly into a sensitive area had to be subjected to more stringent treatment than that mentioned in Article 4 of the directive.

33 With respect to the argument of the Italian Government to the effect that, since the definition of sensitive areas under the Decree has not been contested by the Commission, it should be accepted as an adequate criterion by which to verify the performance of the obligations under Article 5 of the directive, it is sufficient to note that the Commission's complaint does not concern the definition of sensitive areas applied by the Italian authorities, but rather the application of the measures provided for by the directive with respect to discharges of urban waste water in sensitive areas defined by the Italian authorities.

34 In the present case, the urban waste water from the city of Milan, which, as is not contested by the Italian Government, is not subjected to more stringent treatment than that mentioned in Article 4 of the directive, passes through the Po basin and ends up in the sensitive areas of the Po delta and the north-west Adriatic coastal areas.

35 In those circumstances, the action brought by the Commission must be regarded as well founded.

36 Accordingly, by not ensuring that, by 31 December 1998 at the latest, the discharges of urban waste water of the city of Milan located within a relevant catchment area draining into the areas of the delta of the River Po and the north-west coast of the Adriatic Sea, defined by the Decree as sensitive within the meaning of the directive, were subjected to more stringent treatment than secondary treatment or an equivalent treatment prescribed by Article 4 of that directive, the Italian Republic has failed to fulfil its obligations under Article 5(2) of that same directive.

Costs

37 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 Italian 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 not ensuring that, by 31 December 1998 at the latest, the discharges of urban waste water of the city of Milan, within a relevant catchment area draining into the areas of the delta of the River Po and the north-west coast of the Adriatic Sea defined by Decree-Law No 152 of the

Italian Republic of 11 May 1999, enacting provisions on the prevention of water pollution and implementing Directive 91/271/EEC concerning urban waste-water treatment and Directive 91/676/EEC of 12 December 1991 concerning the protection of waters against pollution caused by nitrates from agricultural sources as sensitive, within the meaning of Article 5 of Council Directive 91/271/EEC of 21 May 1991 concerning urban waste-water treatment, were subjected to more stringent treatment than secondary treatment or an equivalent treatment prescribed by Article 4 of that directive, the Italian Republic has failed to fulfil its obligations under Article 5(2) of that same directive;

2. Orders the Italian Republic to pay the costs.

Macken Colneric Gulmann

Schintgen Skouris

Delivered in open court in Luxembourg on 25 April 2002.

R. Grass

Registrar

F. Macken

President of the Sixth Chamber