JUDGMENT OF THE COURT (Third Chamber)

14 June 2001 *

In Case C-368/00,

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

applicant,

v

Kingdom of Sweden, represented by A. Kruse, acting as Agent, with an address for service in Luxembourg,

defendant,

* Language of the case: Swedish.

APPLICATION for a declaration that, by failing to take all necessary measures to ensure that the quality of bathing water conforms to the limit values laid down by Council Directive 76/160/EEC of 8 December 1975 concerning the quality of bathing water (OJ 1976 L 31, p. 1) and by failing to adhere to the minimum sampling frequencies laid down by that directive, the Kingdom of Sweden has failed to fulfil its obligations under Articles 4(1) and 6(1) of that directive,

THE COURT (Third Chamber),

composed of: C. Gulmann, President of the Chamber, J.-P. Puissochet and J.N. Cunha Rodrigues (Rapporteur), 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 5 April 2001,

gives the following

Judgment

1 By application lodged at the Court Registry on 6 October 2000, the Commission of the European Communities brought an action under Article 226 EC for a declaration that by failing to take all necessary measures to ensure that the quality of bathing water conforms to the limit values laid down by Council Directive 76/160/EEC of 8 December 1975 concerning the quality of bathing water (OJ 1976 L 31, p. 1, hereinafter 'the Directive') and by failing to adhere to the minimum sampling frequencies laid down by that directive, the Kingdom of Sweden has failed to fulfil its obligations under Articles 4(1) and 6(1) of that directive.

2 Article 1(2)(a) of the Directive provides that:

'[f]or the purposes of this directive:

(a) "bathing water" means all running or still fresh waters or parts thereof and sea water, in which:

— bathing is explicitly authorised by the competent authorities of each Member State, or

— bathing is not prohibited and is traditionally practised by a large number of bathers'.

3 According to Article 3(1) of the Directive 'Member States shall set, for all bathing areas or for each individual bathing area, the values applicable to bathing water for the parameters given in the annex'.

4 According to Article 3(2) of the Directive, '[t]he values set pursuant to paragraph 1 may not be less stringent than those given in column I of the annex'. Set out in the annex to the Directive are 19 parameters in respect of which are specified, in the majority of cases, mandatory limit values.

5 Article 4(1) of the Directive provides that the Member States are to take the necessary measures to ensure that, within 10 years of notification of the Directive, the quality of bathing water conforms to the limit values set in accordance with Article 3.

6 Article 6(1) of the Directive states that the competent authorities in the Member States must carry out sampling operations, the minimum frequency of which is

laid down in the annex to the Directive. Set out in the annex are the minimum sampling frequencies together with the method of analysis and inspection applicable to each of the 19 parameters.

7 Article 13 of the Directive, as amended by Council Directive 91/692/EEC of 23 December 1991 standardising and rationalising reports on the implementation of certain directives relating to the environment (OJ 1991 L 377, p. 48), provides that, every year, the Member States must send to the Commission a report on the implementation of the Directive in the current year. The report must be made to the Commission before the end of the year in question.

8 In so far as the Kingdom of Sweden is concerned, pursuant to Article 2 of the Act concerning the conditions of accession of the Republic of Austria, the Republic of Finland and the Kingdom of Sweden and the adjustments to the treaties on which the European Union is founded (OJ 1994 C 241, p. 21, and OJ 1995 L 1, p. 1), the Directive came into force on 1 January 1995.

9 The Swedish authorities sent the Commission reports on the implementation of the Directive for the 1995, 1996, 1997 and 1998 bathing seasons. The Commission noticed several lacunae in those reports regarding the implementation of the Directive. On 4 August 1999, it therefore sent the Swedish Government a letter of formal notice concerning those omissions and invited it to submit its observations on the matter.

10 In its letter, the Commission first of all observed that, during the 1995 bathing season, only 44.8% of Swedish sea water bathing areas and 62.3% of Swedish

fresh water bathing areas complied with the mandatory limit values specified in column I of the annex to the Directive, those figures being 55.8 and 62.7% for 1996, 71.6 and 54.4% for 1997, and 84.9 and 74% for 1998. The Commission concluded that, as at 1998, the Kingdom of Sweden had failed to fulfil its obligation under Article 4(1) of the Directive to take all necessary measures to ensure that, by 1 January 1995 at the latest, the quality of its bathing water conforms to the limit values set in accordance with Article 3.

11 Secondly, the Commission pointed out that, in 1995, sampling operations had not complied with the minimum sampling frequencies laid down by the Directive in 54.4% of Swedish sea water bathing areas and 37.4% of Swedish fresh water bathing areas, those figures being 42.2 and 36.7% for 1996, 10.5 and 21.3% for 1997 and 10.3 and 23.2% for 1998. The Commission therefore concluded that the Kingdom of Sweden had failed to fulfil its duty under Article 6(1) of the Directive by failing to take samples in certain bathing areas in accordance with the minimum sampling frequency laid down by the annex to the Directive.

12 The Swedish Government replied by letter of 12 October 1999, stating that it had decided, on 7 October 1999, to establish a plan of action in order to define the measures to be taken, over and above existing measures, in order to comply with its obligations under the Directive.

13 On 26 January 2000, taking the view that the measures needed to ensure a quality of bathing water that complies with the mandatory limit values laid down by the Directive and to comply with the minimum sampling frequencies had not

been adopted, the Commission sent the Kingdom of Sweden a reasoned opinion in which it complained of infringement of Articles 4(1) and 6(1) of the Directive and called upon Sweden to adopt, within two months of notification of the reasoned opinion, the necessary measures to comply therewith.

14 The Swedish authorities replied by letters of 17 March and 26 May 2000 setting out the measures they proposed to adopt in order to ensure compliance with the Directive.

15 The Commission nevertheless took the view that the infringement was continuing, and it thus brought the present action.

16 In its defence, the Kingdom of Sweden emphasises that the samples taken in 1999 and 2000 indicate that, with a few exceptions, the quality of Swedish bathing water complies with the Directive. None the less, it acknowledges the infringement of Article 4(1) of the Directive. Furthermore, as regards sampling frequencies, it unreservedly acknowledges infringement of Article 6(1) of the Directive.

17 According to the evidence before the Court that is not challenged by the Swedish authorities, the quality of Swedish bathing waters has not been made to comply

with the mandatory limit values laid down by the Directive within the period fixed in the reasoned opinion. Furthermore, in certain bathing areas, sampling operations have not been carried out in accordance with the minimum sampling frequencies laid down by the Directive, and the Swedish authorities have not taken measures to remedy that omission within the period fixed in the reasoned opinion.

18 Consequently, it must be held that, by failing to take all necessary measures to ensure that the quality of bathing water conforms to the mandatory limit values laid down by the Directive and by failing to adhere to the minimum sampling frequencies laid down by that directive, the Kingdom of Sweden has failed to fulfil its obligations under Articles 4(1) and 6(1) of that directive.

Costs

19 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 Kingdom of Sweden has been unsuccessful, the latter must be ordered to pay the costs.

On those grounds,

THE COURT (Third Chamber)

hereby:

1. Declares that, by failing to take all necessary measures to ensure that the quality of bathing water conforms to the mandatory limit values laid down by Council Directive 76/160/EEC of 8 December 1975 concerning the quality of bathing water, and by failing to adhere to the minimum sampling frequencies laid down by that directive, the Kingdom of Sweden has failed to fulfil its obligations under Articles 4(1) and 6(1) of that directive;

2. Orders the Kingdom of Sweden to pay the costs.

Gulmann Puissochet Cunha Rodrigues

Delivered in open court in Luxembourg on 14 June 2001.

R. Grass C. Gulmann

Registrar President of the Third Chamber