# JUDGMENT OF THE COURT (Sixth Chamber)
17 June 1998 *

In Case C-214/97,

**Commission of the European Communities**, represented by Francisco de Sousa Fialho, of its Legal Service, acting as Agent, with an address for service in Luxembourg at the office of Carlos Gómez de la Cruz, of the same Service, Wagner Centre, Kirchberg,

applicant,

v

**Portuguese Republic**, represented by Luís Fernandes, Director of the Legal Service of the European Communities Directorate-General in the Ministry of Foreign Affairs, and João Lopes Fernandes, Director of the Legal Department of the National Water Institute, acting as Agents, with an address for service in Luxembourg at the Portuguese Embassy, 33 Allée Scheffer,

defendant,

APPLICATION for a declaration that, by failing to draw up a systematic plan of action and timetable for the improvement of surface waters and, in the alternative, by failing to inform the Commission forthwith of such measures, the Portuguese Republic has failed to fulfil its obligations under the third paragraph of Article 189 of the EC Treaty and the provisions 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),

* Language of the case: Portuguese.

THE COURT (Sixth Chamber),

composed of: H. Ragnemalm, President of the Chamber, G. F. Mancini, J. L. Murray, G. Hirsch and K. M. Ioannou (Rapporteur), Judges,

Advocate General: D. Ruiz-Jarabo Colomer,
Registrar: R. Grass,

having regard to the report of the Judge-Rapporteur,

after hearing the Opinion of the Advocate General at the sitting on 10 March 1998,

gives the following

## Judgment

1 By application lodged at the Court Registry on 4 June 1997, the Commission of the European Communities brought an action under Article 169 of the EC Treaty for a declaration that, by failing to draw up a systematic plan of action and timetable for the improvement of surface waters and, in the alternative, by failing to inform the Commission forthwith of such measures, the Portuguese Republic has failed to fulfil its obligations under the third paragraph of Article 189 of the EC Treaty and the provisions 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).

2 The purpose of Article 1 of Directive 75/440 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 4(2) of Directive 75/440 provides:

'2. ... 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 .... In this context, considerable improvements are to be achieved under the national programmes over the next 10 years.

...

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'.

4 Furthermore, Article 10 of Directive 75/440 provides that Member States are to bring into force the laws, regulations and administrative provisions needed in order to comply therewith within two years of its notification and forthwith to inform the Commission thereof.

5 In accordance with Article 395 of and Annex XXXVI to the Act of Accession of the Kingdom of Spain and the Portuguese Republic to the European Communities (OJ 1985 L 302, p. 9), Directive 75/440 has been applicable in Portugal since 1 January 1989.

6 By letter of 12 August 1991 the Commission asked the Portuguese Government to send it a copy of the plan of action provided for in Article 4(2) of Directive 75/440.

7 Since it received no reply, the Commission, by letter of 13 November 1992 and telex of 22 January 1993, reminded the Portuguese Government of its letter of 12 August 1991.

8 By letter of 19 May 1993 the Portuguese Government sent the Commission a document entitled 'Programmes for the Reduction of Pollution'.

9 Since it considered that that document did not satisfy the requirements of the plan called for by Article 4(2) of Directive 75/440, the Commission initiated the infringement procedure under Article 169 of the Treaty by sending the Portuguese Republic on 13 January 1994 a letter of formal notice.

10 Since all it received was a letter dated 10 June 1994 in which the Portuguese authorities announced that the measures necessary for transposition of Directive 75/440 were in preparation and requested additional time for that purpose, the

Commission sent the Portuguese Republic a reasoned opinion on 10 July 1995, calling upon it to adopt the necessary measures within two months of its notification.

11 By letter of 1 March 1996 the Portuguese Republic replied to that reasoned opinion by sending the Commission a document entitled 'Systematic Plan of Action' which included a plan of action and contract-programmes concerning the improvement of surface water.

12 After examining that document and the contract-programmes annexed thereto, the Commission brought the present infringement proceedings.

13 The Commission submits that, despite its title, the document sent on 1 March 1996 by the Portuguese authorities does not constitute a systematic plan of action within the meaning of Article 4(2) of Directive 75/440 in that it does not contain any timetable for the improvement of surface water and does not constitute an appropriate framework for substantial improvements in the quality of the water and the environment throughout Portugal. In the Commission's view, it is no more than a report from the Water Resources Directorate of the Instituto da Água (Water Institute) describing a number of projects and actions which are only examples of the efforts made to improve the quality of the surface water in question.

14 The Commission points out that the handful of projects enumerated in the report form part of the aforesaid programme, a fact which in itself confirms that the

document does not itself constitute the plan of action required by Directive 75/440 but merely describes a few scattered projects for the execution of which, moreover, no deadline has been set.

15 The Commission adds that the projects described and which are completed, in the course of completion or have yet to be undertaken concern only the Tagus and Ave river basins. Moreover, even in respect of that single part of Portugal, those documents are incomplete as regards data and information on the outcome of the contract-programmes annexed to them. Thus, no deadline has been set for improving the quality of the water at the Valada water-catchment station which supplies Lisbon or for the cleansing of the River Ave, which remains extremely polluted. Nor does the report contain any results of the work carried out or of the projects undertaken there since 1994.

16 Finally, according to the Commission, it is clear that the documents transmitted to it do not cover all the watercourses in Portugal.

17 In its defence the Portuguese Republic does not express a specific view on the various complaints made by the Commission, but instead points out that the Portuguese authorities have made serious efforts in order to implement Article 4(2) of Directive 75/440. It considers, moreover, that the systematic plan of action sent on 1 March 1996 to the Commission satisfies to a significant extent the criteria laid down by Directive 75/440 and that it represents an important step towards the full implementation of the provisions of the directive.

18 The Portuguese Republic submits that that plan, together with various other measures, forms part of a series of initiatives taken by the competent national authorities to enable a systematic plan of action to be defined, including a timetable for

the improvement of surface water, as prescribed by Article 4(2) of Directive 75/440. None the less, the Portuguese Government admits that, in view of the complexity and length of that procedure, work has been somewhat delayed and has not yet been completed.

19 Given the circumstances described above, it must be held that the measures adopted by the Portuguese Republic do not fully satisfy the criteria laid down by Directive 75/440. Accordingly, those measures cannot be regarded as fully transposing that directive within the period prescribed by it.

20 It follows that the action brought by the Commission is well founded.

21 Accordingly, it must be held that, by failing to draw up a systematic plan of action including a timetable for the improvement of surface water, the Portuguese Republic has failed to fulfil its obligations under Article 4(2) of Directive 75/440.

## Costs

22 Under Article 69(2) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs. Since the Portuguese Republic has been unsuccessful, it must be ordered to pay the costs.

On those grounds,

THE COURT (Sixth Chamber)

hereby:

1. **Declares that, by failing to draw up a systematic plan of action including a timetable for the improvement of surface water, the Portuguese Republic has failed to fulfil its obligations under Article 4(2) 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;**

2. **Orders the Portuguese Republic to pay the costs.**

Ragnemalm Mancini Murray

Hirsch Ioannou

Delivered in open court in Luxembourg on 17 June 1998.

R. Grass H. Ragnemalm

Registrar President of the Sixth Chamber