JUDGMENT OF THE COURT (First Chamber)

12 December 2000 *

In Case C-435/99,

Commission of the European Communities, represented by L. Ström, Legal Adviser, and A. Caeiros, of its Legal Service, acting as Agents, with an address for service in Luxembourg at the office of C. Gómez de la Cruz, also of its Legal Service, Wagner Centre, Kirchberg,

applicant,

v

Portuguese Republic, represented by L. Fernandes, Director of the Legal Service of the Directorate-General for European Community Affairs in the Ministry of Foreign Affairs, M. Romão, a lawyer in the same service, and J.L. Fernandes, Director of the Legal Department of the National Water Institute, acting as Agents, 1 Rua da Cova da Moura, Lisbon, Portugal,

defendant,

* Language of the case: Portuguese.

APPLICATION for a declaration that, by having failed to send the Commission the necessary reports on the implementation of:

— Article 13(1) of Council Directive 76/464/EEC of 4 May 1976 on pollution caused by certain dangerous substances discharged into the aquatic environment of the Community (OJ 1976 L 129, p. 23),

— Article 14 of Council Directive 78/176/EEC of 20 February 1978 on waste from the titanium dioxide industry (OJ 1978 L 54, p. 19), as amended by Council Directive 83/29/EEC of 24 January 1983 (OJ 1983 L 32, p. 28),

— Article 16 of Council Directive 78/659/EEC of 18 July 1978 on the quality of fresh waters needing protection or improvement in order to support fish life (OJ 1978 L 222, p. 1), as amended most recently by the act concerning the conditions of accession of the Kingdom of Spain and the Portuguese Republic and the adjustments to the Treaties (OJ 1985 L 302, p. 23),

— Article 16(1) of Council Directive 80/68/EEC of 17 December 1979 on the protection of groundwater against pollution caused by certain dangerous substances (OJ 1980 L 20, p. 43),

— Article 5(1) and the first paragraph of Article 5(2) of Council Directive 82/176/EEC of 22 March 1982 on limit values and quality objectives for mercury discharges by the chlor-alkali electrolysis industry (OJ 1982 L 81, p. 29),

— Article 5(1) and (2) of Council Directive 83/513/EEC of 26 September 1983 on limit values and quality objectives for cadmium discharges (OJ 1983 L 291, p. 1),

— Article 6(1) of Council Directive 84/156/EEC of 8 March 1984 on limit values and quality objectives for mercury discharges by sectors other than the chlor-alkali electrolysis industry (OJ 1984 L 74, p. 49),

— Article 5(1) and (2) of Council Directive 84/491/EEC of 9 October 1984 on limit values and quality objectives for discharges of hexachlorocyclohexane (OJ 1984 L 274, p. 11), and

— Article 6(1) and (2) of Council Directive 86/280/EEC of 12 June 1986 on limit values and quality objectives for discharges of certain dangerous substances included in List I of the Annex to Directive 76/464/EEC (OJ 1986 L 181, p. 16), as amended most recently by Council Directive 90/415/EEC of 27 July 1990 (OJ 1990 L 219, p. 49),

as those provisions are worded pursuant to amendment by Article 2(1) of 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), the Portuguese Republic has failed to fulfil its obligations

under the provisions of the directives mentioned above and under the first paragraph of Article 5, and the third paragraph of Article 189, of the EC Treaty (now, the first paragraph of Article 10 EC and the third paragraph of Article 249 EC).

THE COURT (First Chamber),

composed of: M. Wathelet, President of the Chamber, P. Jann (Rapporteur) and L. Sevón, 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 14 September 2000,

gives the following

Judgment

1 By application lodged at the Court Registry on 12 November 1999, the Commission of the European Communities brought an action under Article 226 EC for a declaration that, by having failed to send the Commission the necessary reports on the implementation of:

— Article 13(1) of Council Directive 76/464/EEC of 4 May 1976 on pollution caused by certain dangerous substances discharged into the aquatic environment of the Community (OJ 1976 L 129, p. 23),

— Article 14 of Council Directive 78/176/EEC of 20 February 1978 on waste from the titanium dioxide industry (OJ 1978 L 54, p. 19), as amended by Council Directive 83/29/EEC of 24 January 1983 (OJ 1983 L 32, p. 28),

— Article 16 of Council Directive 78/659/EEC of 18 July 1978 on the quality of fresh waters needing protection or improvement in order to support fish life (OJ 1978 L 222, p. 1), as amended most recently by the act concerning the conditions of accession of the Kingdom of Spain and the Portuguese Republic and the adjustments to the Treaties (OJ 1985 L 302, p. 23),

— Article 16(1) of Council Directive 80/68/EEC of 17 December 1979 on the protection of groundwater against pollution caused by certain dangerous substances (OJ 1980 L 20, p. 43),

— Article 5(1) and the first paragraph of Article 5(2) of Council Directive 82/176/EEC of 22 March 1982 on limit values and quality objectives for mercury discharges by the chlor-alkali electrolysis industry (OJ 1982 L 81, p. 29),

— Article 5(1) and (2) of Council Directive 83/513/EEC of 26 September 1983 on limit values and quality objectives for cadmium discharges (OJ 1983 L 291, p. 1),

— Article 6(1) of Council Directive 84/156/EEC of 8 March 1984 on limit values and quality objectives for mercury discharges by sectors other than the chlor-alkali electrolysis industry (OJ 1984 L 74, p. 49),

— Article 5(1) and (2) of Council Directive 84/491/EEC of 9 October 1984 on limit values and quality objectives for discharges of hexachlorocyclohexane (OJ 1984 L 274, p. 11), and

— Article 6(1) and (2) of Council Directive 86/280/EEC of 12 June 1986 on limit values and quality objectives for discharges of certain dangerous substances included in List I of the Annex to Directive 76/464/EEC (OJ 1986 L 181, p. 16), as amended most recently by Council Directive 90/415/EEC of 27 July 1990 (OJ 1990 L 219, p. 49),

as those provisions are worded pursuant to amendment by Article 2(1) of 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), the Portuguese Republic has failed to fulfil its obligations under the provisions of the directives mentioned above and under the first paragraph of Article 5, and the third paragraph of Article 189, of the EC Treaty (now, the first paragraph of Article 10 EC and the third paragraph of Article 249 EC).

2 In the past, certain Community directives relating to the environment provided for the Member States to draw up a report on the implementation of the directives and for the Commission to draft a consolidated report. As the provisions regarding reports were diverse and dissimilar, Directive 91/692 harmonised the existing legislation concerning the preparation and submission of the reports.

3 That directive requires the Member States' reports to be submitted at three-year intervals and provides that they are to be drawn up on the basis of a questionnaire prepared by the Commission, which is sent to the Member States six months before the start of the period covered by the report. The reports must then be sent to the Commission within nine months of the end of that period. The first period ran from 1993 to 1995 inclusive.

4 Directive 91/692 applies, by virtue of Annex I thereto, to all the provisions at issue.

5 Under Article 2(1) of Directive 91/692, the Portuguese Republic ought to have submitted the reports for the period 1993 to 1995 on the implementation of the directives at issue by 30 September 1996 at the latest.

6 As the Commission had not received any reports within the prescribed period, it sent the Portuguese Government a letter of formal notice on 30 June 1998, asking it to submit observations on the alleged breach of its obligations within two months.

7 The Portuguese authorities replied to the formal notice by letters dated 21 October and 4 November 1998, which provided certain information and stated principally that the authorities would not fail to send the Commission the reports on the implementation of the directives at issue.

8 No reports on the relevant directives were forwarded to the Commission, which sent the Portuguese Government a reasoned opinion by letter dated 2 February 1999, in which it requested the Government to take the measures necessary to fulfil its obligations under those directives within two months of notification of the opinion.

9 On 30 April 1999, the Portuguese Government sent the Commission 'a document compiling information obtained from the water quality authorities for the period 1993 to 1997, which forms the basis for drawing up the report on the implementation of Directives ... 76/464/EEC, 82/176/EEC, 83/513/EEC, 84/156/EEC, 84/491/EEC and 86/280/EEC' and, on 11 August 1999, it sent the Commission an identical document 'for the period 1993 to 1998', making clear in each case that 'the abovementioned report is being prepared and will be sent to the Commission as soon as it is available'.

10 Since it had received no reports, the Commission was unable to fulfil its own obligation to submit the consolidated Community report prescribed by Article 2(1) of Directive 91/692. It therefore decided to bring the present action.

11 The Commission claims that the Portuguese Republic, by not forwarding the reports in question, has failed to fulfil its obligations under the first paragraph of Article 5, and the third paragraph of Article 189, of the Treaty.

12 In its defence the Portuguese Government contends that it has already sent the Commission all the information available on Directives 76/464, 82/176, 83/513, 84/156, 84/491 and 86/280. The delay in drawing up the reports on those six directives is due to serious difficulties in the bodies responsible for completing the Commission's questionnaires. However, it should be possible to draw up the reports within a very short time.

13 As to Directive 80/68, the Portuguese Government explains that the report will be submitted to the Commission as soon as it is available. So far as Directive 78/659 is concerned, the drafting process is nearing completion and the report was to reach the Commission by 30 May 2000 at the latest. Concerning Directive 78/176, the Portuguese Government, while arguing that the obligation to forward a report to the Commission does not apply to it on the ground that no waste is produced on Portuguese territory by the titanium dioxide industry, has nevertheless annexed a response to the Commission's questionnaire to its defence.

14 In its reply, the Commission confirms that the report on the implementation of Directive 78/176 has been sent to it. It has continued with the proceedings, however, claiming that whether a Member State has failed to fulfil its obligations must be determined by reference to the situation prevailing in that Member State at the end of the period prescribed by the reasoned opinion and that subsequent changes cannot be taken into account. The Commission adds that the fact that the report concerned was finally sent to it with the defence illustrates that it could have been submitted in good time by the Portuguese Government. Furthermore, Article 14 of Directive 78/176 does not provide for any exceptions to the obligation to send the report to the Commission.

15 It is not disputed that the reports on the implementation of Directives 76/464, 78/659, 80/68, 82/176, 83/513, 84/156, 84/491 and 86/280 did not reach the Commission within the prescribed period and that, consequently, the Commission's action in that connection must be regarded as well founded.

16 As to the report on the implementation of Directive 78/176, which was sent to the Commission with the Portuguese Government's defence, it must be borne in mind that it is evident from the case-law of the Court of Justice that, in proceedings under Article 226 EC, the question whether a Member State has failed to fulfil its obligations must be determined by reference to the situation prevailing in that Member State 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-348/99 *Commission* v *Luxembourg* [2000] ECR I-2917, paragraph 8). In the present case, it has been established that, at the end of that period, the report had not been provided.

17 The argument of the Portuguese Government that it was not required to submit a report on the implementation of Directive 78/176 on account of its particular situation, namely that there is no waste from the titanium dioxide industry on Portuguese territory (an argument which the government itself contradicted by subsequently sending the report), must in any event be rejected. As the Advocate General observes in point 16 of his Opinion, the provision at issue binds all Member States in the same way and, if none of the activities referred to in Directive 78/176 are carried out in the territory of a Member State during the period under consideration, that State must indicate that fact in its report, which it may not dispense with under any circumstances.

18 Therefore, it must be held that, by having failed to send the Commission the necessary reports on the implementation of:

— Article 13(1) of Directive 76/464,

— Article 14 of Directive 78/176, as amended by Directive 83/29,

— Article 16 of Directive 78/659, as amended most recently by the act concerning the conditions of accession of the Kingdom of Spain and the Portuguese Republic and the adjustments to the Treaties,

— Article 16(1) of Directive 80/68,

— Article 5(1) and the first paragraph of Article 5(2) of Directive 82/176,

— Article 5(1) and (2) of Directive 83/513,

— Article 6(1) of Directive 84/156,

— Article 5(1) and (2) of Directive 84/491, and

— Article 6(1) and (2) of Directive 86/280, as amended most recently by Directive 90/415,

as those provisions are worded pursuant to amendment by Article 2(1) of Directive 91/692, the Portuguese Republic has failed to fulfil its obligations under the provisions of the directives mentioned above.

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 Portuguese Republic has been unsuccessful, the latter must be ordered to pay the costs.

On those grounds,

THE COURT (First Chamber),

hereby:

1. **Declares that, by having failed to submit to the Commission the necessary reports on the implementation of:**

   — **Article 13(1) of Council Directive 76/464/EEC of 4 May 1976 on pollution caused by certain dangerous substances discharged into the aquatic environment of the Community,**

— Article 14 of Council Directive 78/176/EEC of 20 February 1978 on waste from the titanium dioxide industry, as amended by Council Directive 83/29/EEC of 24 January 1983,

— Article 16 of Council Directive 78/659/EEC of 18 July 1978 on the quality of fresh waters needing protection or improvement in order to support fish life, as amended most recently by the act concerning the conditions of accession of the Kingdom of Spain and the Portuguese Republic and the adjustments to the Treaties,

— Article 16(1) of Council Directive 80/68/EEC of 17 December 1979 on the protection of groundwater against pollution caused by certain dangerous substances,

— Article 5(1) and the first paragraph of Article 5(2) of Council Directive 82/176/EEC of 22 March 1982 on limit values and quality objectives for mercury discharges by the chlor-alkali electrolysis industry,

— Article 5(1) and (2) of Council Directive 83/513/EEC of 26 September 1983 on limit values and quality objectives for cadmium discharges,

— Article 6(1) of Council Directive 84/156/EEC of 8 March 1984 on limit values and quality objectives for mercury discharges by sectors other than the chlor-alkali electrolysis industry,

— Article 5(1) and (2) of Council Directive 84/491/EEC of 9 October 1984 on limit values and quality objectives for discharges of hexachlorocyclohexane, and

— Article 6(1) and (2) of Council Directive 86/280/EEC of 12 June 1986 on limit values and quality objectives for discharges of certain dangerous substances included in List I of the Annex to Directive 76/464/EEC, as amended most recently by Council Directive 90/415/EEC of 27 July 1990,

as those provisions are worded pursuant to amendment by Article 2(1) of Council Directive 91/692/EEC of 23 December 1991 standardising and rationalising reports on the implementation of certain Directives relating to the environment, the Portuguese Republic has failed to fulfil its obligations under the provisions of the directives mentioned above.

2. Orders the Portuguese Republic to pay the costs.

Wathelet Jann Sevón

Delivered in open court in Luxembourg on 12 December 2000.

R. Grass

Registrar

M. Wathelet

President of the First Chamber