JUDGMENT OF THE COURT (Sixth Chamber)

6 July 2000 *

In Case C-236/99,

Commission of the European Communities, represented by G. Valero Jordana, of its Legal Service, and O. Couvert-Castéra, a national civil servant on secondment to the Legal Service, acting as Agents, with an address for service in Luxembourg at the office of C. Gómez de la Cruz, of the Legal Service, Wagner Centre, Kirchberg,

applicant,

v

Kingdom of Belgium, represented by A. Snoecx, Adviser in the Directorate General for Legal Affairs of the Ministry of Foreign Affairs, External Trade and Cooperation with Developing Countries, acting as Agent, assisted by F.P. Louis and A. Vallery, of the Brussels Bar, with an address for service in Luxembourg at the Belgian Embassy, 4 Rue des Girondins,

defendant,

* Language of the case: French.

APPLICATION for a declaration that, by communicating to the Commission a programme for the implementation of Council Directive 91/271/EEC of 21 May 1991 concerning urban waste water treatment (OJ 1991 L 135, p. 40) which does not comply with the directive as regards the Brussels-Capital Region, the Kingdom of Belgium has failed to fulfil its obligations under that directive and, in particular, Article 17 thereof,

THE COURT (Sixth Chamber),

composed of: J.C. Moitinho de Almeida, President of the Chamber, R. Schintgen, J.-P. Puissochet, G. Hirsch and F. Macken (Rapporteur), Judges,

Advocate General: F.G. Jacobs,
Registrar: D. Louterman-Hubeau, Principal Administrator,

having regard to the Report for the Hearing,

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

after hearing the Opinion of the Advocate General at the sitting on 16 March 2000,

gives the following

Judgment

1 By application lodged at the Court Registry on 23 June 1999, the Commission of the European Communities brought an action under Article 226 EC for a declaration that, by communicating to it a programme for the implementation of Council Directive 91/271/EEC of 21 May 1991 concerning urban waste water treatment (OJ 1991 L 135, p. 40, hereinafter 'the directive') which does not comply with that directive as regards the Brussels-Capital Region, the Kingdom of Belgium has failed to fulfil its obligations under that directive and, in particular, Article 17 thereof.

2 According to Article 1, the directive concerns the collection, treatment and discharge of urban waste water and the treatment and discharge of waste water from certain industrial sectors.

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 paragraph of Article 3(1) of the directive states 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 of more than 10 000 population equivalent. In Article 2 the directive defines population

equivalent 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 the waste water referred to in the directive are set out in Article 4.

6 Article 5 of the directive provides in paragraph 1 that Member States are to identify by 31 December 1993 sensitive areas according to the criteria laid down in Annex II. Article 5(2) provides that 'Member States shall ensure that urban waste water entering collecting systems shall before discharge into sensitive areas be subject 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 population equivalent'.

7 Article 8(1) of the directive states that Member States may, in exceptional cases due to technical problems and for geographically defined population groups, submit a special request to the Commission for a longer period for complying with Article 4. Article 8(2) provides that that request, for which grounds must be duly put forward, is to set out the technical difficulties experienced and is to propose an action programme with an appropriate timetable to be undertaken to implement the objective of the directive; that timetable is to be included in the programme for implementation referred to in Article 17. Article 8(3) provides that the longer period referred to in paragraph 1 is not to extend beyond 31 December 2005.

8 Article 17 of the directive provides that Member States are by 31 December 1993 to establish a programme for the implementation of the directive and by 30 June 1994 to provide the Commission with information on the programme.

9 In Belgium the Law of 8 August 1980 regionalised matters relating to the purification of waste water, for which the various regions of the Kingdom of Belgium are now competent.

10 On 23 March 1994 the Government of the Brussels-Capital Region adopted a decree on urban waste water treatment which provides that that region is to set up an urban water collection system corresponding to the requisite characteristics, and also a pre-discharge water purification system, by 31 December 1998. Furthermore, the Senne, the river into which the waste water of the Brussels agglomeration is discharged, is also designated in that law as a sensitive area for the purposes of the directive as regards the Brussels-Capital Region.

11 By letter of 28 May 1996 the Brussels-Capital Region communicated to the Commission its cleansing programme relating to water purification, in which the collection and purification of discharged water was envisaged for the end of 2003. Referring to budgetary restraints and to investments under way, it asked the Commission in the same letter for an extension of the period prescribed for transposition of the directive.

12 By letter of 3 July 1996 the Belgian authorities sent the Commission, within the context of their obligation to provide it with a programme for the implementation of the directive, the programme drawn up by the Brussels-Capital Region. By letter of 30 September 1997 the Commission drew the Belgian authorities' attention to the fact that that programme did not comply with the directive. The Belgian authorities replied by letter of 18 November 1997.

13 The Commission considered that the Kingdom of Belgium had communicated an implementation programme which did not comply with the directive as regards

the Brussels-Capital Region and, by letter of 27 May 1998, gave that State formal notice to submit its observations regarding a possible failure to fulfil its obligations under the directive.

14 The Commission received no reply from the Belgian authorities and on 17 December 1998 issued a reasoned opinion to the Kingdom of Belgium on the ground that it had communicated a programme for the implementation of the directive which did not comply with the directive as regards the Brussels-Capital Region, in breach of the directive and, in particular, Article 17 thereof.

15 By letters of 25 January and 17 March 1999 the Belgian authorities informed the Commission of the progress made in concluding contracts for the construction of the purification plants needed to comply with the directive.

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

17 The Commission observes that it is common ground that the Brussels agglomeration has a population equivalent greater than 10 000 and that the Belgian authorities, pursuant to Article 5 of the directive, identified the Senne basin as a sensitive area, and contends that the Belgian authorities were under an obligation to ensure, pursuant to Article 3 of the directive, that an urban waste water collection system was installed at the latest by 31 December 1998 in the Brussels-Capital Region.

18 The Commission also contends that the Belgian authorities were required to ensure, pursuant to Article 5 of the directive, that the waste water in the Brussels agglomeration underwent secondary treatment and further treatment for nitrogen and phosphorus before being discharged into the Senne. Such treatment should have been put into operation by no later than 31 December 1998.

19 The Commission claims that it follows from the implementation programme communicated by the Kingdom of Belgium that that State has failed to comply with the time-limits laid down in the directive for completion of the urban waste water collection and treatment systems in the Brussels-Capital Region and that, accordingly, the Kingdom of Belgium has failed to fulfil its obligations under Article 17 of the directive.

20 It should be observed at the outset that the Kingdom of Belgium acknowledges that it did not transpose the directive, and in particular Article 17, within the prescribed period.

21 While it admits that it has failed to fulfil the obligation laid down in Article 17 of the directive, the Belgian Government claims in its defence, first, that the difficulties created by the process of institutional reform which it has had to carry out over the last 30 years in order to preserve the unity of the State and the fundamental principles of a State founded upon the rule of law constitute exceptional circumstances which explain and justify the problems experienced by the Brussels-Capital Region. Those circumstances constitute a case of *force majeure*, since they give rise to exceptional difficulties which are beyond the control of the Kingdom of Belgium.

22 In that regard, it should be pointed out that the difficulties to which the Belgian Government refers are of a purely domestic nature, since they result from its political and administrative organisation and, accordingly, do not constitute a case of *force majeure*.

23 Furthermore, according to settled case-law, a Member State may not plead situations in its internal legal order, including those resulting from its federal organisation, in order to justify a failure to comply with the obligations and time-limits laid down in a directive (see, in that regard, Case C-326/97 *Commission* v *Belgium* [1998] ECR I-6107, paragraph 7, and Case C-274/98 *Commission* v *Spain* [2000] ECR I-2823, paragraphs 19 and 20).

24 The Belgian Government cannot therefore plead that situation in order to justify its failure to meet the obligations arising under the directive.

25 Next, the Belgian Government states that following the Brussels-Capital Region's letter of 28 May 1996 in which the Belgian authorities asked the Commission for an extension of the period prescribed for transposition of the directive, the Commission was required, pursuant to Article 5 of the EC Treaty (now Article 10 EC), to take account of any difficulties experienced by that Member State. It claims that the Commission should, accordingly, have either proposed an amendment of the directive in order to extend the period specified therein or delayed bringing an action for failure to fulfil obligations.

26 It must be pointed out that unless a directive has been amended by the Community legislature for the purpose of extending the periods prescribed for implementation, the Member States are required to comply with the periods originally laid down.

27 Since no such amendment was made, and having regard to the fact that the Belgian Government relies in its defence on an alleged case of *force majeure*, that argument raised by the Belgian Government cannot justify its failure to comply with the obligations laid down and the time-limits prescribed in the directive.

28 Second, it should be pointed out that under the system established by Article 226 EC the Commission enjoys a discretionary power as to whether it will bring an action for failure to fulfil obligations and it is not for the Court to judge whether that discretion was wisely exercised (see, in particular, Case C-209/88 *Commission* v *Italy* [1990] ECR I-4313, paragraph 16).

29 It follows that the Belgian Government was not entitled to require the Commission to delay bringing the present action for failure to fulfil obligations.

30 Last, the Belgian Government maintains that the Commission was also required, under Article 10 EC, to state the reasons for its refusal to grant its request for an extension of the period laid down in the directive.

31 It should be pointed out that, although Article 8 of the directive allows the national authorities to submit a request to the Commission for a longer period for complying with Article 4 of the directive, the Belgian Government stated in the observations which it submitted to the Court that it had never sought application of that provision in its favour in order to justify the request for a longer period for implementing the directive referred to in the communication of the purification programme of 28 May 1996.

32 As regards the argument alleging an infringement of Article 10 EC, it suffices to state that in any event the fact that the Commission failed to state the reasons for refusing to extend the period prescribed in the directive does not justify the Kingdom of Belgium's failure to comply with the obligations laid down therein.

33 Since the implementation programme communicated to the Commission by the Kingdom of Belgium did not comply with the time-limits laid down in the directive for completion of the urban waste water collection and treatment systems in the Brussels-Capital Region, the action brought by the Commission must be held to be well founded.

34 Consequently, it must be held that by communicating to the Commission a programme for the implementation of the directive which does not comply with that directive as regards the Brussels-Capital Region, the Kingdom of Belgium has failed to fulfil its obligations under Article 17 of the directive.

Costs

35 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 Belgium has been unsuccessful, the latter must be ordered to pay the costs.

On those grounds,

THE COURT (Sixth Chamber),

hereby:

1. **Declares that, by communicating to the Commission a programme for the implementation of Council Directive 91/271/EEC of 21 May 1991 concerning urban waste water treatment which does not comply with that directive as regards the Brussels-Capital Region, the Kingdom of Belgium has failed to fulfil its obligations under Article 17 of that directive;**

2. **Orders the Kingdom of Belgium to pay the costs.**

Moitinho de Almeida Schintgen Puissochet

Hirsch Macken

Delivered in open court in Luxembourg on 6 July 2000.

R. Grass

Registrar

J.C. Moitinho de Almeida

President of the Sixth Chamber