JUDGMENT OF THE COURT (Sixth Chamber)

13 April 2000 *

In Case C-274/98,

Commission of the European Communities, represented by E. Gippini Fournier and F. de Sousa Fialho, of its Legal Service, acting as Agents, with an address for service in Luxembourg at the office of C. Gómez de la Cruz, of its Legal Service, Wagner Centre, Kirchberg,

applicant,

v

Kingdom of Spain, represented by M. López-Monís Gallego, Abogado del Estado, acting as Agent, with an address for service in Luxembourg at the Spanish Embassy, 4-6 Boulevard E. Servais,

defendant,

* Language of the case: Spanish.

APPLICATION for a declaration that by failing to establish action programmes pursuant to Article 5 of Council Directive 91/676/EEC of 12 December 1991 concerning the protection of waters against pollution caused by nitrates from agricultural sources (OJ 1991 L 375, p. 1; corrigendum to the Spanish version in OJ 1993 L 92, p. 51), the Kingdom of Spain has failed to fulfil its obligations under the EC Treaty,

THE COURT (Sixth Chamber),

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

Advocate General: G. Cosmas,
Registrar: R. Grass,

having regard to the report of the Judge-Rapporteur,

after hearing the Opinion of the Advocate General at the sitting on 20 January 2000,

gives the following

Judgment

1 By application lodged at the Court Registry on 17 July 1998 the Commission of the European Communities brought an action under Article 169 of the EC Treaty (now Article 226 EC) for a declaration that by failing to establish action programmes pursuant to Article 5 of Council Directive 91/676/EEC of 12 December 1991 concerning the protection of waters against pollution caused by nitrates from agricultural sources (OJ 1991 L 375, p. 1; corrigendum to the Spanish version in OJ 1993 L 92, p. 51; hereinafter 'the directive'), the Kingdom of Spain has failed to fulfil its obligations under the EC Treaty.

2 Article 1 of the directive states that its aim is to reduce water pollution caused or induced by nitrates from agricultural sources and prevent further such pollution.

3 Article 3(2) of the directive provides that within two years of notification of the directive, which was made on 19 December 1991, Member States are to designate vulnerable zones.

4 Article 5(1) provides that 'Within a two-year period following the initial designation referred to in Article 3(2) or within one year of each additional

designation referred to in Article 3(4), Member States shall, for the purpose of realising the objectives specified in Article 1, establish action programmes in respect of designated vulnerable zones'.

5 Article 10 provides as follows:

'1. Member States shall, in respect of the four-year period following the notification of this directive and in respect of each subsequent four-year period, submit a report to the Commission containing the information outlined in Annex V.

2. A report pursuant to this article shall be submitted to the Commission within six months of the end of the period to which it relates.'

6 The Real Decreto sobre protección de las aguas contra la contaminación producida por los nitratos procedentes de fuentes agrarias (Royal Decree No 261/1996 of 16 February 1996 on the protection of waters against pollution caused by nitrates from agricultural sources) transposes the directive into Spanish law. Article 6 thereof provides that 'in the zones designated as vulnerable the competent authorities of the autonomous regions shall establish action programmes to prevent and reduce pollution by nitrates from agricultural sources. The action programmes are to be drawn up within two years of the initial

designation of zones as vulnerable or one year after each new extension or modification and shall be implemented within four years of being established.'

7 The Commission sent the Kingdom of Spain a letter of formal notice on 4 April 1997 inviting it to submit its observations regarding an alleged failure to fulfil a number of obligations under the directive, including those imposed by Articles 5, 6 and 10.

8 From the reply sent by the Spanish authorities on 19 June 1997 the Commission was able to ascertain that the obligations under Article 6 had been complied with.

9 On 21 November 1997 the Commission addressed a reasoned opinion to the Kingdom of Spain to the effect that it had failed to communicate a report containing the information referred to in Annex V to the directive, in accordance with Article 10, and had failed to establish action programmes in accordance with Article 5.

10 The Spanish Government replied, forwarding to the Commission a document entitled 'Four-Yearly Report on the application of Directive 91/676/EEC on protection of waters against pollution caused by nitrates from agricultural sources'.

11 As a result the Commission decided to confine its action to the failure to implement Article 5 of the directive, and therefore referred that infringement to the Court.

12 Referring to the obligations imposed on Member States by Article 5 of the EC Treaty (now Article 10 EC) and the third paragraph of Article 189 of the EC Treaty (now the third paragraph of Article 249 EC), the Commission states that the Kingdom of Spain was under an obligation to adopt and communicate the measures necessary to comply with the directive within the prescribed period.

13 It observes that despite the expiry of the time-limits the Kingdom of Spain has not adopted the national provisions necessary to ensure compliance in national law with the obligations imposed by Article 5 of the directive.

14 Article 3(2) of the directive requires the designation of vulnerable zones within two years of notification of the directive. Article 5(1) provides that the Member States are to establish action programmes in respect of designated vulnerable zones within two years of the initial designation referred to in Article 3(2). Since the directive was notified on 19 December 1991, the time-limit for establishing the action programmes envisaged in Article 5 expired on 19 December 1995.

15 It is common ground that the Kingdom of Spain did not establish action programmes in accordance with Article 5 of the directive within the prescribed period.

16 In its defence, whilst admitting that it has failed to comply with the obligation imposed by Article 12 of the directive regarding the time-limit for the adoption of the laws, regulations and administrative measures necessary to comply with the directive, the Spanish Government states, first, that it was impossible to ensure that the entry into force of the royal decree transposing the directive coincided with the designation of vulnerable zones and the subsequent establishment of action programmes. It was hardly possible to draw up the programmes provided for in Article 5 of the directive within the time-limit laid down therein as the directive was only transposed into Spanish law in March 1996.

17 It is sufficient to state in that regard that the fact that the Commission could have based its action on another provision in the directive does not prevent it from relying on the failure to comply with Article 5 represented by the failure to establish the programmes provided for in that article.

18 Next, the Spanish Government explains that the obligation to designate vulnerable zones lies on the autonomous regions, since Article 4 of Royal Decree No 261/1996 provides that they are responsible for such designations. The Autonomous Regions of Andalusia, Aragon, the Balearic Islands, the Canary Islands, Castile-La Mancha, Castille-León, Catalonia, Valencia and the Basque country have designated vulnerable zones and all the other Autonomous Regions, namely Asturia, Cantabria, Estrémadura, Galicia, La Rioja, Madrid, Murcia and Navarra have declared that there is no vulnerable zone in their respective territories. The action programmes provided for in Article 5 of the directive are in

the course of being drawn up in the various autonomous regions which have designated vulnerable zones.

19 The Court has consistently held that Member States cannot rely on provisions, practices or circumstances in their own legal orders to justify failure to comply with the obligations and time-limits laid down by a directive (see, *inter alia*, Case C-144/97 *Commission* v *France* [1998] ECR I-613, paragraph 8).

20 Accordingly, neither the division of powers as between the State and the autonomous regions nor the obligation to comply with directions given in the national legislation transposing the directive into national law can serve to justify failure to comply with the obligations imposed by the directive.

21 Lastly, the Spanish Government claims that the Commission ought to have based its action on the late transposition of the directive into Spanish law. It maintains that since the Commission did not base its action on the failure to implement the directive into Spanish law in due time, there is no point in bringing successive actions directed against the failure to comply with the individual time-limits set by the directive.

22 To that, it must be observed that Member States may not plead their late implementation of the directive as justification for failure to fulfil, or late

fulfilment of, other obligations imposed by the directive (see, to that effect, Case C-431/92 *Commission* v *Germany* [1995] ECR I-2189, paragraph 23).

23 Consequently, the fact that the Kingdom of Spain was late in implementing the directive in no way justifies its failure to fulfil the obligations resulting from Article 5 of the directive.

24 Since the action programmes referred to in Article 5 of the directive have not been drawn up in due time the Commission's action is well founded.

25 The Kingdom of Spain has therefore failed to fulfil its obligations under the directive by not establishing the action programmes referred to in Article 5 of the directive.

Costs

26 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, the Kingdom of Spain, which has been unsuccessful, must be ordered to pay the costs.

On those grounds,

THE COURT (Sixth Chamber)

hereby:

1. **Declares that by not establishing the action programmes referred to in Article 5 of Council Directive 91/676/EEC of 12 December 1991 concerning the protection of waters against pollution caused by nitrates from agricultural sources the Kingdom of Spain has failed to fulfil its obligations under the directive;**

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

Moitinho de Almeida Schintgen Hirsch

Skouris Macken

Delivered in open court in Luxembourg on 13 April 2000.

R. Grass

Registrar

J.C. Moitinho de Almeida

President of the Sixth Chamber