

JUDGMENT OF THE COURT (Third Chamber)
19 March 2002 *

In Case C-268/00,

Commission of the European Communities, represented by G. Valero Jordana and C. van der Hauwaert, acting as Agents, with an address for service in Luxembourg,

applicant,

v

Kingdom of the Netherlands, represented by M.A. Fierstra, acting as Agent,

defendant,

APPLICATION for a declaration that, by failing to fulfil its obligations under Articles 4(1) and 6(1) of Council Directive 76/160/EEC of 8 December 1975 concerning the quality of bathing water (OJ 1976 L 31, p. 1) within the periods

* Language of the case: Dutch.

prescribed by that directive, the Kingdom of the Netherlands has failed to fulfil its obligations under Community law,

THE COURT (Third Chamber),

composed of: F. Macken, President of the Chamber, C. Gulmann (Rapporteur) and J.-P. Puissechet, 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 17 January 2002,

gives the following

Judgment

1 By application lodged at the Court Registry on 3 July 2000, the Commission of the European Communities brought an action under Article 226 EC for a

declaration that by failing to fulfil, within the periods prescribed 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’), its obligations under Articles 4(1) and 6(1) of that directive, the Kingdom of the Netherlands has failed to fulfil its obligations under Community law.

- 2 The aim of the Directive is to protect the environment and public health by way of measures to reduce the pollution of bathing water. The Directive applies to both fresh water (inland waters) and sea water (coastal waters).

- 3 Article 4(1) of the Directive provides that the Member States are to take all necessary measures to ensure that the quality of bathing water conforms to the limit values set in accordance with Article 3 thereof (hereinafter ‘limit values’) within 10 years of notification of the Directive. The Directive was notified on 10 December 1975 and thus that period expired on 10 December 1985.

- 4 In order to monitor the quality of bathing water, the competent authorities in each Member State must, under Article 6(1) of the Directive, carry out sampling operations, the minimum frequency of which is laid down in the annex to the Directive. The Member States were required to adopt the measures needed to fulfil that obligation within two years of notification of the Directive, that is by no later than 10 December 1977. The annex to the Directive sets out the minimum sampling frequencies and the methods of analysis and inspection applicable to each of the 19 parameters laid down in the annex.

- 5 On 5 September 1996 the Commission sent a letter of formal notice to the Kingdom of the Netherlands in which it expressed the view that the latter had

failed to adopt the measures needed to fulfil its obligations under the Directive. First, in breach of Article 6(1) of the Directive, it had failed, with respect to all of the parameters and all bathing waters, to carry out sampling operations in accordance with the minimum sampling frequencies laid down in the annex to the Directive. Secondly, in breach of Article 4(1) of the Directive, it had failed to adopt the measures needed to ensure that, within 10 years of notification of the Directive, the quality of bathing water complied with the limit values.

6 The Netherlands Government admitted those infringements of the Directive in its reply of 13 February 1997. It nevertheless submitted that the report on bathing water for the 1996 bathing season indicated a reduction in the number of areas where sampling frequency had been insufficient and that the report on bathing water for the 1997 bathing season revealed a significant improvement in the quality of bathing water.

7 On 15 October 1998 the Commission sent the Kingdom of the Netherlands a reasoned opinion in which it reiterated the two complaints set out in its letter of formal notice and called upon the Netherlands to adopt the measures needed to comply with the reasoned opinion within two months of its notification.

8 In its reply of 19 April 1999 to the reasoned opinion, the Netherlands Government conceded that the two complaints were well founded, as was borne out by the figures for the 1997 bathing season. It added that it had adopted measures as a matter of urgency in order to comply with its obligations under the Directive and that the figures for the 1998 bathing season indicated that that action was already bearing fruit, the situation having improved appreciably. The Netherlands Government also explained that one of the reasons why the Directive had still not been fully complied with was that it had not been transposed entirely correctly into national law and that, in consequence, national legislation would have to be adapted. Furthermore, it stated that a 'step by step' plan had been adopted in order to ensure compliance with the Directive.

- 9 By letter of 28 March 2000 the Netherlands Government informed the Commission that national legislation had been amended in line with the Directive and that the amendment had been brought into force.
- 10 The Commission took the view, on the basis of the corrected figures for the 1999 bathing season in particular, that the Kingdom of the Netherlands had still not fulfilled its obligations under Articles 4(1) and 6(1) of the Directive, whereupon it brought the present action.
- 11 In its application the Commission argues that sampling operations have been insufficiently frequent for 0.7 per cent of inland waters and that 8 per cent of inland waters fail to comply with the limit values. The Commission observes that the percentage of inland waters failing to comply with the limit values has risen from 3.7 per cent. The Kingdom of the Netherlands does not dispute those figures, having approved them before they were published.
- 12 As regards the poor quality of bathing waters, the Commission argues that, according to the case-law of the Court of Justice (Case C-56/90 *Commission v United Kingdom* [1993] ECR I-4109, paragraph 43, Case C-198/97 *Commission v Germany* [1999] ECR I-3257, paragraph 35, and Case C-307/98 *Commission v Belgium* [2000] ECR I-3933, paragraphs 48 and 49), Article 4(1) of the Directive is not to be understood as meaning that the Member States need only endeavour to adopt all reasonably feasible measures. On the contrary, that provision imposes upon Member States an obligation to achieve a particular result, requiring them to do whatever is necessary to ensure that the quality of bathing water within their territory actually conforms to the limit values by no later than 10 years after notification of the Directive, that period being longer than the two-year period laid down generally for implementation of the Directive in order to give the Member States time to satisfy the requirement.

- 13 The Netherlands Government acknowledges in its defence that the Kingdom of the Netherlands has failed to fulfil its obligations under Articles 4(1) and 6(1) of the Directive as regards the quality of bathing water and sampling frequency and defers to the judgment of the Court.
- 14 Given that the Directive has not been implemented within the periods prescribed therein, the Commission's action must be held to be well founded.
- 15 It must therefore be held that, by failing to fulfil its obligations as regards the quality of bathing water and the frequency of sampling thereof within the periods prescribed by the Directive, the Kingdom of the Netherlands has failed to fulfil its obligations under Articles 4(1) and 6(1) of the Directive.

Costs

- 16 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 the Netherlands 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 fulfil its obligations as regards the quality of bathing water and the frequency of sampling thereof within the periods prescribed by Council Directive 76/160/EEC of 8 December 1975 concerning the quality of bathing water, the Kingdom of the Netherlands has failed to fulfil its obligations under Articles 4(1) and 6(1) of that directive;
2. Orders the Kingdom of the Netherlands to pay the costs.

Macken

Gulmann

Puissochet

Delivered in open court in Luxembourg on 19 March 2002.

R. Grass

F. Macken

Registrar

President of the Third Chamber