

OPINION OF ADVOCATE GENERAL
RUIZ-JARABO COLOMER
delivered on 10 March 1998 *

1. By the present action the Commission seeks a declaration by the Court of Justice that the Portuguese Republic has failed to fulfil its obligations under Community law, specifically under 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, hereinafter 'the Directive'). In particular, the Commission criticises Portugal for not having adopted the plan of action and timetable for the improvement of surface waters, provided for in Article 4(2) of the Directive, by 1 January 1989, in accordance with Article 395 in conjunction with Annex XXXVI to the Act of Accession of the Kingdom of Spain and the Portuguese Republic to the European Communities (OJ 1985 L 302). In the alternative, the Commission seeks a declaration that Portugal has failed to fulfil its obligation to inform the Commission of such measures, contrary to Article 10 of the Directive. The Commission requests, further, that the defendant be ordered to pay the costs.

2. By letter of 12 August 1991 the Commission asked the Portuguese Government to send it a copy of the plan of action and time-

table for the improvement of waters. In view of the Portuguese authorities' failure to reply, the Commission made the same request again on 13 November 1992 and on 22 January 1993.

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

3. By formal letter of notice of 13 January 1994 the Commission informed the Portuguese Government that the abovementioned document did not meet the conditions set by Article 4(2) and called upon it to submit its observations within two months.

4. On 10 June 1994, through its Permanent Representation to the European Union, the Portuguese Government informed the Commission that the measures necessary for implementation of the Directive and, in particular, for drawing up the requisite plan of action, were being taken. The Portuguese Government asked for a period of two more

* Original language: Spanish.

months in order to allow it to provide further information, in view of the complexity of procedures in the field.

5. Since it did not receive the promised information, the Commission sent the Portuguese Republic a reasoned opinion on 10 July 1995, calling upon it to adopt, within two months, the measures necessary to comply with the Directive.

6. On 1 March 1996 the Portuguese Government sent the Commission a new document entitled 'Systematic Plan of Action' accompanied by a number of annexes. Since, after examining the documents, the Commission considered that the Portuguese Republic had still not complied with the requirements laid down in Article 4(2) of the Directive, it decided to bring the present action.

7. In its observations submitted to the Court of Justice, the Portuguese Government does

not deny its failure to fulfil its obligations, but points out that the 'Systematic Plan of Action' sent to the Commission on 1 March 1996 complies with most of the conditions laid down in the Directive. In any event, the definitive plan, whose complexity has led to various delays, should be ready before 30 October 1997, in view of which the Portuguese Government requests the Court of Justice to stay proceedings until that date.

8. It follows from the foregoing that the Portuguese Republic has failed to fulfil its obligations as alleged.

Since the Commission's first letter in this regard was sent more than six years ago by the Commission and the Portuguese Government has failed on several occasions to fulfil its obligations under the Directive, I do not consider that its request for the proceedings to be stayed should be upheld. In any event, the costs of these proceedings should be paid by the defendant pursuant to Article 69(2) of the Rules of Procedure.

Conclusion

9. I propose that the Court should uphold the application and:

(1) Declare that, by not drawing up, within the prescribed period, the systematic plan of action and timetable for the improvement of surface water provided

for in 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, the Portuguese Republic has failed to fulfil its obligations under Article 189 of the EC Treaty;

- (2) Order the Portuguese Republic to pay the costs.