

provisions of a binding nature. Mere administrative practices, which by their nature may be altered at the whim of the administration, may not

be considered as constituting the proper fulfilment of the obligation deriving from the directive in question.

In Case 96/81

COMMISSION OF THE EUROPEAN COMMUNITIES, represented by its Legal Adviser, Robert Caspar Fischer, acting as Agent, assisted by Auke Haagsma, a member of its Legal Department, with an address for service in Luxembourg at the office of its Legal Adviser, Oreste Montalto, Jean Monnet Building, Kirchberg,

applicant,

v

KINGDOM OF THE NETHERLANDS, represented by Adriaan Bos, acting as Agent, Assistant Legal Adviser at the Ministry of Foreign Affairs, with an address for service in Luxembourg at the Embassy of the Kingdom of the Netherlands, 5 Rue C. M. Spoo,

defendant,

APPLICATION for a declaration that the Kingdom of the Netherlands has failed to fulfil an obligation imposed on it by the EEC Treaty, by not adopting within the period prescribed the laws, regulations and administrative provisions needed in order to comply with Council Directive No 76/160/EEC of 8 December 1975 concerning the quality of bathing water (Official Journal 1976, L 31, p. 1),

THE COURT

composed of: J. Mertens de Wilmars, President, G. Bosco and A. Touffait (Presidents of Chambers), Lord Mackenzie Stuart, A. O'Keefe, T. Koopmans and U. Everling, Judges,

Advocate General: F. Capotorti

Registrar: J. A. Pompe, Deputy Registrar

gives the following

JUDGMENT

Facts and Issues

The facts of the case, the course of the procedure and the conclusions, submissions and arguments of the parties may be summarized as follows:

I — Summary of the facts

1. Council Directive No 76/160/EEC of 8 December 1975 concerning the quality of bathing water (Official Journal 1976, L 31, p. 1) provides that Member States are to take certain measures in order to reduce the pollution of bathing water and to protect such water against further deterioration. To that end, the directive lays down the physical, chemical and microbiological parameters applicable to bathing water and provides that Member States shall set, for all bathing areas or for each individual bathing area, the values applicable to bathing water as regards those parameters. Member States are obliged, by virtue of the directive, to take all necessary measures to ensure that, within a period of 10 years, the quality of bathing waters conforms with those values and to ensure that those values are observed in newly-created bathing areas. The competent authorities in the Member States are obliged to carry out sampling operations in accordance with the detailed rules laid down in the directive. Member States are obliged, four years following the notification of the directive and regular intervals thereafter, to submit a comprehensive report to the Commission on their bathing water and the most significant characteristics thereof.

Article 12 (1) of the directive provides as follows:

“Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this directive within two years of its notification. They shall forthwith inform the Commission thereof.”

Notification of the directive to the Netherlands took place on 10 December 1975. Thus the period specified in Article 12 expired on 10 December 1977.

2. By letters of 24 February 1976 and 13 October 1977 the Commission requested the Netherlands Government to inform the Commission of the measures taken by the Netherlands to implement the directive.

In reply to those letters the Ministerie van Verkeer en Waterstaat [Ministry of Transport, Water Control and Construction] of the Netherlands informed the Commission, by letter of 28 March 1978, that an amendment to the *Wet Verontreiniging Oppervlaktewateren* [Law relating to the pollution of surface water] was in preparation. That amendment would *inter alia* enable national standards to be set concerning the discharge of certain substances and to maintain everywhere a general minimum quality level required for the various uses of surface water. That amendment therefore had great significance in connection with the implementation of the directive.

Moreover, an amendment to the *Wet Hygiëne en Veiligheid Zweminrichtingen* [Law relating to hygiene and safety in bathing establishments] would enable the use of surface water in bathing water to be prohibited where the former did not satisfy the requirements laid down in the directive.

Furthermore the competent authorities were in the process of taking concerted action to extend the sampling programme in order to adapt it to the provisions of the directive.

Finally, the Netherlands Government remarked that certain requirements, based on an opinion of the *Gezondheidsraad* [Health Council] and contained in a report entitled "*Interim-rapport Zwemwater*" ["Interim report on bathing water"] dated 25 June 1973, had been imposed for a long time in the Netherlands on the use of surface water for recreational purposes. That report was attached to the letter.

The *Ministerie van Verkeer en Waterstaat* concluded its letter of 28 March 1978 by stating its willingness to supply the Commission with any further information which it might require.

3. By letter of 8 February 1979 the Commission informed the Netherlands Government that it was of the opinion that the Kingdom of the Netherlands had failed to fulfil its obligations under the directive since the Netherlands authorities had still not adopted the measures needed to give effect to the directive under its internal law and since, notwithstanding the provisions of Article 12 (1) of the directive, the Commission had not yet received any communication regarding such measures. The Commission therefore invited the Netherlands Government, pursuant to Article 169 of

the EEC Treaty, to submit its observations on the matter within two months.

The Netherlands Government replied to that letter by a letter dated 23 May 1979 from its Permanent Representation to the European Communities.

In that letter the Netherlands Government supplied a number of further details concerning the content of the law relating to the pollution of surface water accompanied by certain extracts of that law. It stated that that legislation provided for a certain number of methods of controlling the quality of surface water. A prospective multiennial programme drawn up every five years for the purposes of the campaign against water pollution, and determining the policy to be pursued in practice by the authorities responsible for the quality of water contained, in the annexes thereto, the norms laid down in the directive. The programme was attached to the letter. The Netherlands Government emphasized that whilst the preamble to and the explanatory statement accompanying the draft law designed to amend the law relating to the pollution of surface water referred to the directive that did not mean that the directive was not being applied in the Netherlands in the absence of such amendment since for that purpose the present law already provided for a number of methods and laid down certain administrative provisions enabling the directive to be implemented to a considerable extent.

The Netherlands Government also forwarded to the Commission a copy of the law relating to hygiene and safety in bathing establishments, which enabled certain measures to be taken, in respect of bathing establishments, concerning the quality of bathing water. The proposed amendment to that law would have the effect of extending still further the scope of its application.

In that connection the Netherlands Government also referred to the *Wet bestrijding Infectieziekten en Opsporing Ziekteoorzaken* [Law to combat infectious diseases and to detect the causes of disease] which compels the mayor of any municipality to order the total or partial closure of a bathing establishment if the department responsible for the inspection of public health makes a request to that effect.

The Netherlands Government annexed to that letter a report on bathing areas in respect of 1978 and on the most significant characteristics of their bathing water.

The Netherlands Government concluded its letter by stating that it believed it had shown by the contents of the letter that it was in practice already implementing the directive as the basis of existing legislation. It added that it was prepared to supply the Commission with any further information which it might require.

4. By letter of 27 July 1979 the Commission delivered to the Netherlands Government a reasoned opinion within the meaning of Article 169 of the EEC Treaty stating that the Kingdom of the Netherlands had failed to fulfil an obligation imposed on it by the directive by not adopting the laws, regulations and administrative provisions needed to comply with its terms.

The Commission stated in its reasoned opinion that the Kingdom of the Netherlands had not informed the

Commission of the measures taken to comply with the directive and the Commission must therefore assume that the Kingdom of the Netherlands had not yet taken such measures. The provisions of the existing legislation to which the Netherlands Permanent Representation had referred in its letter of 23 May 1979 and the report on bathing areas did not constitute implementation of the directive for the purposes of Article 12. The Commission had still not been informed that the proposed amendments to that legislation had been enacted.

In its reply to that reasoned opinion, by letter of 26 November 1979 from its Permanent Representation to the European Communities, the Netherlands Government reaffirmed that existing legislation already provided mechanisms making it possible to pursue a policy aimed at meeting or continuing to observe the quality requirements which surface water intended for bathing must satisfy. Although, for the purpose of implementing the directive, it was necessary to adapt the law relating to the pollution of surface water in order to create a legal instrument by which general and binding instructions might be issued to all the authorities responsible for the quality of water, that did not mean, contrary to the belief of the Commission, that it was impossible for the Netherlands to implement the directive without such adaptation. The amendments which were being made to the legislation on the subject were considered desirable and the Netherlands Government attached great importance to them. The Netherlands was already implementing the directive by means of existing legislative instruments. In that letter, the Netherlands Government supplied further details of the existing legislation and added that it was prepared to engage in any further consultations with the Commission.

By letter of 24 March 1981 the Permanent Representation of the Kingdom of the Netherlands to the European Communities informed the Commission as to the stage reached in the legislative procedure relating to the aforementioned amendments to the relevant Netherlands legislation.

II — Conclusion and written procedure

1. By an application registered at the Court on 24 April 1981, the *Commission* brought an action against the Kingdom of the Netherlands claiming that the Court should:

Declare that the Kingdom of the Netherlands, by not adopting within the period prescribed the laws, regulations and administrative provisions needed in order to comply with the requirements of Council Directive No 76/160/EEC of 8 December 1975, has failed to fulfil an obligation imposed upon it by the Treaty;

Order the Kingdom of the Netherlands to pay the costs.

The *Government of the Kingdom of the Netherlands* contends that the Court should:

Dismiss the application as unfounded;

Order the Commission to pay the costs.

2. At the conclusion of the written procedure, which followed normal course, the Court, upon hearing the views of the Advocate General, decided to request the Commission to reply in writing to a number of questions and decided to invite the Government of the Netherlands to submit in writing its observations on those replies.

The Court, upon hearing the views of the Advocate General, decided to open the oral procedure without any preparatory inquiry.

III — Submissions and arguments of the parties put forward during the written procedure.

1. The *Commission* contends in its *application* that the Netherlands Government did not deny, in its reply to the Commission or in its subsequent letters, that the directive required an amendment to the legislation in force in the Netherlands. It was apparent from the contents of those letters that that amendment to its legislation had still not been enacted and that therefore, contrary to Article 12 of the directive, the Netherlands still had not adopted all the laws, regulations and administrative provisions needed in order to implement the directive.

The statement, contained in the letter of 26 November 1979, that the Netherlands was implementing the directive by means of existing legislative provisions, through administrative channels, as well as by means of guidelines at the practical level, is contradicted by certain statements also contained in that letter to the effect that it was "necessary to adapt that law for the purpose of implementing the directive". That notion also conflicts with the viewpoint expressed by the Netherlands Government in its reply of 28 March 1978.

The need for certain laws, regulations or administrative provisions also emerges clearly from a comparison of the directive with the existing legislation. It is not however necessary at this stage systematically to examine the differences between the Netherlands legislation and

the directive but the Commission expressly reserves the right to present further argument on this point if that should prove necessary during the course of the procedure.

In the Commission's view, the Netherlands Government wishes to give the impression that the quality of bathing water in the Netherlands is in fact largely the same as that prescribed by the directive without, however, denying that this situation derives only to an insufficient degree from the powers, and the mandatory statements and task-descriptions stipulated in the directive. What is important in the present case is not the practical result brought about by the policy pursued by the Government and by the various subordinate authorities in the Netherlands but the fact that the Netherlands legislation does not make provision for all the instruments prescribed in the directive.

2. In its *defence* the *Netherlands Government* points out that the Commission did not respond to the observations submitted on the reasoned opinion as to the manner in which the directive was already being implemented and that the Commission did not state which provisions of the directive had not been implemented in the Netherlands.

The Netherlands Government, by a letter of 23 May 1979 from its Permanent Representation, had already informed the Commission that its programme for sampling bathing water had been made to comply with the directive. The Commission had received reports con-

cerning the most significant characteristics of the bathing water. In addition in an annex to its defence, the Netherlands Government gives the results of a quarterly bacteriological survey concerning the quality of bathing water.

Moreover, the Netherlands Government recalls that, according to Article 4 of the directive, it is only within a period of 10 years that the quality of bathing water must be made to conform to the limit values set in accordance with Article 3 of the directive.

The draft law amending the law relating to the pollution of surface water was considered desirable for the purpose of creating a uniform scheme in a system under which managerial responsibility for the quality of water rested with decentralized administrative authorities and under which central government did not have the power to regulate directly the management by those subordinate authorities as regards the grant of authorizations or the laying down of quality standards for surface water.

Nevertheless, the existing instruments taken, as a whole, could be used to implement the directive. The subordinate authorities, which are obliged to put into effect the terms of the directive, are aided in their management by all the instruments put at their disposal by the law relating to the pollution of surface water, in particular prohibitions, declarations of inadequacy, the provisions governing authorizations, the levying of a tax and the components of the general

improvement policy. Existing legislation confers, on every authority responsible for the quality of water, the necessary instruments for pursuing a policy aimed at ensuring that the quality of water satisfies requirements which are essential for its recognized use or function. It is not possible to conclude from the existence of a draft amendment to the law, intended to supplement the existing provisions, that the directive had not been implemented. The legislative amendment is designed to impose more stringent rules than those laid down in the directive. The instruments to be created within the framework of the law relating to the pollution of surface water are, moreover, based on Council Directive No 76/464/EEC of 4 May 1976 which is subsequent in time to the directive at issue and places that directive in a general context.

By their nature, the provisions of the directive at issue are primarily addressed to the national authorities. The Member States are free to choose the form and methods of implementing the directive. The Commission has not shown that the Netherlands did not have at its disposal the instruments needed for implementing the directive. The directive has hitherto been adequately implemented in the Netherlands.

3. In its *reply* the Commission maintains that the Netherlands Government fails to realize the true scope of the application and is basing itself on misconceptions as regards the nature of directives in general and of the directive at issue in particular.

The duty to inform the Commission under Article 12 (1) of the directive, on which the application is based, is for the Commission an indispensable instrument in its task of supervising the implementation of directives and constitutes a specific instance of the general duty imposed on the Member States by Article 5 of the EEC Treaty, of

facilitating the achievement of the Commission's tasks. A general communication stating that, for the purpose of its implementation the directive was the subject of a certain legislative amendment or that its implementation was already effected within the context of existing legislation, may not be considered as sufficient.

As with many other directives, under the system laid down by Article 12 (1) of the directive, the supervision by the Commission of the correct implementation of the directive is generally carried out in two stages.

During the first stage, which involves a general and formal examination, the Commission verifies whether the Member States have informed it of the provisions, whether existing or newly enacted, which they consider to be necessary for the implementation of the directive, and whether those provisions have entered into force within the prescribed period. During the second stage which involves a close and lengthy examination and a scrupulous comparison of the national provisions with the various provisions of the directive, the Commission verifies, on the basis of information supplied by the Member States pursuant to Article 12 (1) of the directive, whether the Member States have satisfactorily implemented the provisions of the directive.

The duty to supply information and the supervision, in two stages, of the implementation of the directive entails consequences as regards the procedure laid down in Article 169 of the EEC Treaty in the event of failure by a Member State to fulfil its obligations. An incomplete or delayed communication of the implementing provisions constitutes a failure to comply with the terms of the second sentence of Article 12 (1) of the directive which is sufficient of itself to justify the initiation of the procedure laid down in Article 169 of the EEC Treaty.

Failure to comply with the second sentence of Article 12 (1) of the directive also gives rise to the presumption that the Member State has not complied with its obligation to bring into force the necessary provisions as laid down in the first sentence of Article 12 (1). Where the Member State has informed the Commission of the implementing measures which it considered necessary but did not bring them into force within the prescribed period the Member State is not entitled to rebut that presumption by evidence to the contrary, thus contradicting the previous communication to the Commission.

On the basis of that presumption the Commission may also incorporate, in the default procedure which it initiates, a failure to fulfil the obligation to bring into force the provisions referred to in the first sentence of Article 12 (1), on the basis that the Member State had not brought into force within the prescribed period *all* the necessary implementing measures. There is no need for the Commission to state or demonstrate that the Member State has failed to comply with certain specific obligations laid down in the directive. Verification in regard to such matters takes place during the second stage of the procedure. In any event it is sufficient for the Commission to show that at least *one* of the provisions of the directive has not been implemented or has been implemented incorrectly.

The Commission brought this action during the first stage of its supervision of the implementation of the directive since, as it stated in its application, and that statement has not been contradicted, the Netherlands had not communicated to it, within the prescribed period, and pursuant to the second sentence of Article 12 (1), the implementing

measures adopted. Both parties admit that the Netherlands has not complied with that provision of the directive. The Commission has confined the present case to the fact that the Netherlands had not brought into force, within the prescribed period, all the laws, regulations and administrative provisions necessary. On that narrow issue, the burden of proof on the Commission is clearly much less onerous and, in addition the aforementioned presumption applies.

The presumption of belated or incomplete implementation is confirmed by the letter of the Netherlands Government dated 28 March 1978 which shows that the Netherlands Government was, at that time, convinced that the implementation of the directive required the enactment of a certain number of provisions, indicated in outline. That letter therefore did not constitute the information stipulated by the second sentence of Article 12 (1). Whilst the more detailed information, contained in subsequent letters from the Netherlands Government, on the means available under existing Netherlands legislation constituted valuable material for the purpose of verifying the correct implementation of the directive during the second stage of the Commission's examination, it is of no significance in the present case which is concerned with the first stage of that examination.

The Netherlands Government stated for the first time, in its defence, explicitly and unequivocally, that adequate implementing measures had been adopted, ensuring, for the time being, the adequate implementation of the directive in the Netherlands. Such a viewpoint is unacceptable since it repudiates the earlier attitude adopted by the Netherlands and undermines the confidence with which that attitude

had inspired the Commission. The Commission continues therefore to rely on the presumption that the Netherlands has not adopted all the implementing measures and it need not reply in detail to all the arguments put forward by the Netherlands Government as regards the present state of the implementation of the directive.

In any event, the presumption that the directive has not been fully implemented has not been rebutted by the Netherlands Government even if it were accepted that that possibility is open to the Government. For that purpose, it would have had to demonstrate, in respect of each provision of the directive, that equivalent mandatory provisions already exist in Netherlands law and its defence does not contain any such demonstration.

Moreover, even supposing that no such presumption existed, the Commission has clearly shown that the Netherlands has not brought into force, within the prescribed period, all the necessary implementing provisions. Merely to bring into force some of the provisions of the directive is not sufficient to comply with Article 12 (1). It is clear that the implementation of the obligations contained in the directive requires a certain number of laws, regulations and administrative provisions and that such implementation could not be left to the discretion of the various authorities responsible for the quality of water. The Member States must adopt the implementing measures needed to incorporate in their legal system the terms of the directive and they are not at liberty to exempt themselves from the obligation to enact mandatory implementing rules by maintaining that the directive itself is directly binding on their

authorities and that the practical result sought by the directive can already be achieved. The contents of the letters written by the Netherlands Government before this action was brought show sufficiently clearly that the implementation of the directive in the Netherlands was governed, at least in part, by means of non-mandatory provisions and that the existing legislation does not lay down all the measures prescribed by the directive.

4. In its *rejoinder* the *Netherlands Government* denies that it is agreed between the parties that the Netherlands is in breach of its duty in regard to the information to be given to the Commission by virtue of the second sentence of Article 12 (1) of the directive.

It is necessary to make a distinction between, on the one hand, information supplied by way of a general information procedure such as that instituted by the Council on 5 March 1973 concerning legal measures relating to the protection of the environment (Official Journal, C 9, 15. 3. 1973) under which all those measures designed for the protection and improvement of the environment were brought to the knowledge of the Commission, and, on the other hand, information concerning the implementation of the directive.

The directive is not merely binding on central government but also on the other administrative authorities responsible for ensuring the quality of water and it can in fact be implemented by those authorities. Among the rules issued by the provinces there are provisions relating to authorizations, to planning and to the

taking of samples etc., which require the approval of the State whose influence is thus ensured. The Netherlands Government has shown from the information supplied that it was not necessary, merely in order to implement the directive, to enact amending legislation.

The Netherlands Government acknowledges that the general information contained in its letter of 28 March 1978 concerning the new laws, regulations and administrative provisions, supplied in accordance with the Council Agreement of 5 March 1973, became intermingled with the information supplied concerning the implementation of the directive. However, in its letter of 23 March 1979 it supplied more detailed information relating to the system of Netherlands legislation and stressed the fact that the existing law relating to the pollution of surface water already provided the means needed for implementing the directive. The Netherlands Government considers that it has satisfied, albeit after a certain delay, its obligation in regard to the information to be given to the Commission and reserves the right to submit further observations during the course of the second stage relating to the allegation that the implementation of the directive has been inadequate.

IV — Answers to questions put by the Court

In reply to the questions put by the Court at the close of the written procedure, the *Commission* stated in particular that the legislative framework now existing in the Netherlands for the implementation of the directive was still incomplete since, as indicated in the first

page of the explanatory memorandum to the draft law amending the *Wet Hygiëne en Veiligheit Zweminrichtingen*, no provisions yet existed determining the desired quality for bathing water by means of values for the parameters mentioned in the annex to the directive, as provided for in Article 3 of the directive or provisions prescribing the measures necessary to achieve the quality laid down for bathing water, as provided for in Article 4 (1) of the directive, measures which had to be brought into force within the period laid down in Article 12 of the directive, even though a period of 10 years was granted for achievement of the desired water quality. Moreover, the sampling and checking operations provided for in the directive were carried out only partially, the minimum frequency not always being observed, and then only on the basis of programmes and reports which could not be regarded as the "laws, regulations and administrative provisions" referred to in the directive.

The *Netherlands Government* observed that the law amending the *Wet Verontreiniging Oppervlaktewateren* had entered into force on 1 January 1982 and notice of that fact had been given to the Commission by letter of 14 January 1982. Therefore, in view of the present state of the Netherlands legislation, there was no reason to proceed with the action.

V — Oral procedure

At the sitting on 2 March 1982 oral argument was presented for the Commission by Auke Haagsma, a member of its Legal Department, and for the Government of the Kingdom of the

Netherlands, represented by Adriaan Bos, Assistant Legal Adviser, Ministry for Foreign Affairs. The Advocate General delivered his opinion at the sitting on 31 March 1982.

Decision

- 1 By application received at the Court Registry on 24 April 1981, the Commission of the European Communities brought an action under Article 169 of the EEC Treaty for a declaration that, by not introducing within the period prescribed the laws, regulations and administrative provisions needed to comply with Council Directive No 76/160/EEC of 8 December 1975 concerning the quality of bathing water (Official Journal 1976, L 31, p. 1) the Kingdom of the Netherlands had failed to fulfil its obligation under the Treaty.
- 2 By virtue of that directive, which was adopted pursuant to Articles 100 and 235 of the EEC Treaty, Member States are obliged to set, for all bathing areas or for each individual bathing area, the values applicable to bathing water for the physical, chemical and microbiological parameters laid down in the directive, to adopt the necessary measures to ensure that, within a period of 10 years, the quality of bathing water conforms with those values, to ensure that those values are observed in newly-created bathing areas, to carry out sampling operations in accordance with the detailed rules laid down in the directive and, four years following the notification of the directive, to submit a first comprehensive report to the Commission on their bathing water and the most significant characteristics thereof.
- 3 Article 12 (1) of the directive provides that the Member States are to bring into force the laws, regulations and administrative provisions necessary to comply with the directive within two years of its notification, a period which expired on 10 December 1977, and forthwith to inform the Commission thereof.
- 4 The Commission considers that the Netherlands Government has failed to fulfil its obligation to provide information pursuant to the above-mentioned

provision. In view of that failure the Commission considers that it is entitled to presume, during the first phase of its verification of the implementation of the directive, which is confined to establishing in general whether the necessary implementing measures have been brought into force within the prescribed period, without any detailed examination of such measures, that the defendant has failed to fulfil the obligation to put into effect the necessary measures.

- 5 The subject-matter of these proceedings is not, however, failure to comply with the duty to provide information but failure to fulfil the obligation to bring into force the laws, regulations and administrative provisions needed to ensure compliance with the directive.
- 6 It should be emphasized that, in proceedings under Article 169 of the EEC Treaty for failure to fulfil an obligation, it is incumbent upon the Commission to prove the allegation that the obligation has not been fulfilled. It is the Commission's responsibility to place before the Court the information needed to enable the Court to establish that the obligation has not been fulfilled, and in so doing the Commission may not rely on any presumption.
- 7 It should nevertheless also be emphasized that the Member States are obliged, by virtue of Article 5 of the EEC Treaty, to facilitate the achievement of the Commission's tasks which, under Article 155 of the EEC Treaty, consist in particular of ensuring that the provisions of the Treaty and the measures adopted by the institutions pursuant thereto are applied. It is for those reasons that Article 12 of the directive in question, like other directives, imposes upon the Member States an obligation to provide information.
- 8 The information which the Member States are thus obliged to supply to the Commission must be clear and precise. It must indicate unequivocally the laws, regulations and administrative provisions by means of which the Member State considers that it has satisfied the various requirements imposed on it by the directive. In the absence of such information, the Commission is not in a position to ascertain whether the Member State has effectively and completely implemented the directive. The failure of a Member State to fulfil that obligation, whether by providing no information at all or by providing insufficiently clear and precise information, may of itself justify recourse to the procedure under Article 169 of the EEC Treaty in order to establish the failure to fulfil the obligation.

- 9 In view of the purpose of this action and in order to examine whether it is well founded, those provisions must be compared with the laws, regulations and administrative provisions existing in the Netherlands by means of which the Netherlands Government considers it has implemented the directive.
- 10 In that respect, it must be recorded that in reply to a question put by the Court at the close of the written procedure, the Commission stated that, as appears from the explanatory memorandum to the draft Netherlands law amending the *Wet Hygiëne en Veiligheid Zweminrichtingen* [Law relating to hygiene and safety in bathing establishments], at the present time no provisions exist in the Netherlands determining the desired quality for bathing water by means of values for the parameters mentioned in the annex to the directive, as provided for in Article 3 of the directive, nor are there any provisions prescribing the measures necessary to achieve the quality laid down for bathing water, as provided for in Article 4 (1). The Netherlands Government did not deny that fact either in its observations on the Commission's reply or during the oral procedure and it has adduced no evidence from which it might be inferred that such provisions already exist in the Netherlands.
- 11 The Netherlands Government referred to the fact that the supervision of the quality of water is carried out in the Netherlands within the framework of a decentralized system. The regional and local authorities are directly bound by the provisions of the directive and they implement it in the practical management of water quality, under the control of the national authorities.
- 12 It is true that each Member State is free to delegate powers to its domestic authorities as it considers fit and to implement the directive by means of measures adopted by regional or local authorities. That does not however release it from the obligation to give effect to the provisions of the directive by means of national provisions of a binding nature. The directive in question, adopted *inter alia* pursuant to Article 100 of the EEC Treaty, is intended to approximate the applicable laws, regulations and administrative provisions in the Member States. Mere administrative practices, which by their nature may be altered at the whim of the administration, may not be

considered as constituting the proper fulfilment of the obligation deriving from that directive.

- 13 None of the matters put forward by the Netherlands Government justifies the conclusion that provisions of a binding nature have actually been adopted either by the national authorities or by regional or local authorities in order to determine for all bathing areas or for each of them the values applicable to bathing water for all the parameters indicated in the annex to the directive and in order to ensure that the quality of bathing conforms with the values thus determined. In particular, the prospective multiennial programme to which the Netherlands Government referred in its correspondence with the Commission prior to the commencement of these proceedings, affirming that that programme adopted the rules contained in the directive, constituted, at that time, nothing more than a set of guidelines for those responsible for the supervision of water quality and had no legally binding force. That programme could not therefore be considered as sufficient for the purpose of implementation of the directive.
- 14 In its observations on the Commission's reply to the questions put by the Court before the oral procedure and also during the oral procedure, the Netherlands Government again referred to an amendment of the *Wet Verontreiniging Oppervlaktewateren* [Law relating to the pollution of surface water], which entered into force on 1 January 1982, claiming that by virtue of that amendment the prospective multiennial programme would enable the directive to be fully implemented. At the hearing, the Commission, whilst not departing from its views, declared that that amendment to the law would, if supplemented by certain administrative measures, make it possible for the directive to be implemented properly. In that regard it must be pointed out, without its being necessary to consider whether, merely by reason of that amendment, the failure to fulfil the obligation might have been wholly remedied, that the measures needed to ensure the full implementation of the directive were not adopted within the prescribed periods and in any case did not exist when this action was brought.
- 15 It follows from the foregoing that the Kingdom of the Netherlands did not adopt within the prescribed periods the provisions needed to ensure the full implementation of the directive in question and must be declared to have failed to fulfil its obligations under the Treaty.

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 asked for in the successful party's pleading. As the defendant has failed in its submissions, it must be ordered to pay the costs.

On those grounds,

THE COURT

hereby:

1. Declares that by not bringing into force within the periods prescribed the provisions needed to ensure the full implementation of Council Directive No 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 the Treaty;
2. Orders the Kingdom of the Netherlands to pay the costs.

Mertens de Wilmars	Bosco	Touffait
Mackenzie Stuart	O'Keeffe	Koopmans
		Everling

Delivered in open court in Luxemburg on 25 May 1982.

For the Registrar

H. A. Rühl

Principal Administrator

J. Mertens de Wilmars

President