

Press and Information Division

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Opinion of Advocate General Mischo in Case C-278/01

Commission v Spain

ACCORDING TO THE ADVOCATE GENERAL, THE COMMISSION DID NOT ALLOW SPAIN A REASONABLE PERIOD IN WHICH TO COMPLY WITH THE JUDGMENT OF THE COURT ON THE QUALITY OF BATHING WATERS

In consequence, he proposes that the Commission's action should be dismissed.

The purpose of the Council Directive of 1975 concerning the quality of bathing water ¹ is to protect the environment and public health by reducing the pollution of such water and protecting it against further deterioration. That Directive requires the Member States to set the values applicable to bathing waters for the physical, chemical and microbiological parameters given in the Annexes and to implement in national law the rules laid down in the Directive by 1 January 1986, even Spain, which joined the European Communities on 12 June 1985.

In its judgment of 12 February 1998, ² the Court of Justice held that the Kingdom of Spain had failed to take the measures necessary to ensure that the quality of inshore bathing waters in Spain conformed to the limit values set by the Directive. The Commission found that during the 2000 bathing season, 20% of the bathing areas in question still did not meet the criteria set by the Directive and that, moreover, Spain had reduced the number of those areas. It therefore brought a new action in 2001 for a declaration that Spain had failed to comply with the judgment of the Court, and an order that it should pay a fine of EUR 45 600 in respect of every day's delay from the date on which judgment is delivered in the present case until such time as the judgment in the earlier case shall have been complied with.

1 Directive 76/160/EEC of 8 December 1975.

2 Case C-92/96 *Commission v Spain* [1998] ECR I-505.

Spain argues that the Commission did not leave it sufficient time to fulfil its obligations. The Commission's reasoned opinion prescribed a time-limit of 27 September 2000, that is to say, two years and seven months after the date of the judgment.

Today Advocate General Mischo has delivered his Opinion in this case.

The Advocate General's Opinion is not binding on the Court. His role is to provide, in complete independence, a legal solution for the Court which will enable the latter to give a decision on the cases before it.

The Advocate General observes that the Commission enjoys broad discretion in determining whether it is expedient to take action against a Member State and at what time to bring that action for failure to fulfil obligations. The EC Treaty does not lay down any period at the expiration of which the Member State must have complied with the judgment of the Court of Justice.

It is settled case-law that immediate and uniform application of Community law requires **that the process of compliance must be initiated at once and completed as soon as possible. Those decisions imply that a Member State must be given a reasonable period within which to achieve such compliance.** A certain amount of time may therefore elapse before it is unarguable that the judgment has not been complied with, at least in respect of the completion of the measures taken.

Did Spain start to comply with the Court's judgment only after the time-limit set by the Commission's reasoned opinion?

The Advocate General does not share the Commission's view that the inactivity of the Spanish authorities in the period between the date of the judgment (12 February 1998) and the date of the reasoned opinion (27 September 2000) must be held to be unlawful. He notes that the figures show improvement in the quality of the bathing waters concerned between 1998 and 1999, since the rate of compliance rose from 73 to 76.5%. Furthermore, he states that communication to the Commission at the end of the period fixed in the reasoned opinion of a plan of action drawn up in order to uncover the problems does not establish that Spain began to implement the corrective measures only after it had received that reasoned opinion, but that it is clear from the documents before the Court that that plan is based on data collected earlier. **According to the Advocate General, the Commission has not adduced evidence to establish that the Spanish authorities had not immediately begun to comply with the Court's judgment.**

How is it to be determined whether Spain was allowed a reasonable period of time?

According to the Advocate General, whether or not the period of time prescribed is reasonable depends on the measures still remaining to be adopted by the Member State at the date of delivery of the Court's judgment and may, therefore, vary in accordance with the circumstances of each specific case, and obligations to achieve a certain result imposed by directives are not comparable one with another. While, in some cases, the action required of a Member State is to adopt laws or regulations, which may be done rapidly, the position is different in the present case where the obligation to achieve a certain result consists of altering and monitoring something which is physically present throughout a country. It is apparent that Spain has had to deal with diffuse sources of pollution or run-off

from agricultural land, and that it is not easy to discover these problems and set them right - especially as in most cases several bathing seasons are necessary before the actual source or cycle of the pollution can be detected. In some situations, a solution can be found only in the application of long programmes for the improvement of agricultural techniques.

The Advocate General concludes that the Commission's arguments do not make it possible to establish that Spain was given a reasonable period in which to comply with the Court's judgment and do not therefore prove that at the expiration of the period prescribed by the reasoned opinion it was possible to find that Spain had failed to fulfil its obligations. The Advocate General emphasises that such a situation must necessarily be exceptional, having regard to the particular circumstances of the case. **He is of the view, consequently, that the alleged failure has not been established and that the Commission's application must be dismissed.**

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Available in all official languages.

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www.curia.eu.int
at approximately 3pm today.*

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