

Press and Information Division

PRESS RELEASE No 105/03

25 November 2003

Judgment of the Court of Justice in Case C-278/01

Commission of the European Communities v Kingdom of Spain

FOR THE SECOND TIME¹ THE COURT IMPOSES A FINE ON A MEMBER STATE FOR NON-COMPLIANCE WITH ONE OF ITS JUDGMENTS.

Spain is ordered to pay EUR 624,150 per annum and per percentage of inshore bathing areas not complying with the limit values of the Directive with effect from the 2004 bathing season.

The Court of Justice held in 1998² that Spain had not observed the limit values laid down by the Directive concerning bathing water³ as regards the quality of inshore bathing water.

Under the EC Treaty, if the Commission considers that a Member State has not taken the necessary measures to comply with a judgment of the Court, it may lay down a period for compliance with that judgment. On the expiry of that period the Commission may bring the matter before the Court and request that the Member State be ordered to pay a lump sum or a penalty payment.

In 2001, taking the view that Spain had not complied with the judgment of 1998, the Commission brought an action before the Court seeking the imposition of a penalty payment in the amount of EUR 45,600 per day of delay in the adoption of the measures necessary to comply with that judgment.

The Court holds in its judgment delivered today that Spain has not taken all the measures necessary to comply with its 1998 judgment.

First of all, the Court points out that in accordance with Community law, Spain was required to take the measures necessary to comply with that judgment. Although the EC Treaty does not specify a period for compliance with a judgment of the Court, the Court has held that the process of compliance must be commenced immediately and must be accomplished in as short a period as possible.

It considers that the period allowed to Spain by the Commission – three bathing seasons – was sufficient even if compliance with the judgment involved complex operations.

¹ Judgment in Case C-387/97 *Commission v Greece* [2000] ECR I-5047. See Press release No 48/2000.

² Judgment in Case C-91/96 *Commission v Spain* [1998] ECR I-505.

³ Council Directive 76/160/EEC of 8 December 1975 on the quality of bathing water (OJ 1976 L 31, p. 1).

The Court fixes the amount of the lump sum or periodic penalty, the Commission's proposals serving only as a useful point of reference. The Court must ensure that the amount is appropriate to the circumstances and proportionate to the infringement and to the ability to pay of the Member State concerned, at the same time as encouraging the Member State to bring the infringement to an end as quickly as possible.

The Court sets a periodic penalty lower than that fixed by the Commission. The periodic penalty of EUR 624,150 per annum and per percentage of inshore bathing areas not complying with the limit values laid down by the Directive must be paid with effect from the time when the state of the bathing water during the 2004 bathing season is ascertained until the year in which the 1998 judgment is fully complied with.

In order to take that decision the Court has examined:

- the **frequency** of the periodic payment. The state of bathing water is assessed annually on the basis of a report drawn up by the Member State and communicated to the Commission. It is when that report is submitted that it may be found that the infringement has been brought to an end. In order to prevent Spain from being compelled to pay a penalty for periods in which the infringement has been brought to an end the penalty must be imposed on an annual basis;
- **variations in the amount of the penalty.** Full compliance with the Directive is difficult to achieve. The amount of the penalty payment must take account of progress made by Spain, so that the penalty is appropriate to the circumstances and proportionate to the infringement. The amount must thus be calculated according to the percentage of inshore bathing water which does not as yet comply with the limit values laid down in the Directive; and
- the exact calculation of the amount of the penalty payment which must take account of:
 - the **duration** of the infringement, having regard to the fact that complete compliance with the judgment of 1998 is difficult to achieve in a short space of time;
 - the **seriousness of the infringement**, having regard to the fact that the infringement may endanger human health and harm the environment; and
 - **Spain's ability to pay.**

N.B: The percentage of inshore bathing water that complied with the values in the Directive was 85.1% for the 2002 bathing season.

Unofficial document for media use which does not bind the Court of Justice.

Available languages: all.

*The full text of the judgment can be found on the internet (www.curia.eu.int).
In principle it will be available from midday CET on the day of delivery.*

For additional information please contact Christopher Fretwell:

Tel: (00352) 4303 3355 Fax: (00352) 4303 2731

Pictures of the reading of the judgment are available from

EBS "Europe by Satellite" the TV service of the

European Commission, DG Press and Communication,

L - 2920 Luxembourg,

Tel: (00352) 4301 35177, Fax: (00352) 4301 35249,

or B-1049 Brussels, Tel: (0032) 2 29 64106, Fax: (0032) 2 29 65956