

JUDGMENT OF THE COURT (Fifth Chamber)

4 December 2008 (*)

(Failure of a Member State to fulfil its obligations – Directive 2003/35/EC – Drawing up of certain plans and programmes relating to the environment – Public participation – Failure to transpose within the prescribed period)

In Case C-247/07,

ACTION under Article 226 EC for failure to fulfil obligations, brought on 23 May 2007,

Commission of the European Communities, represented by M. Konstantinidis and D. Lawunmi, acting as Agents, with an address for service in Luxembourg,

applicant,

v

United Kingdom of Great Britain and Northern Ireland, represented by V. Jackson, acting as Agent,

defendant,

THE COURT (Fifth Chamber),

composed of M. Ilešič, President of Chamber, A. Borg Barthet (Rapporteur) and E. Levits, Judges,

Advocate General: J. Kokott,

Registrar: R. Grass,

having regard to the written procedure,

having decided, after hearing the Advocate General, to proceed to judgment without an Opinion,

gives the following

Judgment

- 1 By its application, the Commission of the European Communities requests the Court to declare that, by failing to adopt the laws, regulations and administrative provisions necessary to comply with Directive 2003/35/EC of the European Parliament and of the Council of 26 May 2003 providing for public participation in respect of the drawing up of certain plans and programmes relating to the environment and amending with regard to public participation and access to justice Council Directives 85/337/EEC and 96/61/EC (OJ 2003 L 156, p. 17) ('the directive') or, in any event, by failing to notify such provisions to the Commission, the United Kingdom of Great Britain and Northern Ireland has failed to fulfil its obligations under that directive.
- 2 In accordance with Article 6 of the directive, the Member States were to bring into force the laws, regulations and administrative provisions necessary to comply with that directive by 25 June 2005 at the latest and were forthwith to inform the Commission thereof.
- 3 As it considered that the directive had not been transposed into national law within the prescribed period, the Commission brought infringement proceedings. After having called on the United Kingdom to submit its observations, the Commission issued a reasoned opinion on 18 October 2006 requesting that Member State to adopt the measures necessary to comply with the opinion

within two months of its notification. As it considered that the situation remained unsatisfactory, the Commission decided to bring the present action.

- 4 The United Kingdom acknowledges that the action brought by the Commission is well founded. It submits, nevertheless, that transposition is under way and will be completed in the very near future.
- 5 It should be noted that, according to established case-law, the question whether a Member State has failed to fulfil its obligations must be determined by reference to the situation obtaining in the Member State at the end of the period laid down in the reasoned opinion and that the Court cannot take account of any subsequent changes (see, inter alia, Case C-135/05 *Commission v Italy* [2007] ECR I-3475, paragraph 36, and Case C-111/00 *Commission v Austria* [2001] ECR I-7555, paragraph 13).
- 6 In the present case, it is not disputed that the measures necessary to ensure the complete transposition of the directive had not been adopted by the expiry of the time-limit laid down in the reasoned opinion.
- 7 In those circumstances, the action brought by the Commission must be considered to be well founded.
- 8 Taking the above factors into consideration, it must be declared that, by failing to adopt, within the prescribed period, the laws, regulations and administrative provisions necessary to comply with the directive, the United Kingdom has failed to fulfil its obligations under that directive.

Costs

- 9 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. As the Commission has applied for costs against the United Kingdom and the latter has been unsuccessful, the latter must be ordered to pay the costs.

On those grounds, the Court (Fifth Chamber) hereby:

1. **Declares that, by failing to adopt, within the prescribed period, the laws, regulations and administrative provisions necessary to comply with Directive 2003/35/EC of the European Parliament and of the Council of 26 May 2003 providing for public participation in respect of the drawing up of certain plans and programmes relating to the environment and amending with regard to public participation and access to justice Council Directives 85/337/EEC and 96/61/EC, the United Kingdom of Great Britain and Northern Ireland has failed to fulfil its obligations under that directive;**
2. **Orders the United Kingdom of Great Britain and Northern Ireland to pay the costs.**