

This is another major victory against the UK Govt in about 4 months in  
>>> the  
>>> EU Court of Justice. The previous case which I had brought was over the  
>>> Habitats Directive for failing to implement it properly catching  
>>> Gibraltar also in the net.  
>>>  
>>> We have a great difficulty in taking the Govt to the UK Courts as they  
>>> and  
>>> the legal aid Board are biased against environmentalists and thus great  
>>> harm occurs in our natural environment and thus affects our quality of  
>>> life.  
>>>  
>>> This victory from a complaint I made some time ago is also a kick in the  
>>> rear for the Parliament which should have removed the immunity apart from  
>>> legitimate Defence activity.  
>>>  
>>> This victory will bring all development activity by the Govt into  
>>> scrutiny  
>>> of the Citizens of the UK so as to ensure no serious harm occurs to the  
>>> quality of life of the people and other species.  
>>>  
>>> I have several other cases awaiting the EU Court's decisions.  
>>>  
>>> Ciao! Ciao!  
>>>  
>>> Klaus (From Greek: Victory of the People)  
>>> Cllr  
>>> Saltney Town council  
>>> Forward Wales Party  
>>>  
>>>  
>>> IMPORTANT LEGAL NOTICE - The information on this site is subject to a  
>>> disclaimer and a copyright notice.  
>>>  
>>>  
>>>  
>>> JUDGMENT OF THE COURT (Fifth Chamber)  
>>>  
>>> 12 January 2006 (\*)  
>>>  
>>> (Failure of a Member State to fulfil obligations – Directive 85/337/EEC,  
>>> as  
>>> amended by Directive 97/11/EC – Assessment of the effects of projects on  
>>> the  
>>> environment – Consents granted without assessment)  
>>>  
>>> In Case C-37/05,  
>>>  
>>> ACTION under Article 226 EC for failure to fulfil obligations, brought  
>>> on  
>>> 31  
>>> January 2005,

>>>>  
>>>> Commission of the European Communities, represented by M. van Beek,  
>>>> acting  
>>>> as Agent, and F. Louis and A. Capobianco, avocats, with an address for  
>>>> service in Luxembourg,  
>>>>  
>>>> applicant,  
>>>>  
>>>> v  
>>>>  
>>>> United Kingdom of Great Britain and Northern Ireland, represented by C.  
>>>> White, acting as Agent,  
>>>>  
>>>> defendant,  
>>>>  
>>>> THE COURT (Fifth Chamber),  
>>>>  
>>>> composed of J. Makarczyk (Rapporteur), President of the Chamber, R.  
>>>> Silva  
>>>> de  
>>>> Lapuerta and P. Kuris, Judges,  
>>>>  
>>>> Advocate General: M. Poiares Maduro,  
>>>>  
>>>> 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 action, the Commission of the European Communities  
>>>> requests  
>>>> the Court to declare that, in failing to correctly transpose Articles  
>>>> 2(1)  
>>>> and 4 of Council Directive 85/337/EEC of 27 June 1985 on the assessment  
>>>> of  
>>>> the effects of certain public and private projects on the environment  
>>>> (OJ  
>>>> 1985 L 175, p. 40), as amended by Council Directive 97/11/EC of 3 March  
>>>> 1997  
>>>> (OJ 1997 L 73, p. 5) ('Directive 85/337'), the United Kingdom of Great  
>>>> Britain and Northern Ireland has failed to fulfil its obligations under  
>>>> that  
>>>> directive and under the EC Treaty.  
>>>>  
>>>> 2 Article 2(1) of Directive 85/337 provides:

>>>>

>>>> 'Member States shall adopt all measures necessary to ensure that, before  
>>>> consent is given, projects likely to have significant effects on the  
>>>> environment by virtue, inter alia, of their nature, size or location are  
>>>> made subject to a requirement for development consent and an assessment  
>>>> with  
>>>> regard to their effects. These projects are defined in Article 4.'

>>>>

>>>> 3 Article 4(1) and (2) of Directive 85/337 provides:

>>>>

>>>> '1. Subject to Article 2(3), projects listed in Annex I shall be  
>>>> made  
>>>> subject to an assessment in accordance with Articles 5 to 10.

>>>>

>>>> 2. Subject to Article 2(3), for projects listed in Annex II, the  
>>>> Member  
>>>> States shall determine through:

>>>>

>>>> (a) a case-by-case examination,

>>>>

>>>> or

>>>>

>>>> (b) thresholds or criteria set by the Member State

>>>>

>>>> whether the project shall be made subject to an assessment in accordance  
>>>> with Articles 5 to 10.

>>>>

>>>> Member States may decide to apply both procedures referred to in (a) and  
>>>> (b).'

>>>>

>>>> 4 By virtue of Article 3 of Directive 97/11, the Member States had

>>>> to

>>>> adopt the measures necessary to comply with that directive by 14 March  
>>>> 1999

>>>> at the latest.

>>>>

>>>> 5 Since the Commission considered that, by not providing in

>>>> national

>>>> legislation that Crown development was subject to the requirements of  
>>>> Directive 85/337, the United Kingdom had not transposed Articles 2(1)

>>>> and

>>>> 4

>>>> of Directive 85/337 correctly within the prescribed period, it initiated  
>>>> the

>>>> infringement procedure provided for in the first paragraph of Article  
>>>> 226

>>>> EC. After giving the United Kingdom formal notice to submit its

>>>> observations, on 16 December 2003 the Commission issued a reasoned  
>>>> opinion

>>>> calling on the United Kingdom to take the necessary measures to comply  
>>>> with

>>>> the opinion within two months of notification thereof. As the Commission

>>> took the view that the situation remained unsatisfactory, it decided to  
>>> bring the present action.

>>>

>>> 6 The United Kingdom Government acknowledges that it is necessary  
>>> to

>>> transpose Articles 2(1) and 4 of Directive 85/337 by adopting binding  
>>> national legislation and not by instituting an administrative practice.

>>> It

>>> has committed itself to taking the measures necessary for such

>>> transposition

>>> by removing the Crown exemption provided for by national law. It states,

>>> however, that those measures cannot be adopted before the end of 2005.

>>>

>>> Findings of the Court

>>>

>>> 7 According to settled case-law, the question whether a Member

>>> State

>>> has failed to fulfil its obligations must be determined by reference to

>>> the

>>> situation prevailing in that Member State at the end of the period laid

>>> down

>>> in the reasoned opinion (see, inter alia, Case C-348/99 Commission v

>>> Luxembourg [2000] ECR I-2917, paragraph 8, and Case C-272/01 Commission

>>> v

>>> Portugal [2004] ECR I-6767, paragraph 29).

>>>

>>> 8 Since the United Kingdom did not adopt, before expiry of the

>>> period

>>> set in the reasoned opinion, the measures required in order to bring its

>>> legislation into conformity with Community law, the action brought by

>>> the

>>> Commission must be considered well founded.

>>>

>>> 9 Consequently, it must be held that, in failing to correctly

>>> transpose Articles 2(1) and 4 of Directive 85/337, the United Kingdom

>>> has

>>> failed to fulfil its obligations under that directive.

>>>

>>> Costs

>>>

>>> 10 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. Since the Commission has applied for costs

>>> and

>>> the United Kingdom has been unsuccessful, the United Kingdom must be

>>> ordered

>>> to pay the costs.

>>>

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

>>>

>>> 1. Declares that, in failing to correctly transpose Articles 2(1)

>>> and  
>>> 4  
>>> of Council Directive 85/337/EEC of 27 June 1985 on the assessment of the  
>>> effects of certain public and private projects on the environment, as  
>>> amended by Council Directive 97/11/EC of 3 March 1997, 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.  
>>>  
>>> [Signatures]  
>>>  
>>>  
>>> -----  
>>> ----  
>>>  
>>> \* Language of the case: English.