

JUDGMENT OF THE COURT (Third Chamber)

26 April 2007*

In Case C-135/05,

ACTION under Article 226 EC for failure to fulfil obligations, brought on 22 March 2005,

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

applicant,

v

Italian Republic, represented by I.M. Braguglia, acting as Agent, and G. Fiengo, avvocato dello Stato, with an address for service in Luxembourg,

defendant,

* Language of the case: Italian.

THE COURT (Third Chamber),

composed of A. Rosas, President of the Chamber, J. Klučka (Rapporteur),
U. Lohmus, A. Ó Caoimh and P. Lindh, Judges,

Advocate General: M. Poiares Maduro,
Registrar: M. Ferreira, Principal Administrator,

having regard to the written procedure and further to the hearing on 11 January
2007,

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 all the necessary measures to ensure that:

— waste is recovered or disposed of without endangering human health and without using processes or methods which could harm the environment, and to prohibit the abandonment, dumping or uncontrolled disposal of waste;

— any holder of waste has it handled by a private or public undertaking which carries out the operations of recovery or disposal, or recovers or disposes of it himself in accordance with the provisions of Council Directive 75/442/EEC of 15 July 1975 on waste (OJ 1975 L 194, p. 39), as amended by Council Directive 91/156/EEC of 18 March 1991 (OJ 1991 L 78, p. 32; 'Directive 75/442');

12 December 1991 on hazardous waste (OJ 1991 L 377, p. 20), and under Article 14 (a) to (c) of Council Directive 1999/31/EC of 26 April 1999 on the landfill of waste (OJ 1999 L 182, p. 1).

Legal context

Directive 75/442

- 2 Article 4 of Directive 75/442 provides:

‘Member States shall take the necessary measures to ensure that waste is recovered or disposed of without endangering human health and without using processes or methods which could harm the environment ...

...

Member States shall take the necessary measures to prohibit the abandonment, dumping or uncontrolled disposal of waste.’

- ³ Article 8 of Directive 75/442 requires the Member States to take the necessary measures to ensure that any holder of waste either has it handled by a private or public undertaking which carries out the operations listed in Annexes IIA or IIB to that directive, or recovers or disposes of it himself in accordance with the provisions of that directive.

- ⁴ Article 9(1) of Directive 75/442 provides that, for the purposes of implementing, among others, Article 4 of that directive, any establishment or undertaking which

carries out waste-disposal operations must obtain a permit from the competent authority responsible for the implementation of that directive. Article 9(2) states that such permits may be granted for a specified period, be renewable or subject to conditions and obligations or, in particular, if the intended method of disposal is unacceptable from the point of view of environmental protection, be refused.

Directive 91/689

5 Article 2 of Directive 91/689 provides:

‘1. Member States shall take the necessary measures to require that on every site where tipping (discharge) of hazardous waste takes place the waste is recorded and identified.

...'

Directive 1999/31

6 Article 14(a) to (c) of Directive 1999/31 states:

'Member States shall take measures in order that landfills which have been granted a permit, or which are already in operation at the time of transposition of this Directive, may not continue to operate unless ...

(a) with[in] a period of one year after the date laid down in Article 18(1) [that is not later than 16 July 2002], the operator of a landfill shall prepare and present to the competent authorities, for their approval, a conditioning plan for the site including the particulars listed in Article 8 and any corrective measures which

the operator considers will be needed in order to comply with the requirements of this Directive with the exception of the requirements in Annex I, point 1;

- (b) following the presentation of the conditioning plan, the competent authorities shall take a definite decision on whether operations may continue on the basis of the said conditioning plan and this Directive. Member States shall take the necessary measures to close down as soon as possible, in accordance with Articles 7(g) and 13, sites which have not been granted, in accordance with Article 8, a permit to continue to operate;

- (c) on the basis of the approved site-conditioning plan, the competent authority shall authorise the necessary work and shall lay down a transitional period for the completion of the plan. Any existing landfill shall comply with the requirements of this Directive with the exception of the requirements in Annex I, point 1 within eight years after the date laid down in Article 18(1) [that is not later than 16 July 2009].'

7 Under Article 18(1) of that directive, the Member States were to bring into force the laws, regulations and administrative provisions necessary to comply with it not later

than two years after its entry into force (that is not later than 16 July 2001), and forthwith to inform the Commission thereof.

Pre-litigation procedure

- 8 Following various complaints, parliamentary questions and articles in the press, as well as the publication, on 22 October 2002, of a report of the Corpo forestale dello Stato (National Forestry Authority; 'the CFS') revealing the existence of a large number of illegal and uncontrolled waste tips in Italy, the Commission decided to review that Member State's compliance with its obligations under Directives 75/442, 91/689 and 1999/31.

- 9 The abovementioned report concluded the third stage of a process launched in 1986 by the CFS to record the illegal tips in the forest and mountainous areas of the ordinary regions in Italy (that is all the Italian regions except Friuli-Venezia Giulia, Sardinia, Sicily, Trentino-Alto Adige and Valle d'Aosta). A first survey, carried out in 1986, had covered 6 890 of the 8 104 Italian local authorities and enabled the CFS to establish the existence of 5 978 illegal tips. A second survey, in 1996, had concerned 6 802 local authorities and revealed to the CFS the existence of 5 422 illegal tips. After the 2002 survey, the CFS still listed 4 866 illegal tips, 1 765 of which did not feature in the earlier studies. According to the CFS, 705 of those tips contained hazardous waste. By contrast, the number of tips and landfills which have been granted a permit is only 1 420.

10 The results of that last survey are summarised by the Commission as follows:

Region	Number of illegal tips	Surface area of illegal tips (m ²)	Tips in use/not in use	Tips cleaned up/not cleaned up
Abruzzo	361	1 016 139	111/250	70/291
Basilicata	152	222 830	40/112	43/109
Calabria	447	1 655 479	81/366	19/428
Campania	225	445 222	40/185	37/188
Emilia Romagna	380	254 398	189/191	59/321
Lazio	426	663 535	120/306	110/316
Liguria	305	329 507	145/160	58/247
Lombardy	541	1 132 233	124/417	159/382
Marche	244	364 781	70/174	41/203
Molise	84	199 360	14/70	13/71
Umbria	157	71 510	33/124	61/96
Piedmont	335	270 776	114/221	119/216
Puglia	599	3 861 622	440/159	37/562
Tuscany	436	545 005	107/329	154/282
Veneto	174	5 482 527	26/148	50/124
Total	4 866	16 519 790	1 654/3 212	1 030/3 836

- 11 Although the data provided by the CFS concerns only the 15 Italian ordinary regions, the Commission states that it wishes to pursue, in the present proceedings, the Italian Republic in respect of all the illegal tips on its territory. Indeed, the Commission is in possession of information from which it appears that the situation is comparable in the special regions.
- 12 The Commission refers, in that regard, to the region of Sicily's waste management plan, notified to the Commission on 4 March 2003 and to which is annexed the plan for cleaning up the polluted areas of the region in question. That plan reveals the existence of numerous illegal tips, of abandoned waste sites, of unauthorised fly-tips and of unspecified sites, some of which contain hazardous waste.
- 13 The same applies as regards the regions of Friuli-Venezia Giulia, Trentino-Alto Adige and Sardinia, for which the Commission completes the description of the overall situation in Italy with official documents emanating from the authorities of those regions and with reports of parliamentary commissions of inquiry, as well as press articles.
- 14 As an example, the Commission refers to a tip in a place called 'Cascina Corradina' in the Comune di San Fiorano, which was initially the subject of a separate procedure, but which was subsequently joined to the present procedure for the purposes of the action before the Court.

- 15 On the basis of all that information and in accordance with Article 226 EC, the Commission, by letter of 11 July 2003, gave the Italian Government formal notice to submit to it its observations on the matter.
- 16 Since the Commission received no information from the Italian authorities enabling it to establish that the failures to fulfil obligations complained of had been brought to an end, it delivered, by letter of 19 December 2003, a reasoned opinion requesting the Italian Republic to adopt the measures necessary to comply therewith within two months from the date of its notification.
- 17 The Commission received no reply to that reasoned opinion. Consequently, it decided to bring the present action.

The action

Admissibility

- 18 The Italian Government submits that the Commission's action should be declared inadmissible because of the general and undefined nature of the alleged failure to

fulfil obligations, which makes it impossible for the government to present a detailed defence either in fact or law. In particular, the Commission has not identified the holders of waste or the operators of the tips, or the owners of the sites on which waste has been abandoned.

19 The Commission submits, on the other hand, that it is entitled to deal, in a single set of proceedings, with the question of waste disposal throughout Italian territory. Such an approach, which it describes as 'horizontal', makes it possible, first, to identify and correct more effectively the structural problems underlying the Italian Republic's alleged failure to fulfil obligations and, second, to reduce the processes for reviewing compliance with Community law in the environmental field. In that regard, the Commission refers to the Opinion of Advocate General Geelhoed in Case C-494/01 *Commission v Ireland* [2005] ECR I-3331.

20 First of all, it is appropriate to state that, without prejudice to the Commission's obligation to discharge the burden of proof upon it in proceedings under Article 226 EC, the EC Treaty does not contain any rule which precludes the overall treatment of a significant number of situations on the basis of which the Commission considers that a Member State has, repeatedly and over a long period, failed to fulfil its obligations under Community law.

21 Next, it is settled case-law that an administrative practice can be made the object of an action for failure to fulfil obligations when it is, to some degree, of a consistent and general nature (see, in particular, *Commission v Ireland*, paragraph 28 and the case-law cited).

22 Finally, it must be recalled that the Court has already declared admissible actions brought by the Commission in similar situations, in which the latter relied precisely on a structural and general breach, by a Member State, of Articles 4, 8 and 9 of Directive 75/442 (judgment of 6 October 2005 in Case C-502/03 *Commission v Greece*, not published in the ECR) and on a breach of those same articles as well as Article 14 of Directive 1999/31 (judgment of 29 March 2007 in Case C-423/05 *Commission v France*, not published in the ECR).

23 Accordingly, the Commission's action is admissible.

Substance

The burden of proof

24 The Italian Government submits that the sources of information on which the applicant bases its action lack credibility since, first, the reports of the CFS were not drawn up in collaboration with the Ministry of the Environment and the Protection of Natural Resources, which is the only competent national authority in respect of the Community legal order, and, second, the reports of parliamentary commissions of inquiry and press articles do not constitute admissions but only general sources of evidence, the truth of which must be demonstrated by the party relying upon them.

- 25 The Commission submits, to the contrary, that the reports drawn up by the CFS constitute a reliable and highly credible source of information in the environmental field. In fact, the CFS is a State civil police force, whose mission is, particularly, the defence of Italian forests, the protection of the environment, the countryside and the ecosystem and the pursuit of police activities in order to ensure compliance with the national and international legislation in the matter.
- 26 In that regard, it is to be remembered that in proceedings under Article 226 EC for failure to fulfil obligations it is incumbent upon the Commission to prove the alleged failure. 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 (Case 96/81 *Commission v Netherlands* [1982] ECR 1791, paragraph 6).
- 27 However, the Member States are required, under Article 10 EC, to facilitate the achievement of the Commission's tasks, which consist in particular, pursuant to Article 211 EC, in ensuring that the provisions of the Treaty and the measures taken by the institutions pursuant thereto are applied (*Commission v Ireland*, paragraph 42 and the case-law cited).
- 28 In this context, account should be taken of the fact that, where it is a question of checking that the national provisions intended to ensure effective implementation of

directives, including those adopted in the environmental field, are applied correctly in practice, the Commission, which does not have investigative powers of its own in the matter, is largely reliant on the information provided by any complainants, private or public bodies active in the Member State concerned and that Member State itself (see, to that effect, *Commission v Ireland*, paragraph 43 and the case-law cited).

29 In that regard, the reports drawn up by the CFS and by parliamentary commissions of inquiry or official documents emanating, in particular, from regional authorities can therefore be regarded as valid sources of information for the purposes of the commencement by the Commission of the procedure under Article 226 EC.

30 It follows in particular that, where the Commission has adduced sufficient evidence of certain matters in the territory of the defendant Member State, it is incumbent on the latter to challenge in substance and in detail the information produced and the consequences flowing therefrom (*Commission v Ireland*, paragraph 44 and the case-law cited).

31 In such circumstances, it is indeed primarily for the national authorities to conduct the necessary on-the-spot investigations, in a spirit of genuine cooperation and mindful of each Member State's duty, recalled in paragraph 27 of the present judgment, to facilitate the general task of the Commission (*Commission v Ireland*, paragraph 45 and the case-law cited).

32 Thus, where the Commission relies on detailed complaints revealing repeated failures to comply with the provisions of the directive, it is incumbent on the Member State concerned to contest specifically the facts alleged in those complaints. Likewise, where the Commission has adduced sufficient evidence to show that a Member State's authorities have developed a repeated and persistent practice which is contrary to the provisions of a directive, it is incumbent on that Member State to challenge in substance and in detail the information produced and the consequences flowing therefrom (*Commission v Ireland*, paragraphs 46 and 47 and the case-law cited). That obligation rests on the Member States under the duty of genuine cooperation, enshrined in Article 10 EC, throughout the procedure provided for by Article 226 EC. It is apparent from the case-file that the Italian authorities did not fully cooperate with the Commission for the purposes of the investigation of the present case at the stage of the pre-litigation procedure.

Infringement of Articles 4, 8 and 9 of Directive 75/442, Article 2(1) of Directive 91/689 and Article 14(a) to (c) of Directive 1999/31

— Arguments of the parties

33 In order to challenge the Commission's complaints, the Italian Government, relying on information which it was able to gather from the regional and provincial administrations as well as from the Nucleo operativo ecologico dell'arma dei

Carabinieri (Ecological Operations Unit of the Carabinieri), submits, first, that the information provided by the Commission is inconsistent and does not reflect the actual situation in Italy. It disputes, in particular, the number of 'illegal tips' counted by the Commission on the ground that, in the first place, it counted certain tips several times, in the second place, described as 'illegal tips' mere deposits of, or abandoned, waste, some of which are in the course of being cleaned up or from which the waste has already been cleared and, in the third place, misstated their degree of hazardousness, since the majority of those tips are under control or sequestration.

34 The government points out, also, the recent progress which the Italian Republic has made in the fulfilment of its obligations under Directives 75/442, 91/689 and 1999/31.

35 The Commission argues, in the first place, that the Italian Government has not produced any contrary information emanating from a source of a level comparable to its own sources. In the second place, although the Commission acknowledges that the waste has been cleared from certain tips, it submits that the situations on the point of being regularised are far fewer than those in respect of which the national authorities have taken no action to remedy their illegal nature.

— Findings of the Court

36 First of all, it is settled case-law that 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 even if they

constitute a correct application of the Community law rule which is the subject of the action for failure to fulfil obligations (see, to that effect, Case C-111/00 *Commission v Austria* [2001] ECR I-7555, paragraphs 13 and 14; Case C-103/00 *Commission v Greece* [2002] ECR I-1147, paragraph 23; the judgment of 28 April 2005 in Case C-157/04 *Commission v Spain*, not published in the ECR, paragraph 19; and the judgment of 7 July 2005 in Case C-214/04 *Commission v Italy*, not published in the ECR, paragraph 14).

37 Next, so far as concerns, more specifically, the determination as to the infringement by a Member State of Article 4 of Directive 75/442, it is important to note that that article provides that Member States are to take the necessary measures to ensure that waste is recovered or disposed of without endangering human health and without using processes or methods which could harm the environment, without however specifying the actual content of the measures which must be taken in order to ensure that such objective is attained. It is none the less true that the provision is binding on the Member States as to the objective to be achieved, whilst leaving to the Member States a margin of discretion in assessing the need for such measures (Case C-365/97 *Commission v Italy* (*'San Rocco'*) [1999] ECR I-7773, paragraph 67). It cannot, therefore, in principle, be directly inferred from the fact that a situation is not in conformity with the objectives laid down in Article 4 of Directive 75/442 that the Member State concerned has necessarily failed to fulfil its obligations under that provision. Nevertheless, it is established that if that situation persists and leads in particular to a significant deterioration in the environment over a protracted period without any action being taken by the competent authorities, it may be an indication that the Member States have exceeded the discretion conferred on them by that provision (*San Rocco*, paragraphs 67 and 68).

38 In that regard, it must be stated that the validity of the complaints against the Italian Republic is clearly apparent from the case-file. While the information provided by its

government has established that compliance in Italy with the objectives of the provisions of Community law which are the subject of the failure to fulfil obligations has improved over the course of time, that information reveals, however, that the general non-compliance of the tips in the light of those provisions was persisting at the expiry of the period laid down in the reasoned opinion.

39 As regards the complaint alleging infringement of Article 4 of Directive 75/442, it is common ground that, at the expiry of the period laid down in the reasoned opinion, there was, throughout Italy, a considerable number of tips, the operators of which had not ensured the recovery or disposal of waste in such a way as not to endanger human health and not to use processes or methods which could harm the environment, as well as of sites of uncontrolled waste disposal. By way of example, as is clear from Annex 1 to the Italian Government's rejoinder, it admitted the existence, in the Abruzzo region, of 92 sites affected by abandoned waste, established during a check at the local level, following the survey carried out by the CFS.

40 The existence of such a situation over a prolonged period necessarily brings about a significant deterioration in the environment.

41 As regards the complaint alleging infringement of Article 8 of Directive 75/442, it is established that, at the expiry of the prescribed period, the Italian authorities had not

ensured that holders of waste either recover or dispose of it themselves or have it handled by an undertaking which carries out the operations of recovery or disposal, in accordance with the provisions of Directive 75/442. In that regard, it is clear from Annex 3 to the Italian Government's rejoinder that the Italian authorities counted at least nine sites with such characteristics in the Umbria region and 31 in the Puglia region (province of Bari).

⁴² So far as concerns the complaint alleging infringement of Article 9 of Directive 75/442, it is not disputed that, when the period laid down by the reasoned opinion expired, numerous tips were operating without a permit having been obtained from the competent authorities. That is particularly evidenced, as is clear from Annex 3 to the Italian Government's rejoinder, by the cases of abandoned waste already mentioned in paragraphs 39 and 41 of the present judgment, but also by the presence of at least 14 illegal tips in the Puglia region (province of Lecce).

⁴³ As regards the complaint alleging that the Italian authorities did not ensure the recording or identification of hazardous waste on every site where the tipping or discharge thereof takes place, that is the allegation of infringement of Article 2 of Directive 91/689, it is sufficient to observe that the government of that Member State presented no arguments or specific evidence to contradict the Commission's allegations. In particular, it does not dispute the existence, when the period laid down by the reasoned opinion expired, in Italy, of at least 700 illegal tips containing hazardous waste, which are therefore not subject to any control measures. It follows that the Italian authorities cannot be aware of the deposits of hazardous waste discharged at those tips and, therefore, the obligation to record and identify it is not complied with.

44 Finally, the same applies to the complaint alleging infringement of Article 14 of Directive 1999/31. In this instance, the Italian Government itself stated that 747 landfills in Italian territory should have been the subject of conditioning plans. Examination of all the documents annexed to the government's rejoinder reveals that, when the prescribed period expired, such plans had been presented for only 551 landfills and that only 131 plans had been approved by the competent authorities. In addition, as the Commission correctly points out, the government has not made clear what action was taken as regards the landfills for which the conditioning plans were not approved.

45 It follows that the Italian Republic has, generally and persistently, failed to fulfil its obligations under Articles 4, 8 and 9 of Directive 75/442, Article 2(1) of Directive 91/689 and Article 14(a) to (c) of Directive 1999/31. Consequently, the Commission's action is well founded.

46 Having regard to all the foregoing considerations, it must be held that, by failing to adopt all the necessary measures to ensure that:

- waste is recovered or disposed of without endangering human health and without using processes or methods which could harm the environment, and to prohibit the abandonment, dumping or uncontrolled disposal of waste;

the Italian Republic has failed to fulfil its obligations under Articles 4, 8 and 9 of Directive 75/442, under Article 2(1) of Directive 91/689, and under Article 14(a) to (c) of Directive 1999/31.

Costs

⁴⁷ 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 applied for costs against the Italian Republic and the latter has been unsuccessful, it must be ordered to pay the costs.

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

1. Declares that, by failing to adopt all the necessary measures to ensure that:

- waste is recovered or disposed of without endangering human health and without using processes or methods which could harm the environment, and to prohibit the abandonment, dumping or uncontrolled disposal of waste;**

- **any holder of waste has it handled by a private or public undertaking which carries out the operations of recovery or disposal, or recovers or disposes of it himself in accordance with the provisions of Council Directive 75/442/EEC of 15 July 1975 on waste, as amended by Council Directive 91/156/EEC of 18 March 1991;**

- **any establishment or undertaking which carries out waste-disposal operations is required to obtain a permit from the competent authority;**

- **on every site where tipping (discharge) of hazardous waste takes place the waste is recorded and identified, and**

- **as regards landfills which had already been granted a permit or were already in operation on 16 July 2001, the operator of a landfill, before 16 July 2002, prepared and presented to the competent authorities, for their approval, a conditioning plan for the site including particulars relating to the conditions of the permit and any corrective measures which the operator considered would be needed and that, following the presentation of the conditioning plan, the competent authorities took a definite decision on whether operations might continue, by closing down as soon as possible sites which had not been granted a permit to continue to operate, or by authorising the necessary work and laying down a transitional period for the completion of the plan,**

the Italian Republic has failed to fulfil its obligations under Articles 4, 8 and 9 of Directive 75/442, as amended by Directive 91/156, under Article 2 (1) of Council Directive 91/689/EEC of 12 December 1991 on hazardous waste, and under Article 14(a) to (c) of Council Directive 1999/31/EC of 26 April 1999 on the landfill of waste;

2. Orders the Italian Republic to pay the costs.

[Signatures]