

# Case C-135/05

## Commission of the European Communities

v

## Italian Republic

(Failure of a Member State to fulfil obligations — Waste management —  
Directives 75/442/EEC, 91/689/EEC and 1999/31/EC)

Judgment of the Court (Third Chamber), 26 April 2007 . . . . . I - 3478

### Summary of the Judgment

1. *Actions for failure to fulfil obligations — Proof of failure to fulfil obligations — Burden of proof on Commission*  
(Art. 226 EC)

2. *Member States — Obligations — Supervisory tasks assigned to the Commission — Duty of the Member States*  
(Arts 10 EC, 211 EC and 226 EC; Council Directive 75/442, as amended by Directives 91/156, 91/689 and 1999/31)
  3. *Actions for failure to fulfil obligations — Examination of merits by the Court — Situation to be taken into consideration — Situation on expiry of the period laid down in the reasoned opinion*  
(Art. 226 EC)
  4. *Environment — Disposal of waste — Directive 75/442 — Article 4*  
(Council Directive 75/442, as amended by Directive 91/156, Art. 4)
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1. 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. However, where the Commission has adduced sufficient evidence of certain matters in the territory of the defendant Member State and 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.
  2. 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. 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, 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. In such circumstances, it is primarily for the national authorities to conduct the necessary on-the-spot investigations, in

(see paras 26, 30, 32)

a spirit of genuine cooperation and mindful of each Member State's duty to facilitate the general task of the Commission.

(see paras 27, 28, 31)

3. 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 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 para. 36)

4. Although Article 4 of Directive 75/442 as amended by Directive 91/156, does

(see para. 37)

not specify the actual content of the measures which must be taken by the Member States to ensure that waste is recovered or disposed of without endangering human health and without using processes or methods which could harm the environment, 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.

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 the directive that the Member State concerned has necessarily failed to fulfil its obligations under that provision. Nevertheless, 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.