

Case C-494/01

Commission of the European Communities

v

Ireland

(Failure of a Member State to fulfil obligations — Environment — Waste management — Directive 75/442/EEC, as amended by Directive 91/156/EC — Articles 4, 5, 8, 9, 10, 12, 13 and 14)

Opinion of Advocate General Geelhoed delivered on 23 September 2004 . . .	I - 3338
Judgment of the Court (Grand Chamber), 26 April 2005	I - 3382

Summary of the Judgment

- 1. Actions for failure to fulfil obligations — Subject-matter of the dispute — Determination of the subject-matter in the course of the pre-litigation procedure — Failure of a general nature to comply with the provisions of a directive — Production before the Court of additional evidence intended to support the proposition that the failure is general and consistent — Whether permissible*
(Art. 226 EC)

2. *Actions for failure to fulfil obligations — Proof of failure — Burden of proof on the Commission — Submission of evidence that the obligation has not been fulfilled — Onus of rebuttal on the Member State proceeded against*
(Art. 226 EC)

3. *Member States — Obligations — Supervisory task entrusted to the Commission — Duty of the Member States — Cooperation with inquiries relating to the application of directives — Obligation to investigate and to provide information*
(Arts 10 EC, 211 EC and 226 EC; Council Directive 75/442, as amended by Directive 91/156)

4. *Environment — Waste disposal — Directive 75/442 — Implementation by the Member States — Obligation to achieve a certain result — Obligation on operators to obtain a permit prior to any waste disposal or waste recovery operations — Obligation on the Member States to conduct checks*
(Art. 249, third para., EC; Council Directive 75/442, as amended by Directive 91/156, Arts 9 and 10)

5. *Environment — Waste disposal — Directive 75/442 — Article 12 — Requirement that the collection and transport of waste be subject either to a system of prior authorisation or to a registration procedure — Choice by a Member State of the authorisation system — Consequence — Irrelevance, as regards the correct implementation of the directive, of any registration*
(Council Directive 75/442, as amended by Directive 91/156, Art. 12)

6. *Environment — Waste disposal — Directive 75/442 — Article 5 — Obligation to establish an integrated and adequate network of disposal installations — Obligation not satisfied where a large number of installations lack a permit and the overall disposal capacity is insufficient*
(Council Directive 75/442, as amended by Directive 91/156, Art. 5)

7. *Environment — Waste disposal — Directive 75/442 — Obligation on the Member States resulting from the first paragraph of Article 4 — Obligation infringed in the event of persistent infringement of Articles 9 and 10*
(Council Directive 75/442, as amended by Directive 91/156, Arts 4, first para., 9 and 10)

8. *Environment — Waste disposal — Directive 75/442 — Article 8 — Obligations on the Member States with regard to holders of waste — Obligations also applicable with regard to the operator or owner of an illegal tip, and not capable of being satisfied simply by penal action*

(Council Directive 75/442, as amended by Directive 91/156, Art. 8)

9. *Environment — Waste disposal — Directive 75/442 — Articles 13 and 14 — Obligation to make establishments carrying out disposal and recovery operations subject to periodic inspections — Aim of the inspections — Compliance with the conditions laid down in permits — Inspection not capable of meeting the requirements of the directive if the establishment does not hold the prescribed permit*

(Council Directive 75/442, as amended by Directive 91/156, Arts 13 and 14)

1. The subject-matter of proceedings under Article 226 EC is delimited by the pre-litigation procedure governed by that provision. Accordingly, the Commission cannot seek a declaration of a specific failure by a Member State to fulfil its obligations regarding a particular factual situation that has not been referred to in the course of the pre-litigation procedure.

However, in so far as an action seeks to raise a failure of a general nature to comply with a directive's provisions, concerning in particular the national authorities' systemic and consistent tolerance of situations not in accordance with that directive, the production by the Commission of additional evidence intended, at the stage of proceedings before the Court, to support the propo-

sition that the failure thus alleged is general and consistent cannot be ruled out in principle.

Since the Commission may, in its application, clarify its initial grounds of complaint provided that it does not alter the subject-matter of the dispute, the production of fresh evidence intended to illustrate the grounds of complaint set out in its reasoned opinion, which allege a failure of a general nature to comply with the provisions of a directive, does not alter the subject-matter of the dispute. Thus, facts of which the Commission becomes aware after issue of the reasoned opinion may properly be mentioned by it in support of its application for the purpose of illustrating the failure of a general nature to fulfil obligations raised by it.

(see paras 35-39)

2. In proceedings under Article 226 EC for failure to fulfil obligations it is incumbent upon the Commission to prove the allegation that the obligation has not been fulfilled. 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 which is such as to show that the Member State's authorities have developed a repeated and persistent practice that is contrary to the provisions of a directive, it is incumbent on the Member State to challenge in substance and in detail the information produced and the consequences flowing therefrom.

the case with Directive 75/442 on waste, as amended by Directive 91/156 — are applied correctly in practice, the Commission is largely reliant on the information provided by any complainants and by the Member State concerned. In such circumstances, it is 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 to facilitate the general task of the Commission and to provide it with all the information requested for that purpose.

(see paras 42-43, 45, 197-198)

(see paras 41, 44, 47)

3. 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. So far as concerns checking that the national provisions intended to ensure effective implementation of a directive that covers fields in respect of which the Commission does not have investigative powers of its own — as is

4. Articles 9 and 10 of Directive 75/442 on waste, as amended by Directive 91/156, impose on the Member States obligations formulated in clear and unequivocal terms to achieve a certain result, under which undertakings or establishments which carry out waste disposal operations or waste recovery operations in those States must hold a permit. It follows that a Member State complies with its obligations under those provisions only if, in addition to having correctly transposed the provisions into domestic law, it checks that operators in fact have, before they carry out any disposal or recovery operations, a permit

issued in accordance with Article 9, the absence of which cannot be made up for by the mere submission of an application. The Member State thus has the task of making sure that the permit system set up is actually applied and complied with, in particular by conducting appropriate checks for that purpose and ensuring that operations carried out without a permit are actually brought to an end and punished.

not have a permit on the relevant date, it has complied with its obligations on the basis that the submission of an application for a permit is equivalent to registration.

(see paras 142, 144-145)

(see paras 116-118)

5. Article 12 of Directive 75/442 on waste, as amended by Directive 91/156, provides in particular that establishments or undertakings which collect or transport waste on a professional basis are to be registered with the competent authorities where they are not subject to authorisation. That provision thus requires the Member States to choose a permit system or a registration procedure.

6. In accordance with Article 5 of Directive 75/442 on waste, as amended by Directive 91/156, the establishment of an integrated and adequate network of waste disposal installations, taking account of the best available technology not involving excessive costs, and the network having to enable waste to be disposed of in one of the nearest appropriate installations, is among the objectives pursued by that directive. Accordingly, a Member State which allows a large number of waste disposal installations to operate without a permit and on whose territory the disposal network, taken as a whole, is close to saturation point and not sufficient to absorb the waste produced in that territory fails to fulfil the obligations laid down in Article 5 of the directive.

(see paras 149-158)

Where a Member State has opted for a permit system, it cannot claim that, although, because of delays for which it could be held responsible, operators did

7. While it is not possible, in principle, to draw the direct inference from the fact

that a situation is not in conformity with the objectives laid down in the first paragraph of Article 4 of Directive 75/442 on waste, as amended by Directive 91/156, that a Member State has necessarily failed to fulfil the obligations under that provision, namely to take the requisite measures to ensure that waste is disposed of without endangering human health and without harming the environment, it is nevertheless undisputed that if that situation persists, in particular if it leads to a significant deterioration in the environment over a protracted period without any action being taken by the competent authorities, that may indicate that the Member State has exceeded the discretion conferred by that provision.

Where a Member State has generally and persistently failed to fulfil its obligation to ensure a correct implementation of Articles 9 and 10 of the directive which relate to permit systems for waste disposal and waste recovery operations, that fact alone is sufficient to establish that it has likewise failed generally and persistently to fulfil the requirements of Article 4 of the directive, a provision closely linked to Articles 9 and 10.

(see paras 169-171)

8. Article 8 of Directive 75/442 on waste, as amended by Directive 91/156, which inter alia implements the principle that preventive action should be taken, provides that the Member States have the task of ensuring that any holder of waste has it handled by a private or public waste collector or by an undertaking which carries out waste disposal and recovery operations, or recovers or disposes of it himself in accordance with the provisions of the directive.

The Member States are obliged to take those measures also in relation to the operator or owner of an illegal tip, since he must be regarded as the holder of waste for the purposes of that article. Such an obligation is not satisfied where a Member State confines itself to ordering the sequestration of the illegal tip and prosecuting the operator of the tip.

(see paras 179, 181-182)

9. According to Article 13 of Directive 75/442 on waste, as amended by Direc-

tive 91/156, the appropriate periodic inspections that that provision requires are to cover in particular establishments or undertakings which carry out the operations referred to in Articles 9 and 10 of the directive, which must, by virtue of the latter two provisions, obtain in advance an individual permit containing a number of requirements and conditions.

If such permits are not granted and, therefore, no requirements and conditions are laid down by a permit with regard to a given undertaking or establishment, the inspections of the latter which would be carried out cannot, by

definition, meet the requirements of Article 13 of the directive. One of the fundamental aims of the inspections prescribed by that provision is to check that the requirements and conditions laid down in permits issued in accordance with Articles 9 and 10 of the directive are complied with. The same holds for records kept by the establishments or undertakings referred to by the latter provisions, which, as Article 14 of the directive specifies, must indicate in particular the quantities and nature of the waste or also its treatment method.

(see paras 190-192)