# JUDGMENT OF THE COURT (Fifth Chamber)
5 June 1997 *

In Case C-107/96,

**Commission of the European Communities**, represented by Richard Wainwright, Principal Legal Adviser, and Fernando Castillo de la Torre, of its Legal Service, acting as Agents, with an address for service in Luxembourg at the office of Carlos Gómez de la Cruz, of its Legal Service, Wagner Centre, Kirchberg,

applicant,

v

**Kingdom of Spain**, represented by Luis Pérez de Ayala Becerril, Abogado del Estado, of the Community Legal Affairs Department, acting as Agent, with an address for service in Luxembourg at the Spanish Embassy, 4-6 Boulevard E. Servais,

defendant,

APPLICATION for a declaration that, by failing to adopt and bring into force or to notify within the prescribed period the laws, regulations and administrative provisions necessary to comply with Council Directive 91/156/EEC of 18 March 1991 amending Directive 75/442/EEC on waste (OJ 1991 L 78, p. 32), the Kingdom of Spain has failed to fulfil its obligations under that directive and under Articles 5 and 189 of the EC Treaty,

* Language of the case: Spanish.

THE COURT (Fifth Chamber),

composed of: J. C. Moitinho de Almeida, President of the Chamber, L. Sevón (Rapporteur), D. A. O. Edward, P. Jann and M. Wathelet, Judges,

Advocate General: P. Léger,
Registrar: R. Grass,

having regard to the report of the Judge-Rapporteur,

after hearing the Opinion of the Advocate General at the sitting on 20 March 1997,

gives the following

## Judgment

1 By application lodged at the Court Registry on 3 April 1996, the Commission of the European Communities brought an action under Article 169 of the EC Treaty for a declaration that, by failing to adopt and bring into force or to notify within the prescribed period the laws, regulations and administrative provisions necessary to comply with Council Directive 91/156/EEC of 18 March 1991 amending Directive 75/442/EEC on waste (OJ 1991 L 78, p. 32), the Kingdom of Spain has failed to fulfil its obligations under that directive and under Articles 5 and 189 of the EC Treaty.

2 Directive 91/156 has as its purpose to ensure the removal and recovery of waste, while also encouraging measures to restrict the production of waste, particularly by promoting clean technologies and products which can be recycled and re-used.

3 Under Article 2(1) of the directive, Member States were required to bring into force the laws, regulations and administrative provisions necessary to comply with the directive not later than 1 April 1993 and forthwith to inform the Commission thereof. Directive 91/156 was notified on 25 March 1991.

4 In the absence of any notification of the transposition measures adopted by the Spanish Government, and having no other information indicating that the Kingdom of Spain had met its obligation to bring the necessary provisions into force, the Commission put that Government on formal notice on 9 August 1993 to submit its observations within two months.

5 Since no reply was forthcoming, the Commission sent a reasoned opinion to the Spanish Government on 19 July 1994 requesting it to adopt the measures necessary for compliance within two months.

6 By letters of 8 August 1994 and 16 September 1994, the Spanish authorities requested the Commission to extend the period allowed for replying to the reasoned opinion. The first request alone was accepted by the Commission.

7 By letter of 12 June 1995, the Spanish Government informed the Commission that it had drawn up a preliminary draft basic law on waste. During a meeting on 20 November 1995, the Spanish authorities intimated that preparation of the preliminary draft basic law on waste was practically complete. By letter of 7 February 1996, the Spanish authorities sent to the Commission a copy of this preliminary legislative draft entitled 'Anteproyecto de Ley Básica de Residuos' (preliminary draft basic law on waste).

8 At the time when it brought the action, however, the Commission had not been informed of the adoption of the draft law.

9 While not disputing its failure, the Kingdom of Spain points out that adoption of the text transposing Directive 91/156 was delayed following the dissolution of the Spanish Parliament and the calling of the most recent general election, held in March 1996.

10 However, the Court has consistently held that a Member State may not plead provisions, practices or circumstances existing in its internal legal system in order to justify a failure to comply with the obligations and time-limits laid down in a directive (see, in particular, the judgment of 12 December 1996 in Case C-297/95 *Commission* v *Germany* [1996] ECR I-6739, paragraph 9).

11 Since Directive 91/156 was not transposed within the period prescribed, the action brought by the Commission must be regarded as well founded.

12 It must therefore be held that, by failing to adopt and bring into force within the prescribed period the laws, regulations and administrative provisions necessary to comply with Directive 91/156, the Kingdom of Spain has failed to fulfil its obligations under Article 2(1) of that directive.

## Costs

13 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. The Commission has asked for the Kingdom of Spain to be ordered to pay the costs. Since the latter has failed in its defence submissions, it must be ordered to pay the costs.

On those grounds,

THE COURT (Fifth Chamber)

hereby:

1. **Declares that, by failing to adopt and bring into force within the prescribed period the laws, regulations and administrative provisions necessary to comply with Council Directive 91/156/EEC of 18 March 1991 amending Directive 75/442/EEC on waste, the Kingdom of Spain has failed to fulfil its obligations under Article 2(1) of that directive;**

2. **Orders the Kingdom of Spain to pay the costs.**

Moitinho de Almeida Sevón Edward

Jann Wathelet

Delivered in open court in Luxembourg on 5 June 1997.

R. Grass J. C. Moitinho de Almeida

Registrar President of the Fifth Chamber