JUDGMENT OF THE COURT (Fifth Chamber)
28 March 1996 *

In Case C-160/95,

Commission of the European Communities, represented by Maria Kontou-Durande, of its Legal Service, acting as Agent, with an address for service in Luxembourg at the office of Carlos Gómez de la Cruz, also of its Legal Service, Wagner Centre, Kirchberg,

applicant,

v

Hellenic Republic, represented by Ioanna Galani-Maragkoudaki, Assistant Legal Adviser in the Special Department for Community Legal Affairs in the Ministry of Foreign Affairs, and Evi Skandalou, Legal Assistant in the same Department, acting as Agents, with an address for service in Luxembourg at the Greek Embassy, 117 Val Sainte-Croix,

defendant,

APPLICATION for a declaration that, by not adopting or by not communicating to the Commission 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 Hellenic Republic has failed to fulfil its obligations under the EC Treaty and the first-mentioned directive,

* Language of the case: Greek.

THE COURT (Fifth Chamber),

composed of: D. A. O. Edward, President of the Chamber, J.-P. Puissochet, C. Gulmann, P. Jann and L. Sevón (Rapporteur), Judges,

Advocate General: N. Fennelly,
Registrar: R. Grass,

having regard to the report of the Judge-Rapporteur,

after hearing the Opinion of the Advocate General at the sitting on 1 February 1996,

gives the following

Judgment

1 By application lodged at the Court Registry on 22 May 1995, the Commission of the European Communities brought an action under Article 169 of the EC Treaty for a declaration that, by not adopting or by not communicating to the Commission 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 Hellenic Republic has failed to fulfil its obligations under the EC Treaty and the first-mentioned directive.

2 Article 2(1) of Directive 91/156 provides that the Member States are to bring into force the laws, regulations and administrative provisions necessary to comply with that directive not later than 1 April 1993 and immediately to inform the

Commission thereof. Article 2(2) requires the Member States also to communicate to the Commission the texts of the provisions adopted.

3 Since the Commission received no notification of implementing measures adopted by the Hellenic Republic and possessed no other information to support a conclusion that that Member State had fulfilled its obligations in that respect, it gave the Greek Government formal notice, by letter of 9 August 1993, to submit its observations within two months, in accordance with the first paragraph of Article 169 of the Treaty.

4 Since it received no reply to its letter, the Commission sent a reasoned opinion to the Hellenic Republic on 7 June 1994 calling upon it to adopt within two months the measures required to comply with that opinion. In the absence of any response from the Greek authorities to the reasoned opinion, and forming the view that the Greek Government had failed to adopt within the period prescribed the measures necessary to comply with its obligations, the Commission brought the present proceedings.

5 Referring to Article 2 of Directive 91/156 and also to the first paragraph of Article 5 and the third paragraph of Article 189 of the Treaty, the Commission maintains in its application that the Hellenic Republic was under a duty to adopt the necessary measures to comply with the directive within the prescribed period and that, by failing to do so, it had failed to fulfil its obligations.

6 Although the Hellenic Republic contends that the application should be dismissed, it does not deny that the directive has not been transposed into national law within the prescribed period. It merely points out that a draft ministerial order, which

inter alia transposes Directive 91/156 into Greek legislation, will shortly be signed by the ministers jointly responsible. It adds that, at the same time, the existing legislation governing the treatment of waste is undergoing an exhaustive review.

7 Since the directive has not been transposed within the prescribed period, the action brought by the Commission in relation to that failure must be regarded as well founded.

8 Consequently, it must be held that, by not adopting within the period prescribed the laws, regulations and administrative provisions necessary to comply with Directive 91/156, the Hellenic Republic has failed to fulfil its obligations under Article 2 of that directive.

Costs

9 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 claimed that the Hellenic Republic should be ordered to pay the costs. Since the Hellenic Republic has been unsuccessful, it must be ordered to pay the costs.

On those grounds,

THE COURT (Fifth Chamber)

hereby:

1. **Declares that, by not adopting within the period prescribed the laws, regulations and administrative measures necessary to comply with Council Directive 91/156/EEC of 18 March 1991 amending Directive 75/442/EEC on waste, the Hellenic Republic has failed to fulfil its obligations under Article 2 of the first-mentioned directive;**

2. **Orders the Hellenic Republic to pay the costs.**

Edward Puissochet Gulmann

Jann Sevón

Delivered in open court in Luxembourg on 28 March 1996.

R. Grass D. A. O. Edward

Registrar President of the Fifth Chamber