Case C-70/89

Commission of the European Communities
v
Italian Republic

(Failure by a Member State to fulfil its obligations — Discharge of cadmium)

Report for the Hearing 4817
Opinion of Mr Advocate General Lenz delivered on 21 November 1990 4820
Judgment of the Court, 13 December 1990 4821

Summary of the Judgment

Member States — Obligations — Failure to fulfil obligations not contested (EEC Treaty, Art. 169)

REPORT FOR THE HEARING
in Case C-70/89 *

I — Facts and legislative background

By Directive 76/464/EEC of 4 May 1976 on pollution caused by certain dangerous substances discharged into the aquatic environment of the Community (Official Journal 1976 L 129, p. 23) the Council adopted a list of substances characterized by their toxicity, persistence and bioaccumulation. One of those substances was cadmium. Article 6 of the directive provides that the Council is to lay down limit values and quality objectives for those substances.

Council Directive 83/513/EEC of 26 September 1983 lays down those values and objectives for cadmium (Official Journal 1983 L 291, p. 1). The period within which

* Language of the case: Italian.

that directive was to be implemented expired on 28 September 1985.

By letter of 28 October 1985, the Italian authorities informed the Commission that the rules required to be introduced under the directive corresponded to those already contained in various Italian legislative instruments, namely Law No 319 of 10 May 1976 concerning the protection of water against pollution (*Gazzetta ufficiale della Republica italiana* (GURI) No 641 of 29.5.1976), amending Law No 650 of 24 December 1979 (GURI No 352 of 29.12.1979), the circular of 29 December 1976 from the Interministerial Committee and the decision of that same committee of 4 February 1979 (ordinary supplement to GURI No 69 of 21.2.1977).

Considering that that legislation did not constitute adequate transposition of Directive 83/513, the Commission initiated the treaty infringement procedure. No reply was received either to the formal notice given in the letter of 2 September 1987 or to the reasoned opinion of 12 September 1988.

The Commission therefore decided to bring the present action.

II — Procedure

The Commission's application was received at the Court Registry on 7 March 1989.

The procedure followed the normal course. Upon hearing the report of the Judge-Rapporteur and the views of the Advocate General, the Court decided to open the oral procedure without any preparatory inquiry.

The *Commission* claims that the Court should:

(i) declare that the Italian Republic has failed to fulfil its obligations under Council Directive 83/513 of 26 September 1983 on limit values and quality objectives for cadmium discharges by not adopting within the time-limit laid down in Article 6 thereof all the measures necessary for proper transposition thereof or by failing to give immediate notice thereof to the Commission;

(ii) order the defendant to pay the costs.

The *Italian Government* did not ask for any form of order.

III — Arguments of the parties

According to the *Commission*, the failure to comply with directive 83/513 is apparent from the following considerations:

(1) the Italian legislation does not determine limit values expressed in milligrammes of cadmium discharged per litre of cadmium handled, although Annex I to the directive requires such limit values to be laid down;

(2) the Italian legislation required existing industrial establishments, within the meaning of that legislation, to observe the limit values no later than 1 March 1989, whereas Article 2(f) of the directive requires such establishments to observe those values no later than 23 September 1985;

(3) the Italian legislation provides that the limit values are to be measured upstream of the point of discharge into the surrounding environment, whereas Article 3(2) of the directive requires the limit values to be applied at the point of outflow of the waste waters, that is to say where they are discharged from the industrial establishment or treatment plant;

(4) the Italian legislation lays down no procedure for monitoring the quantities of cadmium treated, whereas Annex I, point 4, of the directive requires such monitoring;

(5) the Italian legislation makes no provision for prior authorization for discharges, whereas a system of authorizations is required by Article 3(3) and (4) of the directive;

(6) the Italian legislation makes no provision for a method of analysis complying with the requirements of Article 3(5) and Annex III, point 1, of the directive to determine the presence of cadmium in waste waters;

(7) finally, the provincial laboratories which, under the Italian legislation, are responsible for monitoring discharges cannot carry out the supervisory duty imposed on the authorities of the Member States by Article 4 of the directive because, under the Italian system, authorizations for discharges are granted automatically.

During the written procedure, the *Italian Government* did not deny its infringement. It stated that it had sought legislative authorization from Parliament to enable it to amend the laws in force in order to ensure proper transposition of the directive.

R. Joliet
Judge-Rapporteur