JUDGMENT OF THE COURT (Fifth Chamber)

8 July 1999 *

In Case C-215/98,

Commission of the European Communities, represented by Maria Condou-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 the Legal Service, Wagner Centre, Kirchberg,

applicant,

v

Hellenic Republic, represented by Aikaterini Samoni-Rantou, Legal Adviser in the Special Department for Community Legal Affairs in the Ministry of Foreign Affairs, and Nana Dafniou, Secretary in that 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 failing to draw up and notify within the prescribed period the programmes provided for in Article 6 of Council Directive 91/157/EEC of 18 March 1991 on batteries and accumulators containing certain

* Language of the case: Greek.

dangerous substances (OJ 1991 L 78, p. 38), the Hellenic Republic has failed to fulfil its obligations under that directive,

THE COURT (Fifth Chamber),

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

Advocate General: F.G. Jacobs,
Registrar: R. Grass,

having regard to the report of the Judge-Rapporteur,

after hearing the Opinion of the Advocate General at the sitting on 29 April 1999,

gives the following

Judgment

1 By application lodged at the Registry of the Court on 10 June 1998, the Commission of the European Communities brought an action under Article 169 of the EC Treaty (now Article 226 EC) for a declaration that, by failing to draw up and notify within the prescribed period the programmes provided for in

Article 6 of Council Directive 91/157/EEC of 18 March 1991 on batteries and accumulators containing certain dangerous substances (OJ 1991 L 78, p. 38, hereinafter 'the Directive'), the Hellenic Republic has failed to fulfil its obligations under the EC Treaty and that directive.

2 Article 1 of the Directive provides that 'the aim of [the] Directive is to approximate the laws of the Member States on the recovery and controlled disposal of... spent batteries and accumulators containing dangerous substances in accordance with Annex I'.

3 Article 6 of the Directive provides:

'Member States shall draw up programmes in order to achieve the following objectives:

— reduction of the heavy-metal content of batteries and accumulators,

— promotion of marketing of batteries and accumulators containing smaller quantities of dangerous substances and/or less polluting substances,

— gradual reduction, in household waste, of spent batteries and accumulators covered by Annex I,

— promotion of research aimed at reducing the dangerous-substance content and favouring the use of less polluting substitute substances in batteries and accumulators, and research into methods of recycling,

— separate disposal of spent batteries and accumulators covered by Annex I.

The first programmes shall cover a four-year period starting on 18 March 1993. They shall be communicated to the Commission by 17 September 1992 at the latest.

The programmes shall be reviewed and updated regularly, at least every four years, in the light in particular of technical progress and of the economic and environmental situation. Amended programmes shall be communicated to the Commission in good time.'

4 Having received no notification from the Hellenic Republic relating to the programmes provided for in Article 6 of the Directive and being in possession of no other information which would enable it to form the view that Greece had fulfilled its obligations, the Commission gave the Greek Government formal notice on 8 November 1995 to communicate its observations on that failure within two months.

5 In reply to the letter of formal notice the Greek Government sent to the Commission, by letter dated 11 March 1996, a ministerial decree, Article 5(3) of which provided that the programmes prescribed by Article 6 of the Directive were to be drawn up before 18 March 1997 by a committee specially assembled for that purpose. The Commission found that response unsatisfactory in that, under Article 6 of the Directive, the programmes in question were to have been notified to the Commission by 17 September 1992 at the latest.

6 On 25 April 1997, following another exchange of letters which again failed to satisfy the Commission, the Commission sent the Greek Government a reasoned opinion pursuant to the first paragraph of Article 169 of the EC Treaty in which it expressed the view that, by failing to draw up and notify to the Commission within the prescribed period the programmes provided for in Article 6 of the Directive, the Hellenic Republic had failed to fulfil its obligations under the Directive. It requested the Hellenic Republic to adopt the necessary measures to comply with the reasoned opinion within two months of its notification.

7 In its reply of 15 December 1997 the Greek Government indicated that the Ministry of the Environment, Regional Planning and Public Works had commissioned a six-month study the purpose of which was to gather information and proposals to the ministry concerning the implementation of the programmes provided for in Article 6 of the Directive.

8 The Commission took the view that it was clear from the reply from the Greek authorities that the establishment of the programmes was only at a preliminary stage, and it therefore resolved to bring the present action.

9 The Greek Government states that, with reference to the draft programmes and in application of Article 6 of the Directive as incorporated into Greek law by ministerial decree, a study relating to the 'treatment of batteries and accumulators containing dangerous substances' was completed and forwarded in June 1998 to the Ministry of the Environment, Regional Planning and Public Works so that the ministry could implement its results. The study describes the existing situation in Greece with regard to batteries and accumulators and defines the objectives necessary to implement the programmes referred to in Article 6 of the Directive.

10 The Greek Government also submits that a draft law entitled 'Measures and conditions for the new management of packaging and other products' has been sent to the Commission for approval. The draft act introduces into Greek law for

the first time legal provisions concerning the adoption of programmes for the management of batteries and accumulators and the integration of those programmes on the creation of the management body within the 'New management system', a scheme with a more general scope. The adoption of the programmes in issue and the effective creation of the body in question, the Greek Government maintains, depend directly upon whether the Commission approves the draft law.

11 The Greek Government is therefore of the view that it has made, and is continuing to make, every effort to advance the creation of the programmes provided for in Article 6 of the Directive with a view to their full implementation.

12 The Commission denies neither the efforts of the Greek authorities to advance the programmes prescribed by Article 6 of the Directive nor the contribution of the study in question to the planning and implementation of those programmes. None the less, it observes that the purpose of the study is to garner information and formulate proposals to the Ministry of the Environment, Regional Planning and Public Works for the implementation of the programmes provided for in the Directive. To that end, after reviewing the existing situation, the study reaches certain conclusions and proposals with a view to creating a framework for the management of batteries and accumulators containing dangerous substances so that they can be properly controlled by a competent supervisory body. However, according to the Commission, the proposals contained in the study have not yet been adopted and the study can therefore only be considered as a preliminary stage in the development of the programmes prescribed by Article 6 of the Directive.

13 It must be observed first of all that, in order to achieve its objectives, Article 6 requires the Member States to draw up programmes and then to review and update them regularly.

14 It is common ground that the measures implemented by the Hellenic Republic do not suffice to achieve the result prescribed by Article 6 of the Directive, namely the effective establishment of the programmes described therein. The study and the draft law relied upon by the Greek Government do no more than detail a number of programmes that may eventually be implemented.

15 Moreover, the fact that the Greek Government is continuing to make every effort to implement the programmes in question is no defence. As Advocate General Jacobs observed at point 16 of his Opinion, an action based on Article 169 of the Treaty requires only an objective finding of a failure by a Member State to fulfil its obligations and not proof of any inertia or opposition on the part of the Member State concerned (see Case 301/81 *Commission* v *Belgium* [1983] ECR 467, paragraph 8).

16 It must therefore be held that, by failing to draw up within the prescribed period the programmes provided for in Article 6 of the Directive, the Hellenic Republic has failed to fulfil its obligations under that article.

Costs

17 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. Since the Commission has applied for the Hellenic Republic to be ordered to pay the costs and the latter has been unsuccessful, it must be ordered to pay the costs.

On those grounds,

THE COURT (Fifth Chamber),

hereby:

1. **Declares that, by failing to draw up within the prescribed period the programmes provided for in Article 6 of Council Directive 91/157/EEC of 18 March 1991 on batteries and accumulators containing certain dangerous substances, the Hellenic Republic has failed to fulfil its obligations under that article;**

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

Puissochet Jann Gulmann

Edward Sevón

Delivered in open court in Luxembourg on 8 July 1999.

R. Grass J.-P. Puissochet

Registrar President of the Fifth Chamber