JUDGMENT OF THE COURT (Fifth Chamber)
20 June 1996 *

In Case C-237/95,

Commission of the European Communities, represented by Maria Kondou Durande and Laura Pignataro, of its Legal Service, acting as Agents, with an address for service in Luxembourg at the office of Carlos Gómez de la Cruz, also of the Commission's Legal Service, Wagner Centre, Kirchberg,

applicant,

v

Italian Republic, represented by Professor Umberto Leanza, Head of the Contentious Diplomatic Affairs Department at the Ministry of Foreign Affairs, acting as Agent, assisted by Pier Giorgio Ferri, Avvocato dello Stato, with an address for service in Luxembourg at the Italian Embassy, 5 Rue Marie-Adélaïde,

defendant,

APPLICATION for a declaration that, by failing to adopt or to communicate the laws, regulations and administrative provisions necessary to comply with Council

* Language of the case: Italian.

Directive 89/369/EEC of 8 June 1989 on the prevention of air pollution from new municipal waste-incineration plants (OJ 1989 L 163, p. 32) and Council Directive 89/429/EEC of 21 June 1989 on the reduction of air pollution from existing municipal waste-incineration plants (OJ 1989 L 203, p. 50), the Italian Republic has failed to fulfil its obligations under the EC Treaty,

THE COURT (Fifth Chamber),

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

Advocate General: M. B. Elmer,
Registrar: R. Grass,

having regard to the report of the Judge-Rapporteur,

after hearing the Opinion of the Advocate General at the sitting on 7 May 1996,

gives the following

Judgment

1 By application lodged at the Court Registry on 6 July 1995, the Commission of the European Communities brought an action under Article 169 of the EC Treaty

for a declaration that, by failing to adopt or to communicate the laws, regulations and administrative provisions necessary to comply with Council Directive 89/369/EEC of 8 June 1989 on the prevention of air pollution from new municipal waste-incineration plants (OJ 1989 L 163, p. 32) and Council Directive 89/429/EEC of 21 June 1989 on the reduction of air pollution from existing municipal waste-incineration plants (OJ 1989 L 203, p. 50), the Italian Republic had failed to fulfil its obligations under the EC Treaty.

2 Pursuant to Article 12(1) of Directive 89/369 and Article 10(1) of Directive 89/429, the Member States were to bring into force the laws, regulations and administrative provisions necessary to comply with the directives by 1 December 1990. They were also to inform the Commission immediately they had done so.

3 In its defence, the Italian Republic indicated that it had partially transposed Directive 89/429 by the adoption of the Minister of the Environment's Decree of 12 July 1990 laying down guidelines for limiting pollutant emissions from industrial plants and fixing minimum emission values (*GURI*, ordinary supplement No 51 of 30 July 1990).

4 In its reply the Commission noted that that measure had been adopted, found that Directive 89/429 had been partially transposed into domestic Italian law and stated that it would withdraw its action in so far as that directive was concerned, but wished to continue the action in respect of Directive 89/369.

5 The Italian Republic does not dispute that Directive 89/369 was not transposed within the prescribed period, but states that it believes it will be able to give notification of the measure implementing it shortly.

6 Since the transposition of Directive 89/369 was not carried out within the period prescribed therein, the application brought in that connection by the Commission must be considered well founded.

7 Accordingly it must be held that, by failing to adopt within the prescribed period the laws, regulations and administrative provisions necessary to comply with Council Directive 89/369, the Italian Republic has failed to fulfil its obligations under Article 12(1) of that directive.

Costs

8 Under Article 69(2) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs.

9 Under Article 69(5) of those Rules, a party who discontinues or withdraws is to be ordered to pay the costs unless this appears justified by the conduct of the other party.

10 It was only after notification by the Italian Republic in its defence of the measures which it had adopted in order partially to transpose Directive 89/429 into its domestic legal system that the Commission withdrew certain complaints set out in its application.

11 Accordingly the partial withdrawal by the Commission was justified by the conduct of the Italian Republic which, for the rest, failed in its submissions.

12 The Italian Republic must therefore be ordered to pay the costs.

On those grounds,

THE COURT (Fifth Chamber)

hereby:

1. **Declares that, by failing to adopt within the prescribed period the laws, regulations and administrative provisions necessary to comply with Council Directive 89/369/EEC of 8 June 1989 on the prevention of air pollution from new municipal waste-incineration plants, the Italian Republic has failed to fulfil its obligations under Article 12(1) of that directive;**

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

Edward Puissochet Moitinho de Almeida

Gulmann Jann

Delivered in open court in Luxembourg on 20 June 1996.

R. Grass D. A. O. Edward

Registrar President of the Fifth Chamber