JUDGMENT OF THE COURT (Fifth Chamber)
28 May 1998 *

In Case C-298/97,

Commission of the European Communities, represented by Fernando Castillo de la Torre, of its Legal Service, acting as Agent, 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 Paloma Plaza García, Abogado del Estado, 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 or communicate to the Commission 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), the Kingdom of Spain has failed to fulfil its obligations under that article,

* Language of the case: Spanish.

THE COURT (Fifth Chamber),

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

Advocate General: G. Cosmas,
Registrar: R. Grass,

having regard to the Report of the Judge-Rapporteur,

after hearing the Opinion of the Advocate General at the sitting on 19 March 1998,

gives the following

Judgment

1 By application lodged at the Court Registry on 13 August 1997, 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 communicate to the Commission 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 Kingdom of Spain has failed to fulfil its obligations under that article.

2 Pursuant to Article 6 of the Directive, Member States are to 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 to the Directive,

— 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 were to cover a four-year period starting on 18 March 1993 and were to be communicated to the Commission by 17 September 1992 at the latest.

3 Since the Kingdom of Spain had not yet communicated the abovementioned programmes to it, on 10 July 1995 the Commission, in the absence of any other information enabling it to conclude that the Kingdom of Spain had fulfilled its obligation to draw up the programmes, formally called on that State, in accordance with Article 169 of the EC Treaty, to submit its observations within two months.

4 On 6 March 1996 the Kingdom of Spain informed the Commission that it was in the course of drawing up the programmes in question and stated that, pending completion of that process, action had been taken regarding the collection, treatment and recycling of batteries and accumulators under cooperation agreements

between the State and the Autonomous Communities, concluded as part of the national plan concerning dangerous waste approved by the Council of Ministers on 17 February 1995.

5 By letter of 3 May 1996, the Commission sought additional information concerning such action and repeated its request on 4 July 1996. It received no reply within the period indicated in those letters.

6 On 21 October 1996 the Commission sent a reasoned opinion to the Kingdom of Spain to the effect that the latter had failed to fulfil its obligations under Article 6 of the Directive.

7 On 20 January 1997 the Kingdom of Spain informed the Commission that the Ministry of the Environment had just drawn up a draft national plan for urban waste providing for the development and coordination of all the action undertaken by the Autonomous Communities, the competent authorities for that purpose by virtue of Article 6 of Royal Decree No 45/96 which transposed the Directive into Spanish law.

8 Taking the view that it was incumbent on the Spanish authorities to ensure that the necessary procedures were completed in due time in order to draw up and adopt the said programmes within the prescribed period and to give notice thereof, the Commission formally determined that the Kingdom of Spain had not yet adopted the requisite provisions and decided to institute the present proceedings.

9 In its defence, the Kingdom of Spain does not deny that it has not prepared or communicated the programmes in question to the Commission. It merely states that the Directive has been transposed into Spanish law by Royal Decree No 45/96, Article 6 of which incorporates the provisions of Article 6 of the Directive and specifies that it is the Autonomous Communities which are responsible for giving effect to the programmes in question.

10 The Kingdom of Spain goes on to state that it is endeavouring gradually to achieve the result pursued by the Directive, in accordance with Article 189 of the EC Treaty. It considers that the result defined in Article 6 of the Directive cannot be achieved merely by drawing up programmes, which, in its view, have no value in themselves unless they are accompanied by specific action facilitating the actual attainment of the objectives defined in that article as constituting the substance of the programmes.

11 That is why, in order to determine whether a Member State has actually fulfilled its obligations under Article 6 of the Directive, it is necessary, in the opinion of the Kingdom of Spain, to consider not whether or not it has drawn up the requisite programmes — which, even though they may be lawful, nevertheless remain theoretical — but rather whether it has undertaken specific action of a practical nature capable of enabling it to attain the objectives which those programmes are intended to achieve. To the extent to which those objectives are achieved, the result pursued by the Directive must be deemed also to have been achieved.

12 The Kingdom of Spain contends that specific action of that kind is being taken in all the Autonomous Communities with a view to attaining the objectives set by Article 6 of the Directive. It cites by way of example a series of initiatives of various kinds undertaken on Spanish territory in order to attain those objectives, such as the Ley Básica de Residuos (Basic Law on Waste), which is a national statute, Ley No 6/93 Reguladora de los Residuos de Cataluña (Law on the Management of Waste in Catalonia), the agreements concluded between the autonomous administration of Castile-León and the municipalities for which it is responsible in order to provide for management of the collection, storage and processing of spent batteries and accumulators, the waste management plans drawn up in Aragon, Catalonia and Galicia, the studies carried out in order to determine the pollutant potential of the various types of batteries and to establish disposal and recycling systems for them, the decrees of the Community of Valencia governing grants for separate collection, storage and processing of spent batteries, the direct contracts concluded with specialised undertakings in Asturias, the Balearic Islands and the Rioja region and the public information campaigns carried out in all the Autonomous Communities.

13 According to the Kingdom of Spain, those measures have resulted in specific action of a practical nature, in particular infrastructural investments making available to the population facilities for the effective collection of spent batteries. Those investments are intended not only to provide and distribute special containers for the collection of waste of that kind, but also to enable centres to be built for processing and recycling and safe storage sites to be provided for batteries that cannot be recycled. As a result of that action as a whole, which is being taken in all the Autonomous Communities, the objectives of Article 6 of the Directive are being achieved in practice.

14 According to settled case-law, 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, Case C-107/96 *Commission* v *Spain* [1997] ECR I-3193, paragraph 10).

15 It should be noted, moreover, as the Kingdom of Spain concedes in its defence, that the latter had not, by the date laid down in the Directive, namely 17 September 1992, either prepared or published a programme with a view to attaining the specific objectives laid down in the first paragraph of Article 6 of the Directive.

16 In that regard, incomplete practical measures and fragmentary legislation cannot discharge the obligation of a Member State to draw up a comprehensive programme with a view to attaining certain objectives, as required by Article 6 of the Directive.

17 It must therefore be held that, by not adopting within the prescribed period the programmes referred to in Article 6 of the Directive, the Kingdom of Spain has failed to fulfil its obligations under that article.

Costs

18 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 asked for costs and the Kingdom of Spain has been unsuccessful, the Kingdom of Spain must be ordered to pay the costs.

On those grounds,

THE COURT (Fifth Chamber)

hereby:

1. **Declares that, by not adopting within the prescribed period the programmes referred to in Article 6 of Council Directive 91/157/EEC of 18 March 1991 on batteries and accumulators containing certain dangerous substances, the Kingdom of Spain has failed to fulfil its obligations under that article;**

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

Gulmann Wathelet Moitinho de Almeida

Jann Sevón

Delivered in open court in Luxembourg on 28 May 1998.

R. Grass C. Gulmann

Registrar President of the Fifth Chamber