JUDGMENT OF THE COURT

9 November 1999 *

In Case C-365/97,

Commission of the European Communities, represented by P. Stancanelli, of its Legal Service, acting as Agent, assisted by M. Merola, of the Rome Bar, with an address for service in Luxembourg at the Chambers of C. Gómez de la Cruz, also of its Legal Service, Wagner Centre, Kirchberg,

applicant,

v

Italian Republic, represented by Professor U. Leanza, Head of the Legal Department of the Ministry of Foreign Affairs, acting as Agent, assisted by P.G. 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 not applying Council Directive 75/442/EEC of 15 July 1975 on waste (OJ 1975 L 194, p. 39) correctly and in full, in

* Language of the case: Italian.

regard to the San Rocco riverbed, the Italian Republic has failed to fulfil its obligations under the EC Treaty and under Articles 4, 5, 7 (first indent) and 10 of Directive 75/442 or the corresponding provisions, as amended by Council Directive 91/156/EEC of 18 March 1991 (OJ 1991 L 78, p. 32),

THE COURT,

composed of: G.C. Rodríguez Iglesias, President, J.C. Moitinho de Almeida, D.A.O. Edward and R. Schintgen (Presidents of Chambers), P.J.G. Kapteyn, J.-P. Puissochet, G. Hirsch, P. Jann and H. Ragnemalm (Rapporteur), Judges,

Advocate General: J. Mischo,
Registrar: L. Hewlett, Administrator,

having regard to the Report for the Hearing,

after hearing oral argument from the parties at the hearing on 2 March 1999,

after hearing the Opinion of the Advocate General at the sitting on 20 April 1999,

gives the following

Judgment

1 By application lodged at the Court Registry on 22 October 1997, 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 not applying Council Directive 75/442/EEC of 15 July 1975 on waste (OJ 1975 L 194, p. 39) correctly and in full, in regard to the San Rocco riverbed, the Italian Republic has failed to fulfil its obligations under the EC Treaty and under Articles 4, 5, 7 (first indent) and 10 of Directive 75/442 or the corresponding provisions, as amended by Council Directive 91/156/EEC of 18 March 1991 (OJ 1991 L 78, p. 32, hereinafter 'the amended directive').

2 The purpose of Directive 75/442 is to harmonise national legislation on waste disposal.

3 The provisions of Directive 75/442 were replaced by those of Directive 91/156. Under Article 1 of the latter instrument, Articles 1 to 12 of Directive 75/442 were replaced by Articles 1 to 18 and Annexes I, II A and II B were added. Articles 4, 6, 8 and 13 of the amended directive correspond in substance to former Articles 4, 5, 7 and 10 of Directive 75/442.

4 As stated in the preamble to Directive 75/442, that instrument seeks to protect human health and the environment against harmful effects caused by the collection, transport, treatment, storage and tipping of waste.

5 In order to secure the attainment of those objectives, Directive 75/442 required the Member States to adopt certain provisions.

6 First of all, under Article 4 of Directive 75/442, the Member States were to take the necessary measures to ensure that waste was disposed of without endangering human health and without harming the environment, and in particular without risk to water, air, soil and plants and animals, without causing a nuisance through noise or odours and without adversely affecting the countryside or places of special interest. Article 4 of the amended directive, which essentially reproduces that provision, adds a second paragraph requiring Member States also to take the necessary measures to prohibit the abandonment, tipping or uncontrolled disposal of waste.

7 Under Article 5 of Directive 75/442, the Member States were to establish or designate the competent authority or authorities to be responsible, in a given zone, for the planning, organisation, authorisation and supervision of waste disposal operations. Under Article 6 of the amended directive, the Member States are to establish or designate the competent authority or authorities to be responsible for the implementation of the directive.

8 Article 7 of Directive 75/442 required the Member States, in particular, to take the necessary measures to ensure that any holder of waste has it handled by a private or public waste collector or by a waste-disposal undertaking. That provision was replaced by Article 8 of the amended directive, which provides, *inter alia*, that the Member States are to take the necessary measures to ensure that any holder of waste has it handled by a private or public waste collector or

by an undertaking which carries out the operations listed in Annex II A or II B to the directive.

9 Finally, Article 10 of Directive 75/442 provided that undertakings transporting, collecting, storing, tipping or treating their own waste and those which collect or transport waste on behalf of third parties were to be subject to supervision by the competent authority referred to in Article 5 thereof. In that regard Article 13 of the amended directive provides that establishments or undertakings which carry out the operations referred to in Articles 9 to 12 are to be subjected to appropriate periodic inspections by the competent authorities.

10 Under Article 2 of Directive 91/156, the Member States were to bring into force the laws, regulations and administrative provisions necessary to comply with the directive not later than 1 April 1993, and were to inform the Commission thereof forthwith.

Pre-litigation procedure and forms of order sought by the parties

11 On 26 June 1990 the Commission sent a letter to the Italian Republic putting it on formal notice that it had found infringements by Italy of its obligations under Articles 4, 5, 6, 7 and 10 of Directive 75/442 and Articles 5, 6, 9, 12 and 15 of

Council Directive 78/319/EEC of 20 March 1978 on toxic and dangerous waste (OJ 1978 L 84, p. 43).

12 By a letter dated 28 January 1992, the Italian Ministry of the Environment provided the Commission with the following information:

— it appeared that biological and chemical materials from the second general hospital had been systematically discharged into the San Rocco valley, putting the population in various areas at serious risk;

— major hydrogeological problems had been recorded in the same valley owing to the presence of tufaceous quarries;

— in the past one of those quarries had been used as an illegal tip;

— having been placed under sequestration on 8 May 1990, that quarry was re-used as a tip in May 1991. The operator was prosecuted on that ground and the proceedings are still pending.

13 Since it had received no communication concerning the implementation of measures to restore the environment in the San Rocco valley, the Commission sent to the Italian Government, under cover of a letter of 5 July 1996, a reasoned

opinion in which it concluded that, in regard to the San Rocco riverbed, the Italian Republic had failed to fulfil its obligations under Articles 4, 5, 6, 7 and 10 of Directive 75/442 and Articles 5, 6, 12 and 15 of Directive 78/319, inasmuch as:

— it had failed to adopt the necessary measures to ensure that waste was disposed of without endangering human health and without harming the environment, and in particular without risk to water, air, soil, plants and animals, without causing a nuisance through noise or odours, and without adversely affecting the countryside or places of special interest, in breach of Article 4 of Directive 75/442 and Article 5 of Directive 78/319;

— the competent authorities designated under Article 5 of Directive 75/442 and Article 6 of Directive 78/319 had failed to meet their obligations in regard to the planning, organisation, authorisation and supervision of waste-disposal operations in the area in question, in breach of the aforementioned provisions;

— the competent authorities designated under Article 5 of Directive 75/442 and Article 6 of Directive 78/319 did not draw up plans for the disposal of waste, in breach of Article 6 of Directive 75/442 and Article 12 of Directive 78/319;

— the competent authorities did not comply with their obligation to supervise undertakings transporting, collecting, storing, tipping or treating their own

waste and those which collect or transport waste on behalf of third parties, in breach of Article 10 of Directive 75/442 and Article 15 of Directive 78/319;

— it had failed to take steps to ensure that, with regard to a tufaceous hollow located in the area of the San Rocco riverbed, which had in the past been used for fly-tipping, the quarry operator had the waste handled by a private or public waste collector or by a disposal undertaking, in breach of the first indent of Article 7 of Directive 75/442.

14 On 2 January 1997 the Commission received notification from the Italian Republic of an environmental management plan for the whole of the Campania region in which the San Rocco valley is situated.

15 Subsequently, in a letter of 21 April 1997, the Italian Republic notified the Commission of a communication from the Ministry of the Environment setting out various initiatives to restore the environment in the San Rocco valley. That communication stated, *inter alia*, that:

— the Naples municipal authority, acting in conjunction with the provisional directorate for the environment, had taken the steps necessary to ensure supervision of fly-tipping of waste in the San Rocco valley;

— the quarry situated in the upper part of the San Rocco valley, which had on several occasions been used for fly-tipping, had again been placed under sequestration in September 1996;

— water discharged by the second general hospital was henceforth being definitively channelled to the municipal sewer;

— the local authorities had taken steps to close six private tips;

— the Naples municipal sewage department had intervened on several occasions in order to destroy waste and to arrange for ongoing supervision and cleansing of the riverbed;

— a committee of experts had been appointed with the task of drawing up a plan for the complete restoration of the riverbed, both geomorphologically and hydraulically and for health purposes.

16 On the basis of that information, the Commission proceeded to conduct checks to verify the consequences of the initiatives notified on the state of the environment in the San Rocco valley, following which it received notice of a determination by the Naples municipality of 10 March 1997 in regard to the following matters:

— the San Rocco riverbed is in need of immediate hydraulic improvements. Pollution would appear to have worsened following further discharge of waste water;

— the plan for hydraulic improvements can be approved only in the context of a wider decision definitively resolving all the environmental problems in the area concerned;

— to that end, a group of experts independent of the administration has been set up essentially with the task of laying down the relevant guidelines to that end on the basis of which the municipal technical services will subsequently be required to draw up a definitive plan for hydraulic improvements in the San Rocco valley.

17 The Commission took the view that all the measures necessary in order to remedy the allegations notified to the Italian Republic in the reasoned opinion had not yet been adopted or implemented, and accordingly brought these proceedings.

18 In its application the Commission abandoned its plea concerning an infringement of Directive 78/319, owing to the repeal thereof. Moreover, in regard to the management plan communicated to it on 2 January 1997, the Commission considered that the infringement of the obligations concerning plans for waste disposal under Article 6 of Directive 75/442, alleged in the reasoned opinion, no longer subsisted.

19 However, the Commission maintained the remainder of its statement of claim.

20 The Italian Government contends that the Court should dismiss the action as inadmissible or, in the alternative, as unfounded, and order the Commission to pay the costs.

Admissibility of the action

21 The Italian Government maintains first of all that the allegation in the letter of 26 June 1990 constituting formal notice was not sufficiently clear to enable it effectively to deploy its defence pleas.

22 The Commission considers at the outset that the letter of formal notice identified with sufficient precision the Italian Government's alleged failure to comply with its obligations since it referred to pollution due to uncontrolled tipping of waste from areas upstream of the San Rocco valley and the failure to take the steps necessary to plan, organise and control waste-disposal operations as provided for in Directive 75/442. The Commission goes on to state that it had already asked the Italian Government, in its letter of 15 December 1988, to submit its observations on the state of the environment in the San Rocco valley. Finally, it was clear from the Italian Government's reply to the letter of formal notice that it was in a position fully to exercise its rights of the defence since it replied point by point to the individual allegations and did not plead that they were of a general nature.

23 As a preliminary point it should be recalled that, in accordance with settled case-law, the letter of formal notice from the Commission to the Member State, and then the reasoned opinion issued by the Commission, delimit the subject-matter of the dispute, so that it cannot thereafter be extended. The opportunity for the State concerned to submit its observations, even if it chooses not to avail itself thereof, constitutes an essential guarantee intended by the Treaty, adherence to which is an essential formal requirement of the infringement procedure. Consequently, the reasoned opinion and the proceedings brought by the Commission must be based on the same complaints as those set out in the letter of formal notice initiating the pre-litigation procedure (Case C-191/95 *Commission* v *Germany* [1998] ECR I-5449, paragraph 55).

24 Thus, in so far as a judgment declaring that a Member State has failed to fulfil its obligations establishes the basis of liability which that State may incur, as a result

of its default (see Case C-29/90 *Commission* v *Greece* [1992] ECR I-1971, paragraph 12), and constitutes a condition precedent to the bringing of proceedings under Article 171 of the EC Treaty (now Article 228 EC), the Member State must be afforded the opportunity, in the course of the pre-litigation procedure, to refute in their entirety the allegations made against it by the Commission.

25 However, that requirement cannot be carried so far as to mean that in every case the statement of complaints in the letter of formal notice, the operative part of the reasoned opinion and the form of order sought in the application must be exactly the same, where the subject-matter of the proceedings has not been extended or altered but simply limited (*Commission* v *Germany*, cited above, paragraph 56).

26 The reasoned opinion provided for in Article 169 of the Treaty must contain a coherent and detailed statement of the reasons which led the Commission to conclude that the State in question has failed to fulfil one of its obligations under the Treaty. The letter of formal notice cannot be subject to such strict requirements of precision, since it cannot, of necessity, contain anything more than an initial brief summary of the complaints. There is therefore nothing to prevent the Commission from setting out in detail in the reasoned opinion the complaints which it has already made more generally in the letter of formal notice (see *Commission* v *Germany*, cited above, paragraph 54).

27 In the present case, the letter of formal notice must be held to satisfy the degree of precision required by the case-law, because identification of the Member State's non-compliance and its designation as being capable of constituting an infringement of Articles 4, 5, 6, 7 and 10 of Directive 75/442 were sufficient to enable the Italian Republic to present its defence.

28 It follows that the first plea of inadmissibility must be rejected as unfounded.

29 Secondly, the Italian Government submits that there is a difference between the reasoned opinion and the application, with the result that the action is inadmissible. The allegations in the reasoned opinion are said to concern only Directive 75/442, whereas the application refers also to the provisions of the amended directive.

30 In that connection, the Italian Government states that the discrepancy between the reasoned opinion and the application cannot be justified by reference to an amendment to Directive 75/442 in the course of the procedure since the amendment was made more than three years prior to notification of the reasoned opinion. Therefore, when drawing up the reasoned opinion, the Commission could not ignore the fact that, with effect from 1 April 1993, the original version of Directive 75/442 was no longer in force. Moreover, by referring exclusively to the provisions of Directive 75/442, the wording of the reasoned opinion tacitly limits the alleged infringement to matters occurring prior to 1 April 1993.

31 The Commission states that, whilst the obligations initially imposed on the Member States by Directive 75/442 were essentially left intact by the amended directive, they became more detailed and were tightened up. The obligations laid down in Articles 4, 5, 7 and 10 of Directive 75/442 were fully confirmed by the amended directive. Accordingly, there is all the more reason for treating the state of the environment in the San Rocco valley as being contrary to the new provisions. The fact that the applicable rules underwent modification in the course of the procedure does not support the conclusion that the Commission amended its claims against the Italian Republic.

32 In that connection, the Court has held that, in the context of proceedings under Article 169, the existence of an infringement must be assessed in the light of the Community legislation in force at the close of the period prescribed by the Commission for the Member State concerned to comply with its reasoned

opinion (Case C-61/94 *Commission* v *Germany* [1996] ECR I-3989, paragraph 42).

33 In the present case, the letter of formal notice was sent on 26 June 1990. On 18 March 1991, Directive 91/156 was adopted amending Directive 75/442. The Member States were to comply with it by 1 April 1993 at the latest.

34 In the introductory part of the reasoned opinion, reference is made to the fact that Directive 75/442 was amended and, in particular, that the provisions of Articles 4, 5, 7 and 10 of Directive 75/442 were incorporated in Articles 4, 6, 7, 9, 10, 12 and 13 of the amended directive, whereas in the operative part of the reasoned opinion the Commission merely cites the former numbering of the articles allegedly contravened. In its application the Commission refers to the articles of Directive 75/442 systematically cross-referencing in brackets to the equivalent provisions of the amended directive, and states that the latter provisions essentially reproduce the content of the former.

35 As the Court has consistently held, the proper conduct of the pre-litigation procedure constitutes an essential guarantee required by the Treaty not only in order to protect the rights of the Member State concerned, but also to ensure that any contentious procedure will have a clearly defined dispute as its subject-matter. It is only on the basis of a properly conducted pre-litigation procedure that the contentious procedure before the Court will enable the latter to judge whether the Member State has in fact failed to fulfil the specific obligations which the Commission alleges it has breached (order in Case C-266/94 *Commission* v *Spain* [1995] ECR I-1975, paragraphs 17 and 18).

36 Accordingly, although the claims as stated in the application cannot in principle be extended beyond the infringements alleged in the operative part of the reasoned opinion and in the letter of formal notice, it is none the less true that, where Community law is amended during the course of the pre-litigation procedure, the Commission has standing to seek a declaration that a Member

State has failed to fulfil obligations which were created in the initial version of a directive, subsequently amended or repealed, and which were maintained in force under the new provisions.

37 As the Commission has emphasised, a comparative study of those provisions shows that the amended directive tightened up certain provisions of Directive 75/442. Consequently, the majority of the obligations imposed on the Member States under Directive 75/442 remain applicable under the amended directive.

38 Indeed, although the provisions of the amended directive are not formally mentioned in the operative part of the reasoned opinion, they are none the less mentioned in the body of the opinion among the provisions relied on by the Commission (see Case C-431/92 *Commission* v *Germany* [1995] ECR I-2189, paragraph 18).

39 Conversely, the subject-matter of the dispute cannot be extended to obligations arising under the amended directive which do not correspond to those arising under Directive 75/442, as otherwise it would constitute a breach of the essential procedural requirements of infringement proceedings.

40 It follows that the action is admissible inasmuch as it concerns obligations arising under the amended directive which were already applicable under Directive 75/442.

41 That being so, the second objection of inadmissibility must be rejected as unfounded.

42 Thirdly, the Italian Government contends that the Commission based its application on the results of fresh investigations which it carried out after receiving the Italian Government's letter of 21 April 1997. That being the case, the Commission, it is contended, ought to have restarted the pre-litigation procedure instead of bringing proceedings.

43 The Commission considers that the new investigations do not amount to new allegations against the Italian Republic. On the contrary, those investigations were carried out solely in order to determine whether the measures notified by the Italian Government in response to the reasoned opinion were in fact capable of restoring the environment in the San Rocco valley in conformity with Community law. However, the Commission found that those measures were unlikely to alter the deterioration in the state of the valley.

44 In that connection, it must be stated that the investigations carried out following the adoption of the reasoned opinion, as well as the deliberations of the municipal council, led the Commission, for the purposes of bringing the action, to the conclusion that the Italian Republic had still not complied with that opinion, even after expiry of the time-limit prescribed for compliance therewith.

45 The Court has consistently held that, even where the default has been remedied after the time-limit prescribed has expired, there is still an interest in pursuing the action (see, in particular, Case 103/84 *Commission* v *Italy* [1986] ECR 1759, paragraph 8; Case 240/86 *Commission* v *Greece* [1988] ECR 1835, paragraph 14; and Case C-29/90 *Commission* v *Greece*, cited above, paragraph 12).

46 However, it is not for the Court to rule, in these proceedings, on whether the alleged default was remedied after expiry of that time-limit.

47 The third plea of inadmissibility must therefore be rejected as unfounded.

48 Fourthly, the Italian Government maintains in its rejoinder that the Commission in its reply raised new matters of fact or couched its allegations in new or different terms.

49 In that connection, suffice it to note that, for the reasons stated by the Advocate General at points 50 to 52 of his Opinion, the matters of fact relied on by the Commission in its reply cannot be regarded as new matters of fact or as its allegations couched in new or different terms.

50 The fourth objection of inadmissibility must therefore be rejected as well.

51 It follows that the action must be declared admissible in its entirety, inasmuch as it concerns obligations arising under the amended directive which were already applicable under Directive 75/442.

Substance

Preliminary issues

52 As a preliminary matter, the Italian Government maintains that by its application the Commission was seeking to afford direct protection to the environment

instead of confining itself, under Article 169 of the Treaty, to a review of the transposition of Directive 75/442 into national law. There is therefore, it is submitted, no Treaty basis for the action brought by the Commission since, under Article 169 of the Treaty, its task is to confine its review to the transposition of a directive into national law and to the legislative and administrative measures implemented by the Member State to that end.

53 Moreover, according to the judgment in Case C-236/92 *Comitato di Coordinamento per la Difesa della Cava and Others* v *Regione Lombardia and Others* [1994] ECR I-483, a distinction must be drawn between the objectives laid down by way of an indicative programme under Article 4 of Directive 75/442 which must be observed by the Member States and the obligations with which they must comply.

54 The Italian Government also submits that, as a matter of principle, a failure by a Member State to fulfil its obligations under Article 4 of Directive 75/442 cannot automatically be inferred from the fact that the situation on the ground is not in conformity with the objectives laid down in that provision.

55 Moreover, in its submission, proceedings under Article 169 of the Treaty must concern a significant part of national territory, to be determined in relation to the nature of the obligations imposed by a directive. The territorial dimensions of the San Rocco valley are not sufficient to warrant an action against the Italian Republic for failure to fulfil its obligations.

56 In that connection, the Commission replies that it is obliged not only to ensure that directives are transposed into each national legal system, but also to verify that the objectives pursued by those directives are actually and correctly attained

in the Member States, which are under an obligation as to the result to be achieved (see Case C-45/91 *Commission* v *Greece* [1992] ECR I-2509).

57 As to the Italian Government's argument that the territorial dimensions of the San Rocco valley are not sufficient to warrant proceedings being brought against the Italian Republic for failure to fulfil its obligations, the Commission points out that Article 169 lays down no minimum territorial threshold enabling it to seek a declaration to that effect.

58 As a preliminary point, it should be recalled that the first indent of Article 155 of the EC Treaty (now the first indent of Article 211 EC) entrusts the Commission with the general task of ensuring that the provisions of the Treaty, and the measures taken by the institutions pursuant thereto, are applied.

59 On the basis of that provision and of Article 169 of the Treaty, the Commission's function is, in the general interest of the Community, to ensure that the Treaty and the provisions adopted by the institutions thereunder are applied by the Member States and to note the existence of any failure to fulfil the obligations deriving therefrom, with a view to bringing it to an end (Case 167/73 *Commission* v *France* [1974] ECR 359, paragraph 15, and Case C-431/92 *Commission* v *Germany*, cited above, paragraph 21).

60 Given its role as guardian of the Treaty, the Commission may ask the Court to find that, in not having achieved, in a specific case, the result intended by the directive, a Member State has failed to fulfil its obligations (Case C-431/92 *Commission* v *Germany*, cited above, paragraph 22).

61 In the present case, the Commission is seeking a declaration that the Italian Republic has infringed the obligation imposed on Member States by Article 4 of

Directive 75/442 to take the necessary measures to ensure that waste is disposed of without endangering human health and without harming the environment and, in particular, without risk to water, air, soil and plants and animals, without causing a nuisance through noise or odours and without adversely affecting the countryside or places of special interest. That provision was essentially incorporated in the first paragraph of Article 4 of the amended directive.

62 It is true that the Court ruled in *Comitato di Coordinamento per la Difesa della Cava,* cited above, with regard to the possibility raised by the national court of Directive 75/442 requiring the Member States to adopt appropriate measures in order to encourage the prevention, recycling and conversion of waste, rather than the tipping thereof, that Article 4 of Directive 75/442 does not create rights for individuals which the national courts must protect.

63 None the less, the question arising in the present case is whether the first paragraph of Article 4 of the amended directive is to be interpreted as imposing the obligation contended for and whether that obligation was fulfilled in a given case. That is quite separate from the question whether the unconditional and sufficiently clear and precise provisions of an unimplemented directive may be relied upon directly by individuals as against the State (Case C-431/92 *Commission* v *Germany,* cited above, paragraph 26).

64 Admittedly, Article 4 of Directive 75/442, which essentially repeats the terms of the third recital in the preamble thereto, set out the principal objective of that directive, namely the protection of human health and the environment against harmful effects caused by the collection, transport, treatment, storage and tipping of waste, which the Member States were obliged to observe in their performance of the more specific obligations imposed on them by Articles 5 to 11 of the directive concerning planning, supervision and monitoring of waste-disposal operations (see Joined Cases 372/85 to 374/85 *Traen and Others* [1987] ECR

2141, paragraph 9, and *Comitato di Coordinamento per la Difesa della Cava,* cited above, paragraph 12).

65 However, in regard to the 'necessary measures' to be taken by the Member States under Article 4 of Directive 75/442, it was permissible for them to impose on operators requirements not prescribed by the other provisions of the directive in order to ensure attainment of the directive's essential objective (see to that effect *Traen and Others*, cited above, paragraph 13).

66 Under the first paragraph of Article 4 of the amended directive, the Member States are to take the necessary measures to ensure that waste is recovered or disposed of without endangering human health and without using processes or methods which could harm the environment and, in particular, without risk to water, air, soil, plants and animals, without causing a nuisance through noise or odours, and without adversely affecting the countryside or places of special interest.

67 Whilst that provision does not specify the actual content of the measures which must be taken in order to ensure that waste is disposed of without endangering human health and without harming the environment, it is none the less true that it is binding on the Member States as to the objective to be achieved, whilst leaving to the Member States a margin of discretion in assessing the need for such measures.

68 From the fact that a situation is not in conformity with the objectives laid down in the first paragraph of Article 4 of the amended directive, then, the direct inference may not in principle be drawn that the Member State concerned has necessarily failed to fulfil its obligation under that provision to take the requisite measures to ensure that waste is disposed of without endangering human health and without harming the environment. However, if that situation persists and leads in particular to a significant deterioration in the environment over a

protracted period without any action being taken by the competent authorities, it may be an indication that the Member States have exceeded the discretion conferred on them by that provision.

69 As to the territorial extent of the alleged infringement, the fact that the Commission's action is for a declaration that the Italian Republic has failed to fulfil its obligation to take the necessary measures only in the San Rocco valley cannot have a bearing on any finding of such an infringement.

70 The consequences of non-compliance with the obligation under the first paragraph of Article 4 of the amended directive are likely, by the very nature of that obligation, to endanger human health and harm the environment even in a small part of the territory of a Member State, as was the position, moreover, in Case C-45/91 *Commission* v *Greece,* cited above.

71 Consequently, the objections raised in that connection by the Italian Government must be rejected as unfounded.

The first head of claim

72 In its first head of claim, the Commission seeks a declaration that the Italian Republic has failed to fulfil its obligation under the first paragraph of Article 4 of the amended directive as to the result to be achieved by failing to take the measures necessary to ensure that waste is disposed of without endangering human health and without harming the environment and, in particular, without

risk to water, air, soil, plants and animals, without causing a nuisance through noise or odours, and without adversely affecting the countryside or places of special interest. That claim appears essentially to be limited to the discharging of waste into the watercourse running through the San Rocco valley.

73 The authorities concerned, it maintains, have acknowledged that biological and chemical matter from the second general hospital has been discharged into the San Rocco valley and in particular into that valley's watercourse.

74 The Italian Government contends that, under Article 2(1)(b)(iv) of the amended directive, 'waste waters, with the exception of waste in liquid form', are excluded from the scope of that directive. Although no objection as to the scope of Directive 75/442 or of the amended directive was raised during the pre-litigation procedure, the Italian Government contends that the Commission has adduced no evidence of pollution by the systematic discharge of waste other than by waste waters.

75 In its defence, the Italian Government confines itself to the contention, as stated at paragraph 54 above, that the Commission automatically deduced a failure by Italy to fulfil its obligations under the amended directive from the state of the environment in the San Rocco valley.

76 In reply, the Commission states that the information communicated to it shows that the deterioration of the environment in the San Rocco valley is not due solely to hydrogeological deterioration and to discharges of waste water, and that the

biological and chemical matter polluting the valley cannot be assimilated to waste water.

77 The Commission points out that it does not have inspectors to call upon in order to conduct inspections on the ground and must, under those circumstances, base its own investigations on information supplied to it by the authorities of the Member States.

78 At the outset, it should be emphasised that, as the Court has consistently held, in proceedings under Article 169 of the Treaty for failure to fulfil an obligation, it is incumbent upon the Commission to prove the allegation that the obligation has not been fulfilled (Case 96/81 *Commission* v *Netherlands* [1982] ECR 1791, paragraph 6).

79 It is thus necessary to examine whether the Commission has established to the requisite legal standard, first, that the waste discharged into the San Rocco valley did not solely comprise waste waters and, secondly, that the Italian Republic failed to adopt the measures necessary to ensure that waste is disposed of without endangering human health and without harming the environment.

80 On the first point concerning the discharge of waste, on-the-spot investigations by the Nucleo Operativo Ecologico dei Carabinieri (Carabinieri environmental field unit) confirmed that the biological and chemical substances discharged into the watercourse of the San Rocco valley did in fact endanger the health of nearby residents and was harmful to the environment, which is not denied by the Italian Government.

81 In its reply of 28 January 1992 to the Commission's letter of formal notice, the Italian Government did not deny that biological and chemical waste from the second general hospital was discharged into the San Rocco valley.

82 The results of the on-the-spot investigation, ordered by the Ministry of the Environment and carried out by the abovementioned field unit, show that rain water and discharges from hospitals, a clinic and other establishments which could not be identified owing to the extent and inaccessibility of the San Rocco riverbed, flowed towards the watercourse which bisects the valley.

83 That result is corroborated by an investigation conducted by the Naples municipality that was referred to in Parliamentary Question No 4-24226 of 20 February 1991, from which it emerged that biological and chemical waste from the second general hospital were discharged into the San Rocco valley.

84 Accordingly, the Commission has adduced sufficient evidence to show that biological and chemical waste has been discharged into the watercourse which bisects the San Rocco valley.

85 Furthermore, it is primarily for the national authorities to conduct the necessary on-the-spot investigations, in a spirit of genuine cooperation and mindful of each Member State's duty under Article 5 of the EC Treaty (now Article 10 EC), to facilitate attainment of the general task of the Commission, which is to ensure that the provisions of the Treaty, as well as provisions adopted thereunder by the institutions, are applied.

86 Since in the present case those investigations were ordered by the Ministry of the Environment, it is for the Italian Republic to challenge in substance and in detail

the data produced by the Commission and to show that the conditions laid down in Article 2(1)(b)(iv) of the directive were met in the present case, that is to say, that only waste waters were discharged into the San Rocco valley.

87 Since the Italian Government has not adduced before the Court any evidence in that regard, the facts alleged by the Commission concerning the discharge of waste into the watercourse bisecting the San Rocco valley must be regarded as proven.

88 On the second point concerning the adoption of 'necessary measures', it is apparent from the file that, as early as 15 December 1988, the Commission drew the attention of the Italian authorities to the environmental state of the watercourse bisecting the San Rocco valley.

89 The existence of the alleged infringement must be determined upon the expiry of the period allowed to the Italian Republic by the Commission for complying with its reasoned opinion, that is to say 5 September 1996.

90 It is not contested that, by the expiry of that period, Italy had failed to take the necessary measures to ensure that the waste discharged into the watercourse bisecting the San Rocco valley is disposed of without endangering human health or harming the environment.

91 Accordingly, in the absence of evidence to the contrary produced by the Italian Government, the Commission must be held to have demonstrated to the requisite legal standard that the competent authorities failed over a protracted period to

adopt the measures necessary to ensure disposal of such waste without endangering human health or harming the environment.

92 As stated at paragraph 46 above, it is not for the Court to rule, in these proceedings, on whether the alleged default was remedied after the expiry of that time-limit, as a result of the measures subsequently notified to the Commission by the Italian Republic, the further investigations carried out by the Commission, or the deliberations of the Naples municipal council of 10 March 1997.

93 It follows that the Commission's first head of claim alleging infringement of the first paragraph of Article 4 of the amended directive must be upheld as regards the discharge of waste into the watercourse bisecting the San Rocco valley.

The second head of claim

94 In its second head of claim, the Commission considers that the Italian Republic has contravened Article 6 of the amended directive, inasmuch as the competent authorities did not discharge their obligations as to the organisation, authorisation and supervision of waste-disposal operations in the area in question. That is borne out, it is submitted, by the pollution still prevailing in the San Rocco valley as a result of the discharge of waste into the watercourse and the presence of an illegal tip.

95 The Commission points out that the illegal tip continued to receive consignments of waste, in spite of being placed under sequestration in 1990, since it is apparent from the Italian Government's reply to the reasoned opinion that, in September

1996, the tip was again placed under sequestration. On the one hand, that clearly points to the ineffectiveness of the measures adopted. On the other, those measures are inadequate because, by virtue of the obligation as to result imposed under the amended directive, the Italian Republic is obliged not only to penalise abuses but also to restore a sound environment in keeping with Community law.

96 The Italian Government contends that the second head of claim is unfounded. First of all, the provisions relied on merely impose an obligation to designate the authorities entrusted with administrative functions in relation to the management of waste. The Italian Republic has satisfied that obligation by transposing Directive 75/442 into national law. Furthermore, it is contended, fulfilment of the alleged obligation cannot be assessed against the yardstick of a particular case. Finally, as evidence of the infringement, the Commission is said to rely on matters which are not substantiated by proof.

97 Since the Court has found that the Italian Republic has failed to fulfil its obligations under the first paragraph of Article 4 of the amended directive as regards the discharge of waste into the watercourse bisecting the San Rocco valley, there is no need to adjudicate on the issue of whether the competent authorities have also failed to fulfil their obligation under Article 6 of amended Directive 75/442 to supervise disposal operations in respect of that waste, an infringement already established in the context of the examination of the first head of claim.

98 The question whether the competent authorities failed to fulfil their obligations concerning the organisation and authorisation of waste-disposal operations, and whether they showed the degree of care and efficiency needed in order to bring the illegal tipping of waste in the San Rocco valley to an end, substantially

overlaps with the claim alleging infringement of Article 8 of the amended directive which is examined at paragraph 105 et seq. of this judgment.

99 Consequently, there is no need to adjudicate on the second head of claim alleging infringement of Article 6 of the amended directive.

The third head of claim

100 In its third head of claim, the Commission considers that the competent authorities failed, in breach of Article 13 of the amended directive, to satisfy the obligation to supervise undertakings which transport, collect, store, tip or treat their own waste or which collect or transport waste on behalf of others.

101 The Italian Government considers this claim to be unfounded, in particular because Article 13 provides for supervision as regards the persons authorised to deal with the different stages of waste management. The Commission has adduced no proof that the illegal tipping was carried out by persons subject to such supervision.

102 In that connection, Article 13 of the amended directive provides that establishments or undertakings which carry out the operations referred to in Articles 9 to

12 thereof are to be subject to appropriate periodic inspections by the competent authorities.

103 In its reply, the Commission has acknowledged that it was not 'in a position specifically to demonstrate that the individuals who used the unauthorised tip should have been subject to supervision under that provision. It would, however, be difficult to believe that the waste does not, at least in part, come from such individuals.'

104 Thus, in the absence of evidence that the waste discharged into the illegal tip came from undertakings subject to supervision by the competent authority mentioned in Article 6 of the amended directive, the claim alleging infringement of Article 13 thereof must be rejected.

The fourth head of claim

105 In its fourth head of claim, the Commission seeks a declaration that, by failing to take the steps necessary to ensure that, with regard to a tufaceous hollow in the San Rocco riverbed, which had in the past been used for fly-tipping, the quarry operator had the waste handled by a private or public waste collector or by a waste disposal undertaking, the Italian Republic has failed to fulfil its obligations in breach of the first indent of Article 8 of the amended directive.

106 Although fly-tipping would appear no longer to be carried on, the Commission points out that there is nothing to suggest that the Italian authorities have adopted the measures necessary to compel the operator of the unlawful tip to have the waste handled by a private or public waste collector. Consequently, the

Commission claims, the Italian Republic has failed to comply with its obligations under the first indent of Article 8 of the amended directive.

107 The Italian Government contends that the fourth head of claim is unfounded. In its view, the fact that the quarry was used for fly-tipping demonstrates not that the Italian Republic infringed that provision but merely that the relevant Italian provisions were contravened. By placing the tip under sequestration, the Italian authorities took the steps necessary to put an end to the abuse.

108 In that connection, suffice it to state that, on receiving consignments of waste, the operator of an illegal tip becomes the holder of that waste. Article 8 of the amended directive accordingly imposes on the Italian Republic the obligation, in regard to that operator, to take the steps necessary to ensure that that waste is handed over to a private or public waste collector or a waste-disposal undertaking, where it is not possible for that operator himself to recover or dispose of the waste.

109 Thus, by confining itself to ordering the sequestration of the illegal tip and prosecuting the operator of that tip, the Italian Republic did not satisfy the specific obligation imposed on it by Article 8 of the amended directive.

110 The Commission's fourth head of claim alleging infringement of the first indent of Article 8 of the amended directive must therefore be upheld.

111 Consequently, it must be held that, by not taking the measures necessary to ensure that the waste discharged into the watercourse bisecting the San Rocco valley is disposed of without endangering human health or harming the environment and

by not taking the measures necessary to ensure that waste stored in a fly-tip is handed over to a private or public waste collector or a waste-disposal undertaking, the Italian Republic has failed to fulfil its obligations under the first paragraph of Article 4 and the first indent of Article 8 of the amended directive.

Costs

112 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 against the Italian Republic and the latter has essentially failed in its submissions, it must be ordered to pay the costs.

On those grounds,

THE COURT

hereby:

1. **Declares that, by not taking the measures necessary to ensure that the waste discharged into the watercourse bisecting the San Rocco valley is disposed of without endangering human health or harming the environment and by not taking the measures necessary to ensure that waste stored in a fly-tip is**

handed over to a private or public waste collector or a waste-disposal undertaking, the Italian Republic has failed to fulfil its obligations under the first paragraph of Article 4 and the first indent of Article 8 of Council Directive 75/442/EEC of 15 July 1975 on waste, as amended by Council Directive 91/156/EEC of 18 March 1991;

2. **Dismisses the remainder of the application;**

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

Rodríguez Iglesias Moitinho de Almeida

Edward Schintgen Kapteyn Puissochet

Hirsch Jann Ragnemalm

Delivered in open court in Luxembourg on 9 November 1999.

R. Grass G.C. Rodriguez Iglesias

Registrar President