

JUDGMENT OF THE COURT (Fourth Chamber)

13 June 2002 (1)

(Failure by a Member State to fulfil its obligations - Waste - Management of hazardous waste - Failure to provide information required under Article 8(3) of Directive 91/689 - Establishments and undertakings which carry out disposal and/or recovery of hazardous waste)

In Case C-33/01,

**Commission of the European Communities**, represented by H. Støvlbæk and P. Panayotopoulos, acting as Agents, with an address for service in Luxembourg,

applicant,

v

**Hellenic Republic**, represented by P. Skandalou and N. Dafniou, acting as Agents, with an address for service in Luxembourg,

defendant,

APPLICATION for a declaration that, by failing to send to the Commission, within the prescribed period, the information concerning every establishment or undertaking which carries out disposal and/or recovery of hazardous waste required under Article 8(3) of Council Directive 91/689/EEC of 12 December 1991 on hazardous waste (OJ 1991 L 377, p. 20), in the version resulting from Council Directive 94/31/EC of 27 June 1994 (OJ 1994 L 168, p. 28), and Commission Decision 96/302/EC of 17 April 1996 establishing a format in which information is to be provided pursuant to Article 8(3) of Directive 91/689 (OJ 1996 L 116, p. 26), the Hellenic Republic has failed to fulfil its obligations under the EC Treaty and that directive,

THE COURT (Fourth Chamber),

composed of: S. von Bahr, President of the Chamber, D.A.O. Edward (Rapporteur) and C.W.A. Timmermans, Judges,

Advocate General: P. Léger,

Registrar: R. Grass,

having regard to the report of the Judge-Rapporteur,

after hearing the Opinion of the Advocate General at the sitting on 18 April 2002,

gives the following

## Judgment

1.

By application lodged at the Court Registry on 24 January 2001, the Commission of the European Communities brought an action under Article 226 EC for a declaration that, by failing to send to it, within the prescribed period, the information concerning every establishment or undertaking which carries out disposal and/or recovery of hazardous waste required under Article 8(3) of Council Directive 91/689/EEC of 12 December 1991 on hazardous waste (OJ 1991 L 377, p. 20), in the version resulting from Council Directive 94/31/EC of 27 June 1994

(OJ 1994 L 168, p. 28; 'Directive 91/689'), and Commission Decision 96/302/EC of 17 April 1996 establishing a format in which information is to be provided pursuant to Article 8(3) of Directive 91/689 (OJ 1996 L 116, p. 26), the Hellenic Republic has failed to fulfil its obligations under the EC Treaty and that directive.

2.

According to Article 1(1) of Directive 91/689, the object of that directive is to approximate the laws of the Member States on the controlled management of hazardous waste.

3.

Article 8(3) of Directive 91/689 provides:

'... by 12 December 1994, the Member States shall send the Commission the following information for every establishment or undertaking which carries out disposal and/or recovery of hazardous waste principally on behalf of third parties and which is likely to form part of the integrated network referred to in Article 5 of Directive 75/442/EEC:

- name and address,
- the method used to treat waste,
- the types and quantities of waste which can be treated.

Once a year, Member States shall inform the Commission of any changes in this information.

The Commission shall make this information available on request to the competent authorities in the Member States.

The format in which this information will be supplied to the Commission shall be agreed upon in accordance with the procedure laid down in Article 18 of Directive 75/442/EEC.'

4.

Article 10(1) of Directive 91/689 states:

'The Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive before 27 June 1995. They shall forthwith inform the Commission thereof.'

5.

Decision 96/302 contains an annex setting out the standard format in which the information referred to in Article 8(3) of Directive 91/689 is to be provided.

6.

Since the Commission took the view that the Hellenic Republic had not sent it the information required under that provision, it initiated the infringement procedure. After giving the Hellenic Republic formal notice, by letter of 16 September 1998, that it should submit its observations, the Commission delivered a reasoned opinion on 17 December 1998 calling on that Member State to take the necessary measures to comply with that opinion.

7.

In the meantime, by letter of 30 November 1998, the Greek authorities had replied to the letter of formal notice stating that in Greece there were no establishments or undertakings carrying out disposal and/or recovery of hazardous waste. In that same letter, they supplied the names and addresses of four undertakings which manage hazardous waste on behalf of third parties and export that waste to other Member States.

8.

On 11 August 1999, the Commission delivered a supplementary reasoned opinion in which it stated that the information provided by the Greek authorities was incomplete. According to the Commission, one third of the hazardous waste

produced in Greece was recovered by establishments or undertakings in respect of which the Greek authorities had not yet provided any information.

9.

In their reply of 9 November 1999, the Greek authorities pointed out that they had sent to the Commission, by letter of 30 November 1998, information regarding the establishments or undertakings responsible for disposal or recovery of hazardous waste on behalf of third parties. The Greek authorities added that the total weight of the hazardous waste produced in 1998 amounted to 287 000 tonnes, of which 65 000 tonnes had been recovered.

10.

In its application, the Commission complains that the Hellenic Republic did not send it the information required under Article 8(3) of Directive 91/689 in respect of all the establishments or undertakings responsible for the disposal or recovery of hazardous waste. In both its defence and rejoinder, the Hellenic Republic implicitly acknowledges that fact by providing additional information on the establishments or undertakings referred to in that provision.

11.

Article 8(3) of Directive 91/689 requires Member States to provide the following information in respect of all the establishments or undertakings which carry out disposal or recovery of waste principally on behalf of third parties: the name and address of the establishment or undertaking, the method of treatment of the waste, and the type and quantity of the waste which can be treated. That information must be provided in the format required by Decision 96/302.

12.

It is settled case-law that the question whether a Member State has failed to fulfil its obligations must be determined by reference to the situation prevailing in that Member State at the end of the period laid down in the reasoned opinion and that the Court cannot take account of any subsequent changes (see, *inter alia*, Case C-394/00 *Commission v Ireland* [2002] ECR I-0000, paragraph 12).

13.

On the expiry of the period laid down in the supplementary reasoned opinion, two months after 11 August 1999, the Hellenic Republic had not sent the Commission all the information required under Article 8(3) of Directive 91/689.

14.

In those circumstances, the action brought by the Commission is well founded.

15.

It must therefore be held that, by failing to send to the Commission, within the prescribed period, all the information required under Article 8(3) of Directive 91/689, the Hellenic Republic has failed to fulfil its obligations under that directive.

### **Costs**

16.

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

On those grounds,

THE COURT (Fourth Chamber),

hereby:

**1. Declares that, by failing to send to the Commission, within the prescribed period, all the information required under Article 8(3) of Council Directive 91/689/EEC of 12 December 1991 on hazardous waste, in the version resulting from Council Directive 94/31/EC of 27 June 1994, the Hellenic Republic has failed to fulfil its obligations under that directive;**

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

von Bahr  
Edward  
Timmermans

Delivered in open court in Luxembourg on 13 June 2002.

R. Grass

S. von Bahr

Registrar

President of the Fourth Chamber