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JUDGMENT OF THE COURT

4 July 2000 (1)

(Failure of a Member State to fulfil its obligations - Judgment of the Court establishing such failure - Non-compliance - Article 171 of the EC Treaty (now Article 228 EC) - Financial penalties - Periodic penalty payment - Waste - Directives 75/442/EEC and 78/319/EEC)

In Case C-387/97,

**Commission of the European Communities,** represented by M. Condou-Durande, of its Legal Service, acting as Agent, with an address for service in Luxembourg at the office of C. Gómez de la Cruz, of its Legal Service, Wagner Centre, Kirchberg,

applicant,

supported by

**United Kingdom of Great Britain and Northern Ireland**, represented by J.E. Collins, Assistant Treasury Solicitor, acting as Agent, with an address for service at the British Embassy, 14 Boulevard Roosevelt,

intervener,

v

**Hellenic Republic,** represented by A. Samoni-Rantou, Legal Adviser in the Special Department for Community Legal Affairs in the Ministry of Foreign Affairs, E.M. Mamouna, Assistant Lawyer in the same department, and G. Karipsiadis, Specialist Adviser 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 take the necessary measures to comply with the judgment of the Court of 7 April 1992 in Case C-45/91 *Commission* v *Greece* [1992] ECR I-2509 and, in particular, by still not having drawn up or implemented the plans necessary for the disposal of waste and toxic and dangerous waste from the area concerned without endangering human health and without harming the environment, the Hellenic Republic has failed to fulfil its obligations under Article 171 of the EC Treaty (now Article 228 EC), and for an order requiring the Hellenic Republic to pay to the Commission, into the account 'EC own resources, a daily penalty payment of ECU 24 600 for each day of delay in implementing the measures necessary to comply with the judgment in Case C-45/91, from notification of the present judgment,

THE COURT,

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

Advocate General: D. Ruiz-Jarabo Colomer,

Registrar: L. Hewlett, Administrator,

having regard to the Report for the Hearing,

after hearing oral argument from the parties at the hearing on 29 June 1999,

after hearing the Opinion of the Advocate General at the sitting on 28 September 1999,

gives the following

# Judgment

1. By application lodged at the Court Registry on 14 November 1997, the Commission of the European Communities brought an action under Article 171 of the EC Treaty (now Article 228 EC) for a declaration that, by failing to take the necessary measures to comply with the judgment of the Court of 7 April 1992 in Case C-45/91 *Commission* v *Greece* [1992] ECR I-2509 and, in particular, by still not having drawn up or implemented the plans necessary for the disposal of waste and toxic and dangerous waste from the area concerned without endangering human health and without harming the environment, the Hellenic Republic has failed to fulfil its obligations under Article 171 of the EC Treaty (now Article 228 EC), and for an order requiring the Hellenic Republic to pay to the Commission, into the account 'EC own resources, a daily penalty payment of ECU 24 600 for each day of delay in implementing the measures necessary to comply with the judgment in Case C-45/91, from notification of the present judgment.

**Community legislation**

2. In the versions in force on the expiry of the period of two months set in the reasoned opinion which culminated in the finding of a failure to fulfil obligations in Case C-45/91, Council Directive 75/442/EEC of 15 July 1975 on waste (OJ 1975 L 194, p. 39) and Council Directive 78/319/EEC of 20 March 1978 on toxic and dangerous waste (OJ 1978 L 84, p. 43) provided for the harmonisation of national laws concerning the disposal of certain waste. As is apparent from the third recital in the preamble to Directive 75/442 and the fourth recital in the preamble to Directive 78/319 respectively, those directives were designed, in particular, to protect human health and safeguard the environment against harmful effects caused by the collection, carriage, treatment, storage and tipping of such waste.

3. In order to ensure achievement of that objective, Directives 75/442 and 78/319 required the Member States to adopt certain provisions and to take certain other measures.

4. First of all, under Article 4 of Directive 75/442 the Member States were to take the measures necessary 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 or animals, without causing a nuisance through noise or odours and without adversely affecting the countryside or places of special interest.

5. Article 5(1) of Directive 78/319 provided that the Member States were to take the necessary measures to ensure that toxic and dangerous waste was disposed of without endangering human health and without harming the environment, and in particularwithout risk to water, air, soil, plants or animals, without causing a nuisance through noise or odours and without adversely affecting the countryside or places of special interest. Under Article 5(2) of that directive, the Member States were in particular to take the necessary steps to prohibit the abandonment and uncontrolled discharge, tipping or carriage of toxic and dangerous waste, as well as its consignment to installations, establishments or undertakings other than those referred to in Article 9(1) of the directive.

6. Article 5 of Directive 75/442 required the Member States 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.

7. Under the first paragraph of Article 6 of Directive 75/442, the competent authority or authorities designated were required to draw up as soon as possible one or several plans

relating, in particular, to the type and quantity of waste to be disposed of, general technical requirements, suitable disposal sites and any special arrangements for particular types of waste. The second paragraph of that article provided that the plan or plans could, for example, cover the natural or legal persons empowered to carry out the disposal of waste, the estimated costs of the disposal operations, and appropriate measures to encourage rationalisation of the collection, sorting and treatment of waste.

8.

Under Article 6 of Directive 78/319, the Member States were to designate or establish the competent authority or authorities to be responsible, in a given area, for the planning, organisation, authorisation and supervision of operations for the disposal of toxic and dangerous waste.

9.

The first subparagraph of Article 12(1) of Directive 78/319 stated that the competent authorities had to draw up, and keep up to date, plans for the disposal of toxic and dangerous waste. Those plans were to cover in particular the type and quantity of waste to be disposed of, the methods of disposal, specialised treatment centres where necessary, and suitable disposal sites.

10.

In accordance with Article 145 of the Act concerning the conditions of accession of the Hellenic Republic and the adjustments to the Treaties (OJ 1979 L 291, p. 17, hereinafter 'the Act of Accession), the Hellenic Republic had until 1 January 1981 to put into effect the measures necessary to comply with Directives 75/442 and 78/319.

**The judgment in Case C-45/91**

11.

In its judgment in Case C-45/91, the Court held that the Hellenic Republic had failed to fulfil its obligations under Articles 4 and 6 of Directive 75/442 and Articles 5 and 12 of Directive 78/319.

12.

According to that judgment, the Commission, having become aware of problems posed by the disposal of waste in the prefecture of Chania in Crete (Greece), asked the GreekGovernment to explain the situation. In particular, it asked for information regarding the existence of a rubbish tip at the mouth of the river Kouroupitos.

13.

The Greek Government replied that it was going to put an end to the operation of that tip and create new disposal sites. However, it stated that, pending completion of the necessary work on the infrastructure for those new sites, the waste from the prefecture of Chania would continue to be deposited in the Kouroupitos tip until August 1988.

14.

The Commission considered that reply to be unsatisfactory and sent the Hellenic Republic a letter of formal notice. In that letter it stated that, in its view, the Hellenic Republic, contrary to Article 4 of Directive 75/442 and Article 5 of Directive 78/319, had not taken any measures enabling the waste in question to be disposed of without endangering human health and without harming the environment. It also stated that the Hellenic Republic had still not drawn up either the waste disposal plan prescribed by Article 6 of Directive 75/442 or the plan for the disposal of toxic and dangerous waste required by Article 12 of Directive 78/319. Nor had it taken any measure regarding the disposal of waste as required by Article 7 of Directive 75/442. The Commission concluded that the Hellenic Republic had failed to fulfil its obligations under Articles 4, 5, 6, 7 and 13 of Directive 75/442 and Articles 5, 6, 12 and 21 of Directive 78/319.

15.

In their reply to that letter, the Greek authorities referred to the opposition of the population of Chania to the plan to create new landfill sites and stated that the authorities in Chania therefore envisaged, in the medium term, the creation of landfill sites in smaller towns and, in the long term, the incineration and recycling of refuse.

16.

On 5 March 1990 the Commission issued a reasoned opinion which it sent to the Hellenic Republic. In the reasoned opinion, the Commission expressed the view that the Greek authorities had failed to fulfil their obligations arising from the Treaty since they were still at the stage of preparing the necessary measures to comply with Directives 75/442 and 78/319 in the area of Chania.

17.

In the Treaty infringement proceedings which it brought against the Hellenic Republic, the Commission submitted that the Greek authorities had taken no measure enabling waste from the Chania area to be disposed of without endangering human health and without harming the environment. It added that the competent authorities had not taken any steps to implement a proper plan which would lead to the correct management of waste in that area in accordance with a time-table. It made the same criticisms with regard to the toxic and dangerous waste from the area, in respect of which the Greek authorities had similarly not taken any appropriate measures or laid down a disposal plan.

18.

In reply, the Hellenic Republic stated that several studies had been undertaken between 1989 and 1991 regarding the management and recycling of waste from the Chania area. However, implementation of the planned programme had been suspended because of the opposition of the local population.

19.

In paragraph 21 of its judgment in Case C-45/91, the Court stated that, pursuant to Article 145 of the Act of Accession, Directives 75/442 and 78/319 should have been implemented in Greece by 1 January 1981 at the latest. It also pointed out that, in accordance with settled case-law, a Member State may not plead internal circumstances, such as difficulties of implementation which emerge at the stage when a Community measure is put into effect, to justify a failure to comply with obligations and time-limits laid down by Community law.

20.

The Court accordingly held:

'By failing to take the measures necessary to ensure that in the area of Chania waste and toxic and dangerous waste are disposed of without endangering human health and without harming the environment, and by failing to draw up for that area plans for the disposal of waste and of toxic and dangerous waste, the Hellenic Republic has failed to fulfil its obligations under Articles 4 and 6 of Council Directive 75/442/EEC of 15 July 1975 on waste, and Articles 5 and 12 of Council Directive 78/319/EEC of 20 March 1978 on toxic and dangerous waste.

**Pre-litigation procedure**

21.

The Commission was not notified of any measures to comply with the judgment in Case C-45/91, and so it reiterated in a letter of 11 October 1993 to the Greek authorities that the Court had found against the Hellenic Republic in that judgment and pointed out that no measure to comply with the judgment had been communicated to it.

22.

By letter of 24 August 1994 the Greek Government informed the Commission that the competent body for waste management at local level had obtained 'preliminary approval for two landfill sites at Kopinadi and Vardia. Studies to assess the impact of those sites on the environment were in the process of being prepared, in accordance with the national legislation transposing Council Directive 85/337/EEC of 27 June 1985 on the assessment of the effects of certain public and private projects on the environment (OJ 1985 L 175, p. 40), and were to be completed before the end of 1994. Following that procedure, the competent body could draw up the final study regarding the construction, operation, supervision and restoration of whichever of the two sites appeared the more suitable.

23.

Having received no further information from the Greek Government, the Commission decided to initiate the procedure under Article 171(2) of the Treaty. On 21 September 1995 it called on the Greek Government to submit within two months its observations concerning its failure to comply with the judgment in Case C-45/91.

24.

By letter of 14 December 1995 the Greek Government informed the Commission that the prefectorial council for Chania had selected a waste disposal site and that the waste disposal programme would therefore be implemented.

25.

The Commission considered that that reply clearly showed that, four years after the judgment in Case C-45/91, the Greek authorities still had not taken the necessary measures to comply with the judgment, that adoption of those measures was still only at a preliminary stage and that the waste disposal plans still could not be implemented. Thus,

according to the Commission, waste continued to be deposited in the Kouroupitos tip, endangering public health and harming the environment.

26.

By reasoned opinion of 6 August 1996, the Commission found that, by failing to take the necessary measures to comply with the judgment in Case C-45/91 and, in particular, by still not having drawn up or implemented the plans necessary for the disposal of waste and toxic and dangerous waste from the area concerned without endangering human health and without harming the environment, the Hellenic Republic had failed to fulfil its obligations under the Treaty.

27.

The Commission called on the Hellenic Republic, in accordance with Article 171(2) of the Treaty, to take the necessary measures to comply with the reasoned opinion within two months of its notification. In addition, the Commission drew the attention of the Greek authorities to the fact that a periodic penalty payment could be imposed for failure by the Hellenic Republic to comply with the judgment in Case C-45/91, stating that it would determine the amount of the penalty payment to be claimed in the Court proceedings pursuant to Article 171(2) of the Treaty in the light of the circumstances obtaining when it brought its action.

28.

In their reply of 11 November 1996, the Greek authorities referred to a national waste management plan, guaranteed and implemented at prefectorial and regional level, for which the necessary funds were available and committed. As regards the regional waste management plan in the prefecture of Chania, the Greek authorities stated that it consisted in the implementation of an integrated management programme including:

- the sorting of waste at source;

- the construction and operation of a mechanical recycling plant;

- the provision and operation of a landfill site; and

- a programme for the reinstatement and restoration of the area on account of the uncontrolled disposal of waste in the Kouroupitos tip.

29.

With regard to the waste deposited in the Kouroupitos tip, the Greek authorities indicated that they had taken specific actions and measures of intervention dealing with the local problems in order to resolve definitively the question of that site, for which they were drawing up separate management programmes.

30.

As for the management of toxic and dangerous waste, especially hospital waste, the Greek authorities stated that they were implementing a series of actions and measuresof intervention relating to the financing of waste management studies and works and, in particular, that the Chania prefectorial authorities had taken the steps necessary to set up a mechanical recycling plant and a landfill site. According to the competent authorities, completion of that programme would settle the problem of the river Kouroupitos and resolve the problem of waste management in the Chania area.

31.

By letter of 28 August 1997 the Greek authorities provided supplementary information concerning progress with the procedure for waste management in the prefecture of Chania. They indicated in particular that preliminary approval had been granted for the location chosen for the landfill site and that the study relating to the environmental impact of the waste recycling and composting plant had been completed, as had the first stage of an international restricted tendering procedure.

32.

The Commission considered that those replies were unsatisfactory and that the measures to comply with the judgment in Case C-45/91 had still not been implemented and consequently decided to bring the present action.

**Forms of order sought**

33.

The Commission claims that the Court should declare that the Hellenic Republic has failed to fulfil its obligations under Article 171 of the Treaty, impose on it a penalty payment of EUR 24 600 for each day of delay in implementing the measures necessary to comply with the judgment in Case C-45/91 and order it to pay the costs.

34.

By order of the President of the Court of 29 September 1998, the United Kingdom was granted leave to intervene in support of the form of order sought by the Commission. However, it has not filed pleadings.

35.

The Greek Government claims that the Court should declare the action inadmissible or dismiss it as unfounded and order the Commission to pay the costs. In the alternative, it contends that the Court should set the penalty payment on the basis of coefficients of seriousness and duration which are more favourable to the Hellenic Republic than those applied by the Commission, taking account of the high degree of compliance with the judgment in Case C-45/91 achieved by the Hellenic Republic.

**Admissibility**

36.

Relying on the judgments in Case 14/81 *Alpha Steel* v *Commission* [1982] ECR 749, at paragraph 28, and in Case C-331/88 *Fedesa and Others*, at paragraph 42, the Opinion of Advocate General Fennelly in Case C-334/94 *Commission* v *France* [1996] ECR I-1307 and some of the legal literature, the Greek Government maintains that the action is inadmissible on the ground that Article 171(2) of the Treaty, which results from the Treaty on European Union, entered into force on 1 November 1993, after theinitiation of the infringement procedure based on Article 171 for failure to comply with the judgment in Case C-45/91.

37.

In its submission, Article 171(2) of the Treaty provides for the imposition of very severe penalties on the Member States and is therefore a stricter and more onerous rule which in principle cannot be applied retroactively.

38.

The Greek Government states that the infringement procedure for failure to comply with the judgment in Case C-45/91 began on 11 October 1993 when the Commission, having received no information regarding compliance with that judgment, wrote to the Greek authorities reminding them that the Court had found against the Hellenic Republic and setting a time-limit for communication by them of the measures taken to comply with the Court's ruling.

39.

The Greek Government argues that, although it relates to the future and not to the past and does not apply retroactively, the fine contains retroactive elements. The procedure under Article 171(2) of the Treaty essentially involves consideration of the past and the fine is calculated on the basis of factors and criteria referring to acts carried out in the past. The Commission seeks to penalise past conduct while pursuing the longer-term objective of avoiding future 'reoffending by the 'undisciplined Member State.

40.

The Commission contends that Article 171(2) of the Treaty is not being applied retroactively. The present action can be distinguished from *Commission* v *France*, cited above, since here all the stages of the infringement procedure have taken place after the Treaty on European Union entered into force.

41.

Nor are the penalties being applied retroactively. The penalty payment proposed by the Commission cannot be considered to be a penal sanction, because it is imposed to influence future conduct.

42.

On this issue, it is sufficient to note, first, that all the stages of the pre-litigation procedure, including the letter of formal notice of 21 September 1995, occurred after the Treaty on European Union entered into force. The letter of 11 October 1993 to which the Greek Government refers does not form part of that procedure. Second, the argument put forward by the Greek Government concerning the relevance, when setting the penalty payment, of factors and criteria relating to the past is indissociable from consideration of the substance of the case, in particular as regards the object of penalty payments under Article 171(2) of the Treaty.

43.

Accordingly, the plea of inadmissibility raised by the Greek Government must be rejected.

**Substance**

44.

A preliminary point to be considered is whether the obligations which the Hellenic Republic owed under Articles 4 and 6 of Directive 75/442 and Articles 5 and 12 of Directive 78/319 still apply as Community law now stands.

45.

Directive 75/442 was substantially amended by Council Directive 91/156/EEC of 18 March 1991 (OJ 1991 L 78, p. 32). The effect of Article 1 of Directive 91/156 is that Articles 1 to 12 of Directive 75/442 have been replaced by Articles 1 to 18 and three annexes have been added.

46.

Directive 78/319 was repealed with effect from 12 December 1993 and replaced by Council Directive 91/689/EEC of 12 December 1991 on hazardous waste (OJ 1993 L 377, p. 20). Council Directive 94/31/EC of 27 June 1994 amending Directive 91/689 (OJ 1994 L 168, p. 28) postponed the repeal of Directive 78/319 to 27 June 1995.

47.

Comparative study of the abovementioned provisions shows that the amended directive tightened up certain provisions of Directive 75/442 (Case C-365/97 *Commission* v *Italy* [1999] ECR I-0000, paragraph 37). Thus, the obligations imposed on the Member States by Article 4 of Directive 75/442 remain applicable by virtue of the first paragraph of Article 4 of the amended directive (*Commission* v *Italy*, paragraph 61). The obligation laid down in Article 6 of Directive 75/442 to draw up waste disposal plans corresponds now to the obligation under Article 7 of the amended directive to draw up waste management plans.

48.

Similarly, the obligations imposed on the Member States by Article 5 of Directive 78/319 are retained by virtue of Article 4 of Directive 75/442, as amended. First, the obligation under Article 5(1) of Directive 78/319 to dispose of toxic and dangerous waste without endangering human health or harming the environment now appears in the first paragraph of Article 4 of Directive 75/442, as amended, that directive having been rendered applicable to hazardous waste by Article 1(2) of Directive 91/689.

49.

Second, Article 5(2) of Directive 78/319 imposed a specific obligation on the Member States to take the necessary steps to prohibit the abandonment and uncontrolled discharge, tipping or carriage of toxic and dangerous waste, as well as its consignment to installations, establishments or undertakings other than those referred to in Article 9(1) of the directive. That obligation now appears in the second paragraph of Article 4 of Directive 75/442, as amended.

50.

As regards the obligation laid down in Article 12 of Directive 78/319 to draw up, and keep up to date, plans for the disposal of toxic and dangerous waste, that obligation corresponds to the obligation to draw up plans for the management of hazardous waste, imposed by Article 6(1) of Directive 91/689.

51.

It follows from the foregoing that the obligations owed by the Hellenic Republic under Articles 4 and 6 of Directive 75/442 and Articles 5 and 12 of Directive 78/319 still apply as Community law now stands.

*Scope of the obligations found not to have been fulfilled in the judgment in Case C-45/91*

52.

The Commission maintains that the Hellenic Republic would have satisfied its obligation under Article 171 of the Treaty to comply with the judgment in Case C-45/91 had it drawn up and implemented the plans prescribed by Article 6 of Directive 75/442 and Article 12 of Directive 78/319. In its submission, the obligations flowing from Articles 4 and 6 of Directive 75/442 and Articles 5 and 12 of Directive 78/319 are fulfilled only if the plans prescribed by those directives are adopted and actually implemented.

53.

It states that it is clear from the information provided by the Greek Government that the waste disposal plan required by Article 6 of Directive 75/442 and the plan for the disposal of toxic and dangerous waste required by Article 12 of Directive 78/319 were still at a preliminary stage and that the river Kouroupitos continued to serve as a site for the uncontrolled disposal of waste from the Chania area.

54.

The Greek Government points out that a Member State might very well have drawn up and notified to the Commission the plans prescribed by Article 6 of Directive 75/442 and Article 12 of Directive 78/319 without, however, having taken the necessary measures required by Article 4 of Directive 75/442 and Article 5 of Directive 78/319. Conversely, a Member State could have taken the necessary measures required by Article 4 of Directive 75/442 and Article 5 of Directive 78/319 without having drawn up and given notification of the plans prescribed by Article 6 of Directive 75/442 and Article 12 of Directive 78/319, in which case the failure to fulfil obligations would relate solely to the latter provisions.

55.

It should be noted that, whilst Article 4 of Directive 75/442 did not specify the actual content of the measures to be taken in order to ensure that waste is disposed of without endangering human health and without harming the environment, it was none the less binding on the Member States as to the objective to be achieved, while leaving to them a margin of discretion in assessing the need for such measures (*Commission* v *Italy*, cited above, paragraph 67).

56.

Thus the Court has held that a significant deterioration in the environment over a protracted period when no action has been taken by the competent authorities is in principle an indication that the Member State concerned has exceeded the discretion conferred on it by that provision (*Commission* v *Italy*, paragraph 68).

57.

The same analysis can be made as regards Article 5 of Directive 78/319.

58.

In addition, the obligations flowing from Article 4 of Directive 75/442 and Article 5 of Directive 78/319 were independent of the more specific obligations contained in Articles 5 to 11 of Directive 75/442 concerning the planning, organisation and supervision of waste disposal operations and Article 12 of Directive 78/319 concerningthe disposal of toxic and dangerous waste. The same is true of the corresponding obligations under Directive 75/442 as amended and Directive 91/689.

59.

Accordingly, in order to determine whether the Hellenic Republic has satisfied the obligation to comply with the judgment in Case C-45/91, it must be established in turn whether each of the obligations found by that judgment not to have been fulfilled has, in so far as those obligations are mutually independent, since been complied with,

*Compliance with the obligations flowing from Article 171(1) of the Treaty*

60.

The Greek Government argues in defence that the volume of waste which continues to be tipped in the Kouroupitos ravine has decreased significantly because some of the waste is landfilled at appropriate sites located in four sub-prefectures of the prefecture of Chania (Sfakia, Kalives, Selino and Kissamo) and a paper sorting and recycling system has been set up.

61.

Toxic and hazardous waste from the American military base at Souda has not been deposited in the Kouroupitos ravine since 1996, but is entrusted to a private undertaking which transports it abroad in order for it to be treated. That is also the case with hospital waste, which is loaded into a special vehicle and stored in a cold chamber until it is incinerated. As for sediments of hydrocarbons, the Greek Government affirms that they are stored in an appropriate place until they are sent abroad. Used mineral oils are passed to the Chania prefectorial authorities for transportation to a reclamation plant, while tankers no longer deposit the contents of septic tanks into the Kouroupitos as a biological sewage treatment plant has been built in the Chania area.

62.

It should be remembered that the present proceedings stem from a complaint received by the Commission on 22 September 1987, drawing its attention to uncontrolled waste disposal in the mouth of the river Kouroupitos, on the Akrotiri peninsula, by the majority of

the municipalities in the prefecture of Chania. The waste included refuse from military bases in the area, hospitals and clinics, and residues from salt factories, poultry farms, slaughterhouses and all the industrial sites in the area.

63.

In a study produced to the Court by the Greek Government entitled 'Environmental Impact of Uncontrolled Solid Waste Combustion in the Kouroupitos Ravine, Crete, which was carried out in June 1996 by the Laboratory of Environmental Engineering and Management of the Technical University of Crete, in collaboration with the Institute of Ecological Chemistry, Munich, it is stated:

'... The solid wastes are disposed of in the Kouroupitos ravine located approximately 30 km east of Chania, on the Akrotiri peninsula. The wastes are dumped into the ravine from the top at a distance of 200 m from the sea without any other care. The wastes have been uncontrollably burning for at least 10 years, while the burning is self-supporting due to the high levels of organic matter. The improper waste disposalcombined with the uncontrolled burning of the solid wastes has resulted in an environmentally hazardous situation, with the leachate seeping into the [sea], and the products of the burning process being transferred both to land and sea.

64.

As regards, first, fulfilment of the obligation imposed by Article 4 of Directive 75/442 to dispose of waste without endangering human health and without harming the environment, the Greek Government does not dispute that solid waste, in particular household refuse, is still tipped into the river Kouroupitos.

65.

It is clear from the letters from the Prefecture of Chania to the Ministry of the Environment of 7 and 18 August 1998, disclosed by the Greek Government, that most of the waste still ends up, in the same uncontrolled and unlawful manner, in the Kouroupitos ravine, which today receives all the household waste from the urban area of Chania.

66.

The Greek Government concedes in its rejoinder that 'in any event, only the definitive solution to the problem, that is to say discontinuing the operation at the river Kouroupitos and introducing a modern, lawful and effective system, could be regarded as fully satisfactory.

67.

Moreover, it is apparent from paragraph 10 of the judgment in Case C-45/91 that the Greek Government had stated on 15 March 1988 in reply to the Commission that it was going to put an end to the operation of that tip after August 1988 and create new disposal sites.

68.

The fact remains that that has still not been done.

69.

It is true that, according to the Greek Government, the competent authorities, which have planned to establish and put into operation a mechanical recycling and composting plant and a landfill site at Strongilo Kefali in the municipality of Khordakios, have come up against opposition from the members of the public concerned, in the form of complaints and actions brought before the competent administrative and judicial authorities challenging the administrative decisions concerning the location of the two installations.

70.

However, as has already been pointed out in paragraph 21 of the judgment in Case C-45/91, it is settled case-law that a Member State may not plead internal circumstances, such as difficulties of implementation which emerge at the stage when a Community measure is put into effect, to justify a failure to comply with obligations and time-limits laid down by Community law.

71.

It must therefore be held that the Hellenic Republic has not complied with the judgment in Case C-45/91 inasmuch as it persists in failing to fulfil its obligations under Article 4 of Directive 75/442 as regards adoption of the measures necessary toensure that waste is disposed of in the area of Chania without endangering human health and without harming the environment.

72.

As regards, second, fulfilment of the obligation imposed by Article 5 of Directive 78/319 to dispose of toxic and dangerous waste without endangering human health and without

harming the environment, the Greek Government's assertion that toxic and dangerous waste have not been tipped into the river Kouroupitos since 1996 is supported by consideration of the file. Its assertion is disputed only partially by the Commission, which concedes that the quantities of toxic and dangerous waste have been reduced.

73.

It is for the Commission in such circumstances to provide the Court, in the course of the proceedings, with the information necessary to determine the extent to which a Member State has complied with a judgment declaring it to be in breach of its obligations.

74.

Since no such information is available, it has not been proved that the Hellenic Republic has failed fully to comply with the obligation to dispose of toxic and dangerous waste from the area of Chania in accordance with Article 5 of Directive 78/319.

75.

As regards, third, fulfilment of the obligations to draw up waste disposal plans and to draw up, and keep up to date, plans for the disposal of toxic and dangerous waste, imposed by Article 6 of Directive 75/442 and Article 12 of Directive 78/319 respectively, it is settled case-law that incomplete practical measures or fragmentary legislation cannot discharge the obligation of a Member State to draw up a comprehensive programme with a view to attaining certain objectives (Case C-298/97 *Commission* v *Spain* [1998] ECR I-3301, paragraph 16).

76.

Contrary to the claims of the Greek Government, legislation or specific measures amounting only to a series of ad hoc normative interventions that are incapable of constituting an organised and coordinated system for the disposal of waste and toxic and dangerous waste cannot be regarded as plans which the Member States are required to adopt under Article 6 of Directive 75/442 and Article 12 of Directive 78/319 (see, by analogy, Case C-214/96 *Commission* v *Spain* [1998] ECR I-7661, paragraph 30).

77.

It therefore follows that the Hellenic Republic has likewise failed to comply with the judgment in Case C-45/91 inasmuch as it persists in failing to fulfil its obligations under Article 6 of Directive 75/442 and Article 12 of Directive 78/319 so far as concerns the drawing up of waste management plans and plans for the disposal of toxic and dangerous waste.

78.

On the basis of all the foregoing considerations it must be held that, by failing to take the measures necessary to ensure that waste is disposed of in the area of Chania without endangering human health and without harming the environment in accordancewith Article 4 of Directive 75/442 and by failing to draw up for that area plans for the disposal of waste, pursuant to Article 6 of Directive 75/442, and of toxic and dangerous waste, pursuant to Article 12 of Directive 78/319, the Hellenic Republic has not implemented all the necessary measures to comply with the judgment in Case C-45/91 and has failed to fulfil its obligations under Article 171 of the Treaty.

**Setting of the penalty payment**

79.

Relying on the method of calculation set out in its memorandum 96/C 242/07 of 21 August 1996 on applying Article 171 of the EC Treaty (OJ 1996 C 242, p. 6) and its communication 97/C 63/02 of 28 February 1997 on the method of calculating the penalty payments provided for pursuant to Article 171 of the EC Treaty (OJ 1997 C 63, p. 2), the Commission has proposed that the Court should, in respect of failure to comply with the judgment in Case C-45/91, impose a penalty payment of ECU 24 600 for each day of delay from the date of notification of the present judgment until the breach of obligations has been remedied. The Commission contends that a financial penalty in the form of a periodic penalty payment is the most appropriate means of achieving the objective of compliance with the judgment as soon as possible.

80.

The Greek Government claims that the Court should set the penalty payment on the basis of coefficients of seriousness and duration which are more favourable to the Hellenic Republic than those applied by the Commission. It contends that the coefficient relating to the duration of the infringement, determined unilaterally by the Commission without considering the extent to which the judgment has been complied with, does not reflect the existing situation and would be unfair to the Hellenic Republic. While the Commission has a

discretion to determine coefficients relating to seriousness, duration and the Member States' ability to pay, without their assent, it is exclusively for the Court to assess what is just, proportionate and equitable.

81.

As to that, Article 171(1) of the Treaty provides that, if the Court finds that a Member State has failed to fulfil an obligation under the Treaty, that State is required to take the necessary measures to comply with the Court's judgment.

82.

Article 171 of the Treaty does not specify the period within which a judgment must be complied with. However, in accordance with settled case-law, the importance of immediate and uniform application of Community law means that the process of compliance must be initiated at once and completed as soon as possible (Case 131/84 *Commission* v *Italy* [1985] ECR 3531, paragraph 7, Case 169/87 *Commission* v *France* [1988] ECR 4093, paragraph 14, and Case C-334/94 *Commission* v *France*, cited above).

83.

If the Member State concerned has not taken the necessary measures to comply with the Court's judgment within the time-limit laid down by the Commission in the reasoned opinion adopted pursuant to the first subparagraph of Article 171(2) of theTreaty, the Commission may bring the case before the Court. As provided in the second subparagraph of Article 171(2), the Commission is to specify the amount of the lump sum or penalty payment to be paid by the Member State concerned which it considers appropriate in the circumstances.

84.

In the absence of provisions in the Treaty, the Commission may adopt guidelines for determining how the lump sums or penalty payments which it intends to propose to the Court are calculated, so as, in particular to ensure equal treatment between the Member States.

85.

Memorandum 96/C 242/07 states that decisions as to the amount of a fine or penalty payment must be taken with an eye to their purpose, namely the effective enforcement of Community law. The Commission therefore considers that the amount must be calculated on the basis of three fundamental criteria: the seriousness of the infringement, its duration and the need to ensure that the penalty itself is a deterrent to continuation of the infringement and to further infringements.

86.

Communication 97/C 63/02 identifies the mathematical variables used to calculate the amount of penalty payments, that is to say a uniform flat-rate amount, a coefficient of seriousness, a coefficient of duration, and a factor intended to reflect the Member State's ability to pay while ensuring that the penalty payment is proportionate and has a deterrent effect, calculated on the basis of the gross domestic product of the Member States and the weighting of their votes in the Council.

87.

Those guidelines, setting out the approach which the Commission proposes to follow, help to ensure that it acts in a manner which is transparent, foreseeable and consistent with legal certainty and are designed to achieve proportionality in the amounts of the penalty payments to be proposed by it.

88.

The Commission's suggestion that account should be taken both of the gross domestic product of the Member State concerned and of the number of its votes in the Council appears appropriate in that it enables that Member State's ability to pay to be reflected while keeping the variation between Member States within a reasonable range.

89.

It should be stressed that these suggestions of the Commission cannot bind the Court. It is expressly stated in the third paragraph of Article 171(2) of the Treaty that the Court, if it 'finds that the Member State concerned has not complied with its judgment ... may impose a lump sum or a penalty payment on it. However, the suggestions are a useful point of reference.

90.

First, since the principal aim of penalty payments is that the Member State should remedy the breach of obligations as soon as possible, a penalty payment must be set that will be appropriate to the circumstances and proportionate both to the breach which has been found and to the ability to pay of the Member State concerned.

91.

Second, the degree of urgency that the Member State concerned should fulfil its obligations may vary in accordance with the breach.

92.

In that light, and as the Commission has suggested, the basic criteria which must be taken into account in order to ensure that penalty payments have coercive force and Community law is applied uniformly and effectively are, in principle, the duration of the infringement, its degree of seriousness and the ability of the Member State to pay. In applying those criteria, regard should be had in particular to the effects of failure to comply on private and public interests and to the urgency of getting the Member State concerned to fulfil its obligations.

93.

In the present case, having regard to the nature of the breaches of obligations, which continue to this day, a penalty payment is the means best suited to the circumstances.

94.

As regards the seriousness of the infringements and in particular the effects of failure to comply on private and public interests, the obligation to dispose of waste without endangering human health and without harming the environment forms part of the very objectives of Community environmental policy as set out in Article 130r of the EC Treaty (now, after amendment, Article 174 EC). The failure to comply with the obligation resulting from Article 4 of Directive 75/442 could, by the very nature of that obligation, endanger human health directly and harm the environment and must, in the light of the other obligations, be regarded as particularly serious.

95.

The failure to fulfil the more specific obligations of drawing up a waste disposal plan and drawing up, and keeping up to date, plans for the disposal of toxic and dangerous waste, imposed by Article 6 of Directive 75/442 and Article 12 of Directive 78/319 respectively, must be regarded as serious in that compliance with those specific obligations was necessary in order for the objectives set out in Article 4 of Directive 75/442 and Article 5 of Directive 78/319 to be fully achieved.

96.

Thus, contrary to the Commission's submissions, the fact that specific measures have been taken, in accordance with Article 5 of Directive 78/319, to reduce the quantities of toxic and dangerous waste cannot have a bearing on the seriousness of the failure to comply with the obligation, under Article 12 of Directive 78/319, to draw up, and keep up to date, plans for the disposal of toxic and dangerous waste.

97.

In addition, account should be taken of the fact that it has not been proved that the Hellenic Republic has failed fully to comply with the obligation to dispose of toxic and dangerous waste from the area of Chania in accordance with Article 5 of Directive 78/319.

98.

As regards the duration of the infringement, suffice it to state that it is considerable, even if the starting date be that on which the Treaty on European Union entered into force and not the date on which the judgment in Case C-45/91 was delivered.

99.

Having regard to all the foregoing considerations, the Hellenic Republic should be ordered to pay to the Commission, into the account 'EC own resources, a penalty payment of EUR 20 000 for each day of delay in implementing the measures necessary to comply with the judgment in Case C-45/91, from delivery of the present judgment until the judgment in Case C-45/91 has been complied with.

**Costs**

100.

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 costs and the Hellenic Republic has essentially been unsuccessful, the latter must be ordered to pay the costs. The United Kingdom is to bear its own costs, in accordance with Article 69(4) of the Rules of Procedure.

On those grounds,

THE COURT,

hereby:

**1. Declares that, by failing to take the measures necessary to ensure that waste is disposed of in the area of Chania without endangering human health and without harming the environment in accordance with Article 4 of Council Directive 75/442/EEC of 15 July 1975 on waste and by failing to draw up for that area plans for the disposal of waste, pursuant to Article 6 of Directive 75/442, and of toxic and dangerous waste, pursuant to Article 12 of Council Directive 78/319/EEC of 20 March 1978 on toxic and dangerous waste, the Hellenic Republic has not implemented all the necessary measures to comply with the judgment of the Court of 7 April 1992 in Case C-45/91 *Commission* v *Greece* and has failed to fulfil its obligations under Article 171 of the EC Treaty;**

**2. Orders the Hellenic Republic to pay to the Commission of the European Communities, into the account 'EC own resources, a penalty payment of EUR 20 000 for each day of delay in implementing the measures necessary to comply with the judgment in Case C-45/91 from delivery of the present judgment until the judgment in Case C-45/91 has been complied with;**

**3. Orders the Hellenic Republic to pay the costs;**

**4. Orders the United Kingdom of Great Britain and Northern Ireland to bear its own costs.**

Rodríguez Iglesias
Moitinho de Almeida
Edward

Sevón Schintgen

Kapteyn

Gulmann
Puissochet

Hirsch Jann

Ragnemalm

Wathelet
Skouris

Delivered in open court in Luxembourg on 4 July 2000.

R. Grass

G.C. Rodríguez Iglesias

Registrar

President

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1: Language of the case: Greek.