

JUDGMENT OF THE COURT (Fourth Chamber)

3 October 2002 \*

In Case C-47/01,

**Commission of the European Communities**, represented by G. Valero Jordana,  
acting as Agent, with an address for service in Luxembourg,

applicant,

v

**Kingdom of Spain**, represented by S. Ortiz Vaamonde, acting as Agent, with an  
address for service in Luxembourg,

defendant,

APPLICATION for a declaration that, by failing to draw up, or in any event to  
communicate to the Commission, the plan, outline and summary of the inventory  
provided for in Articles 4(1) and 11 of Council Directive 96/59/EC of

\* Language of the case: Spanish.

16 September 1996 on the disposal of polychlorinated biphenyls and polychlorinated terphenyls (PCB/PCT) (OJ 1996 L 243, p. 31), the Kingdom of Spain has failed to fulfil its obligations under those provisions of the directive,

THE COURT (Fourth Chamber),

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

Advocate General: F.G. Jacobs,  
Registrar: R. Grass,

having regard to the report of the Judge-Rapporteur,

after hearing the Opinion of the Advocate General at the sitting on 6 June 2002,

gives the following

## Judgment

1 By application lodged at the Court Registry on 5 February 2001, the Commission of the European Communities brought an action under Article 226 EC for a declaration that, by failing to draw up, or in any event to communicate to the Commission, the plan, outline and summary of the inventory provided for in Articles 4(1) and 11 of Council Directive 96/59/EC of 16 September 1996 on the disposal of polychlorinated biphenyls and polychlorinated terphenyls (PCB/PCT) (OJ 1996 L 243, p. 31; 'the Directive'), the Kingdom of Spain has failed to fulfil its obligations under those provisions of the Directive.

2 Article 1 of the Directive states:

'The purpose of this directive is to approximate the laws of the Member States on the controlled disposal of PCBs, the decontamination or disposal of equipment containing PCBs and/or the disposal of used PCBs in order to eliminate them completely on the basis of the provisions of this directive.'

3 Article 4(1) of the Directive provides:

'In order to comply with Article 3, Member States shall ensure that inventories are compiled of equipment with PCB volumes of more than 5 dm<sup>3</sup>, and shall send summaries of such inventories to the Commission at the latest three years after the adoption of this directive. In the case of power capacitors, the threshold of 5 dm<sup>3</sup> shall be understood as including all the separate elements of a combined set.'

4 Article 11 of the Directive provides:

‘1. Member States shall, within three years of the adoption of this directive, draw up:

- plans for the decontamination and/or disposal of inventoried equipment and the PCBs contained therein;
  
- outlines for the collection and subsequent disposal of equipment which is not subject to inventory in accordance with Article 4(1), as referred to in Article 6(3).

2. Member States shall communicate these plans and outlines to the Commission without delay.’

5 Pursuant to Article 13(1), the Directive entered into force on the date of its adoption, namely 16 September 1996.

6 Taking the view that it had not been informed by the Kingdom of Spain of the measures taken by that State to comply with Articles 4 and 11 of the Directive on expiry of the period laid down by those provisions, the Commission gave the

Kingdom of Spain formal notice, by letter of 11 April 2000, to submit its observations on the matter within two months, in accordance with the procedure provided for in Article 226 EC.

- 7 In reply to that letter, the Kingdom of Spain informed the Commission, by letter of 20 June 2000, that drafts of the inventory and of the plans for decontamination and disposal, and collection and disposal of equipment had been drawn up. By letters of 14 and 22 August and 12 September 2000, the Spanish authorities sent the Commission a copy of the draft national plan for decontamination and disposal of PCBs and PCTs, and of equipment containing those substances.
  
- 8 The Commission took the view that the information supplied by the Kingdom of Spain showed that that Member State had not yet complied with its obligations under Articles 4(1) and 11 of the Directive, and hence issued a reasoned opinion, on 18 September 2000, calling on the Kingdom of Spain to take the measures necessary to comply with that opinion within two months of its notification.
  
- 9 The Spanish authorities replied to that opinion by letter of 6 November 2000, to which was appended a copy of the opinion submitting to a public inquiry the decision taken by the Director-General of environmental quality and assessment at the Ministry of the Environment in respect of the national plan for decontamination and disposal of PCB and PCT discharges and equipment containing those substances.

- 10 Taking the view that the Kingdom of Spain had not complied with its obligations under the Directive, the Commission decided to bring the present action.
- 11 In its application, the Commission submits that the Kingdom of Spain has failed to fulfil its obligations under the Directive since it did not draw up and/or communicate, within the prescribed period, the summary of inventories, the plan or the outline provided for in Articles 4(1) and 11 of the Directive.
- 12 In its defence, the Kingdom of Spain contests the alleged failure to fulfil its obligations. It claims that the national plan for the decontamination and elimination of PCBs, PCTs and equipment containing them was adopted and published in the *Boletín Oficial del Estado* of 18 April 2001, as prescribed by Royal Decree No 1378/99 of 27 August 1999 (BOE No 206, 28 August 1999, p. 31911) which transposes the Directive into national law. That plan was also subsequently notified to the Commission.
- 13 The Commission claims in its reply that the national plan in question is not such as to remedy the alleged failure, since it was adopted after the expiry of the time-limit laid down in the Commission's reasoned opinion and indeed after the present action was lodged. In the alternative the Commission submits that the content of the plan does not meet the requirements of the Directive.
- 14 In its rejoinder, the Kingdom of Spain contests the Commission's allegations regarding the content of the national plan and, relying on considerations of a technical nature, submits that the content of that plan meets the criteria laid down in the Directive.

- 15 In that regard, it should be pointed out that according to settled case-law the question whether a Member State has failed to fulfil its obligations must be determined by reference to the situation prevailing in the 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-148/00 *Commission v Italy* [2001] ECR I-9823, paragraph 7 and Case C-372/01 *Commission v Luxembourg* [2002] ECR I-4553, paragraph 7).
- 16 Yet it is common ground between the parties that the national plan for decontamination and disposal of PCBs, PCTs and equipment containing them was adopted, published and communicated to the Commission after the expiry of the two-month time-limit laid down in the reasoned opinion.
- 17 In those circumstances, the action brought by the Commission must be considered to be well founded.
- 18 It must therefore be declared that, by failing to draw up, within the prescribed period, a summary of the inventories of equipment with PCB volumes of more than 5 dm<sup>3</sup>, a plan for the decontamination and/or disposal of the inventoried equipment and the PCBs contained therein, and an outline for the collection and subsequent disposal of equipment which is not subject to inventory in accordance with Articles 4(1) and 11 of the Directive, the Kingdom of Spain has failed to fulfil its obligations under those provisions of the Directive.

## Costs

- 19 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 Kingdom of Spain has been unsuccessful, the latter must be ordered to pay the costs of the proceedings.

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On those grounds,

THE COURT (Fourth Chamber)

hereby:

1. Declares that, by failing to draw up, within the prescribed period, a summary of the inventories of equipment with PCB volumes of more than 5 dm<sup>3</sup>, a plan for the decontamination and/or disposal of the inventoried equipment and the PCBs contained therein, and an outline for the collection and subsequent disposal of equipment which is not subject to inventory in accordance with Articles 4(1) and 11 of Council Directive 96/59/EC of

16 September 1996 on the disposal of polychlorinated biphenyls and polychlorinated terphenyls (PCB/PCT), the Kingdom of Spain has failed to fulfil its obligations under those provisions of that directive;

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

von Bahr

Edward

La Pergola

Delivered in open court in Luxembourg on 3 October 2002.

R. Grass

Registrar

S. von Bahr

President of the Fourth Chamber