

JUDGMENT OF THE COURT (Fourth Chamber)

4 March 2010*

In Case C-297/08,

ACTION under Article 226 EC for failure to fulfil obligations, brought on 3 July 2008,

European Commission, represented by D. Recchia, C. Zadra and J.-B. Laignelot,
acting as Agents, with an address for service in Luxembourg,

applicant,

v

Italian Republic, represented by G. Palmieri, acting as Agent, and G. Aiello,
avvocato dello Stato, with an address for service in Luxembourg,

defendant,

* Language of the case: Italian.

supported by

United Kingdom of Great Britain and Northern Ireland, represented by
S. Ossowski, acting as Agent, and K. Bacon, Barrister,

intervener,

THE COURT (Fourth Chamber),

composed of J.-C. Bonichot, President of the Chamber, C. Toader (Rapporteur),
K. Schiemann, P. Küris and L. Bay Larsen, Judges,

Advocate General: J. Mazák,
Registrar: R. Şereş, Administrator,

having regard to the written procedure and further to the hearing on 3 December
2009,

having decided, after hearing the Advocate General, to proceed to judgment without
an Opinion,

gives the following

Judgment

- 1 By its action, the Commission of the European Communities claims that the Court should declare that, by failing to adopt, for the region of Campania, all the measures necessary to ensure that waste is recovered or disposed of without endangering human health and without harming the environment and, in particular, by failing to establish an integrated and adequate network of disposal installations, the Italian Republic has failed to fulfil its obligations under Articles 4 and 5 of Directive 2006/12/EC of the European Parliament and of the Council of 5 April 2006 on waste (OJ 2006 L 114, p. 9).

Legal context

Community legislation

- 2 In the interests of clarity and rationality, Directive 2006/12 codifies the provisions of Council Directive 75/442/EEC of 15 July 1975 on waste (OJ 1975 L 194, p. 39).

3 Recitals 2, 6 and 8 to 10 in the preamble to Directive 2006/12 state as follows:

- ‘(2) The essential objective of all provisions relating to waste management should be the protection of human health and the environment against harmful effects caused by the collection, transport, treatment, storage and tipping of waste.

...

- (6) In order to achieve a high level of environmental protection, Member States should, in addition to taking responsible action to ensure the disposal and recovery of waste, take measures to restrict the production of waste particularly by promoting clean technologies and products which can be recycled and re-used, taking into consideration existing or potential market opportunities for recovered waste.

...

- (8) It is important for the Community as a whole to become self-sufficient in waste disposal and desirable for Member States individually to aim at such self-sufficiency.

- (9) In order to achieve those objectives, waste management plans should be drawn up in the Member States.

- (10) Movements of waste should be reduced and Member States may take the necessary measures to that end in their management plans.’

⁴ Article 4 of Directive 2006/12 provides:

‘1. Member States shall 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:

(a) without risk to water, air or soil, or to plants or animals;

(b) without causing a nuisance through noise or odours;

(c) without adversely affecting the countryside or places of special interest.

2. Member States shall take the necessary measures to prohibit the abandonment, dumping or uncontrolled disposal of waste.’

5 Article 5 of that directive provides:

‘1. Member States shall take appropriate measures, in cooperation with other Member States where this is necessary or advisable, to establish an integrated and adequate network of disposal installations, taking account of the best available technology not involving excessive costs. The network must enable the Community as a whole to become self-sufficient in waste disposal and the Member States to move towards that aim individually, taking into account geographical circumstances or the need for specialised installations for certain types of waste.

2. The network referred to in paragraph 1 must enable waste to be disposed of in one of the nearest appropriate installations, by means of the most appropriate methods and technologies in order to ensure a high level of protection for the environment and public health.’

6 Article 7 of Directive 2006/12 provides:

‘1. In order to attain the objectives referred to in Articles 3, 4 and 5, the competent authority or authorities referred to in Article 6 shall be required to draw up as soon as possible one or more waste management plans. Such plans shall relate in particular to:

(a) the type, quantity and origin of waste to be recovered or disposed of;

(b) general technical requirements;

(c) any special arrangements for particular wastes;

(d) suitable disposal sites or installations.

2. The plans referred to in paragraph 1 may, for example, cover:

...

(c) appropriate measures to encourage rationalisation of the collection, sorting and treatment of waste.

3. Member States shall cooperate as appropriate with the other Member States and the Commission to draw up such plans. They shall notify the Commission of them.

...'

National legislation

7 Articles 4 and 5 of Directive 2006/12 were transposed into Italian law by Legislative Decree No 152 of 3 April 2006 laying down rules on environmental matters (ordinary supplement to GURI No 96 of 14 April 2006; Decree No 152/06).

8 Article 178(2) of Decree No 152/06 provides:

‘Waste must be recovered or disposed of without endangering human health and without using processes or methods which could harm the environment and, in particular:

(a) without risk to water, air or soil, or to plants or animals;

(b) without causing a nuisance through noise or odours;

(c) without adversely affecting the countryside or places of special interest, protected by the legislation in force.’

9 Article 182(3) of Decree No 152/06 provides:

‘The disposal of waste shall be carried out by means of an integrated and adequate network of disposal installations, employing the best available technology and taking into account the overall cost/benefit ratio, in order to

- (a) achieve self-sufficiency in the disposal of non-hazardous urban waste in the “Optimal Territorial Ambits”;
- (b) enable the disposal of waste in one of the installations appropriate for that purpose as near as possible to the place of production and collection in order to reduce the movement of waste, account being taken of geographical circumstances or the need for specialised installations for certain types of waste;
- (c) employ the methods and technologies best suited to guaranteeing a high level of protection for the environment and human health.’

10 Regional Law No 10/93 of 10 February 1993 of the Region of Campania on the standards and procedures for the disposal of waste in Campania (‘Norme e procedure per lo smaltimento dei rifiuti in Campania’), identified 18 homogenous territorial zones in which, through the compulsory participation of the municipalities in those zones, steps had to be taken for the management of the disposal of the urban waste produced in the respective catchment areas.

Background to the dispute

- 11 The present action concerns the region of Campania, comprising 551 municipalities, including the city of Naples. The region is faced with problems in managing and disposing of its urban waste.
- 12 As early as 1994, according to the information provided by the Italian Republic in its statement in defence, a state of emergency was declared in Campania and a *Commissario delegato* was appointed, with the duties and powers normally delegated to other public bodies, whose remit was to implement rapidly the measures designed to overcome what was commonly known as ‘the waste crisis’.
- 13 An urban waste management plan was approved in 1997. It provided for a system of industrial installations for the recovery of waste through thermal treatment, which could be supplied through a system for the sorted collection of waste, organised at regional level in Campania.
- 14 By Ministerial Order No 2774 of 31 March 1998, the decision was taken to organise a tendering procedure in order to entrust waste treatment operations, for a period of 10 years, to private operators capable of constructing installations for the production of combustible materials derived from waste (‘CMW’), as well as installations for the incineration of waste or its recovery through thermal treatment.
- 15 The procurement contracts in question were awarded in 2000 to Fibe SpA and Fibe Campania SpA, two companies belonging to the Impregilo group. Those companies had to build and manage seven CMW production plants and two thermal recovery

plants, to be located at Acerra and Santa Maria La Fossa respectively. The municipalities in the region of Campania were required to have their waste treated by those companies.

- 16 However, implementation of the plan ran into difficulties, first, because of opposition from some of the local inhabitants concerning the sites selected and, secondly, because of the low volume of waste collected and deposited with the regional service. Moreover, plant construction ran into delays, and flaws were detected in the design of the installations, with the result that waste accumulated to saturation point in the available landfills and storage areas because it could not be treated by the facilities in question.
- 17 The Public Prosecutor's Office of Naples also opened an investigation to establish fraud in the award of public procurement contracts. The CMW production plants in Campania were placed in receivership, which meant that it was impossible to bring the equipment in question up to standard. Lastly, the contracts under which the administrative authorities were tied into a relationship with Fibe SpA and Fibe Campania SpA were rescinded, but efforts to make a fresh award of those contracts for the disposal of waste in Campania, by means of a tendering procedure, are reported to have met with failure on more than one occasion, chiefly because of the insufficient number of eligible tenders.

Pre-litigation procedure

- 18 The situation in Campania was the subject of discussions between the Commission and the Italian authorities. Thus, by memorandum of 16 May 2007, the *Commissario delegato* — the official specially appointed to deal with the waste crisis — explained to the Commission the reasons which had led to the adoption of Decree Law No 61 of 11 May 2007, under which provision was made for 'extraordinary measures to overcome the crisis situation in the waste disposal sector in the region of Campania', including the construction of four new landfills in the municipalities of Serre, Savignano Irpino, Tezigno and Sant'Arcangelo Trimonte.

- 19 According to that memorandum, those exceptional measures were justified ‘in order to eradicate the danger of epidemics or other health emergencies and in order to protect the health of the population’. The memorandum acknowledged that ‘the state of crisis has been exacerbated recently by the lack of landfill sites suitable for final disposal of waste’ and described that situation as ‘a social emergency, a danger for the fundamental rights of the citizens of Campania and also a cause for extreme environmental concern’, since ‘the unlawful landfills created outside the control of the competent public authorities, as well as the burning of abandoned waste — whether through spontaneous combustion or deliberate ignition — are damaging the environment owing to the emission of pollutants (such as dioxin) into the atmosphere and their leakage into the soil, which creates the risk of irreparable damage to the aquifers’.
- 20 On the view that the measures adopted by the Italian Republic were not sufficient to ensure a high level of protection for the environment and for public health — in particular, to establish an adequate network of waste disposal installations — and that the Italian Republic had therefore failed to fulfil its obligations under Articles 4 and 5 of Directive 2006/12, the Commission sent the Italian Republic a letter of formal notice on 29 June 2007, calling upon it to submit its observations within one month of receiving that letter.
- 21 Following an invitation from the Italian Republic, a delegation from the Commission went to Naples in July 2007 to meet with the authorities and to see for themselves how matters stood.
- 22 By letter of 3 August 2007, the Italian Republic replied to the letter of formal notice, appending a memorandum dated 2 August 2007 from the Director-General of the Directorate for the Quality of Life, a directorate of the Ministry of the Environment and the Protection of Natural Resources. In the light of the information received, the Commission found it appropriate to extend its complaints to include infringement of

Articles 3 and 7 of Directive 2006/12 and accordingly sent the Italian Republic a supplementary letter of formal notice on 23 October 2007, calling upon it to submit its observations within two months of receiving that letter.

- ²³ On 20 November 2007, another meeting was held in Brussels, during which the Italian Republic presented a new draft waste management plan for the region of Campania and gave a report on developments in the situation, particularly with respect to the progress made in constructing certain facilities, such as the landfills. That plan was adopted on 28 December 2007.
- ²⁴ By letter of 24 December 2007, the Italian Republic replied to the supplementary letter of formal notice, appending to its reply a memorandum of 21 December 2007 from the Ministry of the Environment and the Protection of Natural Resources.
- ²⁵ On 28 January 2008, a ‘package meeting’ was held in Rome between the Italian Republic and the Commission, during which, with respect to the issue of waste management in Campania, the Italian Republic unveiled a new plan aimed at resolving the crisis before the end of November 2008.
- ²⁶ After studying the information provided by the Italian Republic in its various communications, as well as information culled from other sources, such as the media, associations, organisations and individuals, the Commission sent the Italian Republic a reasoned opinion on 1 February 2008, calling on it to comply with that opinion within one month, given the urgency of the situation. The Italian Republic replied by letter despatched to the Commission on 4 March 2008, appended to which were three memoranda from regional officials.

- ²⁷ In the light of the information thus gathered, the Commission decided to bring the present action.
- ²⁸ By order of the President of the Court of 2 December 2008, the United Kingdom of Great Britain and Northern Ireland was granted leave to intervene in support of the forms of order sought by the Italian Republic.

The action

- ²⁹ In support of its action, the Commission submits that the Italian Republic is in breach of Articles 4 and 5 of Directive 2006/12, in that (i) it has not established an integrated and adequate network of disposal installations capable of ensuring self-sufficiency in waste disposal on the basis of the criterion of geographical proximity and (ii) that situation has become a source of danger for human health and the environment.
- ³⁰ The Commission maintains that the Italian Republic acknowledges that, as alleged, it has failed to fulfil its obligations. Evidence of this, according to the Commission, lies in the content of the replies provided by the Italian Republic during the pre-litigation procedure. Thus, in its reply to the initial letter of formal notice, the Italian Government had presented the regional waste management plan approved in 1997, whilst acknowledging that, 'even though it was rightly included in the regional plan, the integrated waste management system is currently not yet actually in place,' chiefly owing to delays in the construction of the two incinerators planned for Acerra and Santa Maria La Fossa, and because of the closure of landfills. The Italian authorities thus recognised the 'paralysis of the system' and the illegal or uncontrolled dumping

of waste, which they described as ‘a widespread phenomenon in Campania run by sectors of organised crime, which has been the subject of various investigations by the judicial authorities.’

- ³¹ In its reply to the reasoned opinion, the Italian Republic confirmed that the situation had not been resolved and, according to the Commission, it is clear — from the replies given by the Italian Republic, and from the time needed to put in place the facilities provided for under the most recent management plan, as well as from the national press — that, on the expiry of the deadline set in the reasoned opinion, the Italian State was still a long way from establishing an integrated and adequate network of disposal installations based on the criterion of geographical proximity.
- ³² Moreover, certain information, received after the deadline set in the reasoned opinion, confirms that the failure by the Italian Republic to fulfil its obligations is ongoing. Thus, in communications dated 21 and 28 April 2008, sent to the Presidency of the Council of the European Union, the Italian Republic acknowledged that the landfills planned for the sites at Savignano Irpino and Sant’Arcangelo Trimonte would not come on stream until July 2008 at the earliest, with the result that, until then, the Macchia Soprana landfill in the municipality of Serre would be the only landfill in operation for the whole of Campania.
- ³³ The Commission also relies on a memorandum sent on 4 June 2008 by which the Italian Republic notified to the Commission Decree Law No 90 of 23 May 2008 (ordinary supplement to GURI No 120 of 23 May 2008) (‘Decree Law No 90/08’). The very wording of that instrument is an admission of the shortcomings of the waste disposal system in Campania. The Commission also states that, at the time when the present proceedings were brought, the ‘state of emergency’ concerning the waste crisis had not been lifted and was to be maintained until 31 December 2009.

- ³⁴ It is clear, however, that, contrary to the Commission's assertions, the Italian Republic denies failing to fulfil its obligations under Articles 4 and 5 of Directive 2006/12. Consequently, the Court must determine whether the complaints put forward by the Commission in support of its action are well founded.

Infringement of Article 5 of Directive 2006/12

Arguments of the parties

- ³⁵ The Commission argues that, in order for a Member State to be regarded as having established an integrated and adequate network of disposal installations, as required under Article 5 of Directive 2006/12, that Member State must have in place a set of technical structures which is designed, first, to enable waste which cannot be recovered and/or re-used to be disposed of without endangering the environment or public health and, secondly, to ensure that, in order to meet the principles of self-sufficiency and proximity, the establishments intended for waste disposal, such as incinerators and landfills, have an absorption capacity proportionate to the volume of waste which is likely to require disposal in the region in question.
- ³⁶ As it is, the system in place in Campania displays certain shortcomings. Only 10,6% of the waste produced is sorted at the time of collection, as compared with a Community average of 33% and a national average varying between 19,4% for the central regions of Italy and 38,1% for its northern regions.
- ³⁷ Next, whilst landfills should be used as little as possible because they are the worst option for the environment, most of the waste in the Campania is dumped in landfills

or abandoned illegally. Moreover, the CMW production plants which are supposed to dispose of the waste are deficient and in reality merely treat the waste, with the result that it then has to be sent to another facility for final disposal.

- 38 The incinerators planned for the municipalities of Acerra and Santa Maria La Fossa have not yet come on stream and there is only one legal landfill operating in the entire region (at Serre), the intake capacity of which is well below actual requirements. Lastly, many tonnes of waste have been transported to Germany and other regions of Italy for disposal and an agreement concerning additional shipments has been signed with the Federal Republic of Germany.
- 39 According to the Commission, on 2 March 2008, the waste littering the public roads amounted to 55 000 tonnes, while another 110 000 tonnes to 120 000 tonnes of waste lay in the municipal dumps awaiting treatment. Moreover, in Case C-494/01 *Commission v Ireland* [2005] ECR I-3331, the Court held that a Member State in which there is a network of landfills which are close to saturation point and illegal deposits of waste throughout the country is in breach of Article 5 of Directive 2006/12.
- 40 The Italian Republic contends that the action should be dismissed. It maintains that the complaint alleging infringement of Article 5 of Directive 2006/12 is based on an insufficient analysis of the historical reasons for the serious situation affecting Campania. Moreover, the Italian Republic has done everything possible to contain the crisis, whether by deploying considerable administrative and military resources, or by making sizeable financial investments (EUR 400 million between 2003 and 2008).
- 41 As regards waste collection, although the Italian Republic acknowledges that the regional average figures provided by the Commission are accurate, it states that

special collection initiatives have been undertaken and that, generally speaking, there has been an increase in sorted waste collection in Campania, which should be further improved with the implementation of Order No 3639/08 of the President of the Council. Thus, between 14 January and 1 March 2008, 348 000 tonnes of waste were collected — particularly from the streets — and placed in a safe location. Currently, the total waste disposal capacity is higher than the daily production of waste in the region. Some 530 municipalities have implemented the first measures for sorted waste collection, 73 municipalities (approximately 370 000 inhabitants) have achieved percentages of 50% to 90%, whilst 134 municipalities (approximately one million inhabitants) are achieving close to 25% to 50%.

- ⁴² Moreover, in June 2008, the Savignano Irpino landfill was opened, followed by the landfill at Sant’Arcangelo Trimonte. As for incinerators, the new plan set out in Decree Law No 90/08 provides for the construction of two more incinerators in Naples and Salerno, which would thus be added to the existing incinerators at Acerra and Santa Maria La Fossa. Other facilities are also being put in place, such as the landfills at Chiaiano, Terzigno, Sant Tammaro and Andretta and the thermal recovery facilities at Acerra and Salerno.
- ⁴³ With regard to the seven CMW production plants which, according to the Commission, are not yet operational, the Italian Republic states that the inefficiencies observed in those production plants are the result of factors outside its control, such as failure to perform contractual obligations, or even unlawful or criminal conduct.
- ⁴⁴ Regarding landfills, although the Italian Republic acknowledges that the only landfill to be operational by the deadline set in the reasoned opinion was the Macchia Soprana landfill at Serre, it states that the opening of other landfills was impeded by protest actions on the part of the local inhabitants which even necessitated intervention by the armed forces.

- 45 All those circumstances combine to constitute a situation of *force majeure* within the meaning of the case-law.
- 46 The Italian Republic contends that the infringement of Article 5 of Directive 2006/12 cannot therefore be attributed to inaction on its part. It adds that the decontamination of waste illegally dumped in Campania is organised on an ongoing basis and that the illegal dumping of waste has never been an option proposed, suggested or accepted by the Italian authorities, who have done everything in their power — including calling in the armed forces — to ensure that such waste is removed.
- 47 With regard to the possibility that this combination of circumstances may be construed as a case of *force majeure*, the Commission states in its reply that the notion of *force majeure* requires that the act in question or its non-performance be attributable to circumstances, beyond the control of the party claiming *force majeure*, which are abnormal and unforeseeable and the consequences of which could not have been avoided despite the exercise of all due diligence (Case 296/86 *McNicholl and Others* [1988] ECR 1491, paragraph 11 and the case-law cited).
- 48 Moreover, where it is possible to attribute an act to *force majeure*, the effects of that attribution can only last a certain time, namely the time which is in fact needed in order for an administration exercising a normal degree of diligence to put an end to the crisis which has arisen for reasons outside its control (Case 101/84 *Commission v Italy* [1985] ECR 2629, paragraph 16).
- 49 The Commission adds that the inadequacy of the waste disposal system in Campania dates back to 1994. As regards the protests of the local inhabitants and the civil disturbances, those occurrences were foreseeable and cannot be regarded as being in any way out of the ordinary, since the crisis and the protests that it has provoked have arisen precisely because of the continuing failure by the national authorities to comply with their obligations under Directive 2006/12.

- 50 As for the presence of organised crime, the Commission states that, even if it were to be proved, that could be no justification for the failure of the Italian Republic to comply with its obligations under Directive 2006/12 (see Case C-263/05 *Commission v Italy* [2007] ECR I-11745, paragraph 51).
- 51 Lastly, as regards the fact that the successful tenderers did not meet their contractual obligations to bring the waste treatment installations into operation, the Commission maintains that this cannot be regarded as an unusual and unforeseeable event, chiefly because — contrary to the assertions made by the Italian Republic — the authorities could have inserted specific clauses in the contracts to guard against it.
- 52 As regards the criminal proceedings initiated by the Public Prosecutor's Office against some of the managers of those undertakings and the difficulties encountered by the authorities in finding another tenderer to take over the operations concerned, the Commission argues that, according to settled case-law, a Member State cannot rely on provisions, practices or situations in its domestic law to justify non-compliance with obligations or time-limits laid down in a directive (see Case C-263/05 *Commission v Italy*, paragraph 51).
- 53 The United Kingdom confines its observations to the interpretation of Article 5 of Directive 2006/12. It contends that, contrary to what the Commission is suggesting by bringing the present proceedings, the Member States' obligations under that provision are applicable at national level, not at regional level. Thus, the principles of self-sufficiency and proximity — in accordance with which, respectively, the integrated and adequate network of disposal installations 'must enable the Community as a whole to become self-sufficient in waste disposal and the Member States to move towards that aim individually' and must enable waste to be disposed of 'in one of the nearest appropriate installations' — should be construed as referring to Community or national territory, not to regions.

- 54 Consequently, the United Kingdom does not share the Commission's view that Article 5 of Directive 2006/12 is infringed where, in a given region of a Member State, the waste disposal installations are insufficient to meet the disposal needs of that region. According to the United Kingdom, it is open to the Member States to move certain categories of waste away from the regions of provenance to other regions for treatment and disposal in specialised installations — the method chosen by the United Kingdom for dealing with hazardous waste — provided that the national network of waste disposal installations is sufficient to meet the entire national demand.
- 55 The case-law of the Court also supports that national-level approach to the principle of self-sufficiency. Moreover, the wording of Article 16(4) of Directive 2008/98/EC of the European Parliament and of the Council of 19 November 2008 on waste and repealing certain Directives (OJ 2008 L 312, p. 3) — the new directive on waste — is consistent with such an interpretation since, under that provision, '[t]he principles of proximity and self-sufficiency shall not mean that each Member State has to possess the full range of final recovery facilities within that Member State.'
- 56 The Italian Republic agrees with the United Kingdom and states that, at national level, the impact of the region of Campania on the production of waste is limited.
- 57 Whilst arguing that the interpretation issues raised by the United Kingdom are not relevant in the context of the present proceedings, the Commission acknowledges that Member States are free to determine the appropriate administrative level for waste management. Thus, for the purposes of compliance with Article 5 of Directive 2006/12, a Member State may have only one national installation — if that installation is capable of treating all the waste produced — or only a few specialised installations, such as those in the United Kingdom which treat hazardous waste.

- 58 However, the Commission states that, in order to determine how to interpret and apply the principles of self-sufficiency and proximity, it is also necessary to take into account the nature of the waste and the volume of waste produced. Household waste, for example, is produced locally and on a daily basis, and thus usually requires collection and treatment immediately and at local level.
- 59 The Italian Republic has opted for management at the level of the ‘Optimal Territorial Ambit’ (*ambito territoriale ottimale*) as a geographical parameter of self-sufficiency and proximity. The Commission points out in that regard that it does not criticise Italy for its choice of administrative level for putting in place an integrated network for the management and disposal of waste. What the Commission does criticise, however, is the failure to put such a system in place in Campania, where — in reality — waste is not disposed of in installations situated close to source and where the shipment of waste to other regions or other Member States has provided no more than a temporary and limited solution to the health and environmental emergency and, as such, forms no part of an integrated network of waste disposal installations.

Findings of the Court

- 60 It is clear from the arguments put forward by the Commission during the pre-litigation procedure and from the observations lodged in the proceedings before the Court that, by its action, the Commission is raising generally the issue of waste disposal in the region of Campania and, more specifically, as emerges from its reply to the statement in intervention lodged by the United Kingdom, the issue of the disposal of urban waste. Consequently, notwithstanding the answer given by the Commission to a question put at the hearing, the Commission is not claiming that the Court should declare that the Italian Republic has failed to fulfil its obligations with respect to the specific category of hazardous waste, which is partly covered by Council Directive 91/689/EEC of 12 December 1991 on hazardous waste (OJ 1991 L 377, p. 20).

- ⁶¹ Under Article 5(1) of Directive 2006/12, Member States are to take appropriate measures to establish an integrated and adequate network of waste disposal installations, so as to enable the Community as a whole to become self-sufficient in waste disposal and the Member States to move towards that aim individually. To that end, Member States must take into account geographical circumstances or the need for specialised installations for certain types of waste.
- ⁶² For the purposes of establishing such a network, the Member States enjoy a measure of discretion as to the territorial basis which they consider appropriate if they are to achieve national self-sufficiency in terms of waste disposal capacity, and thus enable the Community itself to ensure disposal of its waste.
- ⁶³ As the United Kingdom rightly pointed out, the characteristics of certain categories of waste, such as hazardous waste, can be so specific that it may be appropriate to treat waste belonging to such a category all together, with a view to its disposal at one or more dedicated national installations, or even — as expressly provided for under Articles 5(1) and 7(3) of Directive 2006/12 — within the framework of cooperation with other Member States.
- ⁶⁴ The Court has nevertheless stated that one of the most important measures that the Member States must adopt as part of their obligation under Directive 2006/12 to establish waste management plans which may, in particular, provide for ‘appropriate measures to encourage rationalisation of the collection, sorting and treatment of waste’, is that provided for in Article 5(2) of that directive, under which the network established must enable waste to be disposed of in one of the nearest appropriate installations (see, to that effect, Case C-480/06 *Commission v Germany* [2009] ECR I-4747, paragraph 37).

- ⁶⁵ The Court has thus ruled that the criteria governing the location of waste disposal sites must be determined in the light of the objectives pursued by Directive 2006/12, which include the protection of health and the environment and the establishment of an integrated and adequate network of disposal installations, which must, in particular, enable waste to be disposed of in one of the nearest appropriate installations. Those location criteria should accordingly relate, *inter alia*, to the distance of such sites from inhabited areas where the waste is produced; the prohibition on establishing installations in the vicinity of sensitive areas; and the existence of adequate infrastructure for the shipment of waste, such as connections to transport networks (see, to that effect, Joined Cases C-53/02 and C-217/02 *Commune de Braine-le-Château and Others* [2004] ECR I-3251, paragraph 34).
- ⁶⁶ Regarding non-hazardous urban waste, which does not, as a rule, require specialised installations like those required for the treatment of hazardous waste, Member States must therefore endeavour to have a network which makes it possible to meet the need, in terms of waste disposal installations, as close as possible to the places where the waste is produced, although that does not alter the fact that it is also possible to organise such a network within the framework of inter-regional or even cross-border cooperation, where that is consistent with the principle of proximity.
- ⁶⁷ It follows that, as the Commission observed, where a Member State has specially opted, as part of one or more of its ‘waste management plans’ within the meaning of Article 7(1) of Directive 2006/12, to organise the equipping of its territory on a regional basis, it should be inferred from this that each region with a regional plan must, as a rule, ensure the treatment and disposal of its waste as close as possible to the place where it is produced. The principle that environmental damage should, as a matter of priority, be remedied at source - laid down in Article 191 TFEU as a basis for Community action in relation to the environment - entails that it is for each region, municipality or other local authority to take appropriate steps to ensure that its own waste is collected, treated and disposed of and that that waste must accordingly be disposed of as close as possible to the place where it is produced, in order to limit as far as possible the transportation of waste (see Case C-155/91 *Commission v Council* [1993] ECR I-939, paragraph 13 and the case-law cited).

⁶⁸ Consequently, in such a national network as defined by a Member State, if one of the regions lacks, in telling measure and for a significant length of time, infrastructure sufficient to meet its waste disposal needs, it is legitimate to conclude that such serious deficiencies at regional level are likely to compromise the national network of waste disposal installations, which will then no longer be integrated and adequate, as required under Directive 2006/12, or capable of meeting the obligation to enable the Member State concerned to move individually towards the aim of self-sufficiency as defined in Article 5(1) of that directive.

⁶⁹ In the present case, it should be noted that — as the Commission observed — the Italian Republic itself opted for waste management at the level of the region of Campania as an ‘Optimal Territorial Ambit’. As is clear from the regional law of 1993 and the 1997 regional waste management plan, as amended by the 2007 plan, the decision was taken, with a view to achieving regional self-sufficiency, to require the municipalities of Campania to deliver the waste collected in their territory to the regional service, an obligation which can be justified, moreover, by the need to ensure that operations are maintained at the level of activity necessary for the treatment installations to remain viable and, in that way, to preserve a treatment capacity sufficient to enable the principle of self-sufficiency to be put into practice at national level (see Case C-324/99 *DaimlerChrysler* [2001] ECR I-9897, paragraph 62).

⁷⁰ Furthermore, since — according to the statements made by the Italian Republic — first, the production of urban waste in Campania accounts for 7% of urban waste production nationwide (that is to say, a not insignificant proportion) and, secondly, the population of that region represents approximately 9% of the national population, a major deficiency in Campania’s capacity to dispose of its waste is likely to compromise seriously the ability of the Italian Republic to move towards the aim of self-sufficiency at national level.

- 71 In those circumstances, it is appropriate to consider whether, within the Italian national network of waste disposal installations, Campania has sufficient installations enabling urban waste to be disposed of near to the place where it is produced.
- 72 In that regard, the Italian Republic has recognised that the installations in operation, whether landfills, incinerators or thermal recovery plants, were not sufficient in number to meet the waste disposal requirements of the region of Campania.
- 73 The Italian Republic has in fact acknowledged that, on the expiry of the deadline set in the reasoned opinion, only one landfill was in operation for the entire region of Campania; the CMW production plants for Campania could not ensure the final disposal of waste; and the incinerators planned for Acerra and Santa Maria La Fossa were still not operational.
- 74 As emerges from the regional waste management plan approved in 1997 and from subsequent plans adopted by the Italian authorities to deal with the waste crisis, those authorities considered, *inter alia*, that, in order to meet the urban waste disposal needs of Campania, other landfills would have to be brought on stream, such as those at Savignano Irpino and Sant’Arcangelo Trimonte; two more incinerators would have to be provided in addition to those at Acerra and Santa Maria La Fossa; and the CMW production plants would have to be made genuinely operational.
- 75 Although Article 5 of Directive 2006/12 allows inter-regional cooperation in the management and disposal of waste, and even cooperation between Member States,

the fact remains that, in the present case, even with the assistance of other Italian regions and the German authorities, it has not been possible to remedy the structural deficit in terms of the installations necessary for the disposal of the urban waste produced in Campania, as evidenced by the considerable quantities of waste which have accumulated along the public roads in the region.

⁷⁶ Moreover, the low rate of sorted waste collection in the region, as compared with the national and Community averages, merely serves to exacerbate the situation.

⁷⁷ The Italian Republic has contended that it is endeavouring to remedy the situation in Campania, informing the Court of the actual bringing on stream, subsequent to 2 May 2008, of the landfills at Savignano Irpino and Sant’Arcangelo Trimonte, and also of the measures provided for in the new plan of 23 May 2008, such as the establishment of four more landfills, the construction of two more incinerators and the establishment of thermal recovery facilities at Acerra and Salerno. Furthermore, the rate of sorted collection is definitely improving and daily disposal capacity in the region is higher than production, to the point where resolution of the ‘waste crisis’ can be expected.

⁷⁸ Although such measures show that certain initiatives have been undertaken to deal with the difficulties in Campania, the fact remains that, in so acting, the Italian Republic clearly acknowledges that, on the expiry of the deadline set in the reasoned opinion, the installations then existing and operational in Campania fell a long way short of being able to meet the actual needs of the region in terms of waste disposal.

⁷⁹ Moreover, and in any event, it should be borne in mind that the Court has held on numerous occasions that the question whether a Member State has failed to fulfil its

obligations must be determined by reference to the situation obtaining in that Member State at the time of the deadline set in the reasoned opinion and that the Court cannot take account of any subsequent changes (see, *inter alia*, Case C-168/03 *Commission v Spain* [2004] ECR I-8227, paragraph 24, and Case C-23/05 *Commission v Luxembourg* [2005] ECR I-9535, paragraph 9).

- ⁸⁰ The Italian Republic further argues that it cannot be held responsible for the alleged failure to fulfil obligations, which is attributable, rather, to certain events which constitute force majeure, such as the opposition of the local inhabitants to the establishment of landfills in their municipalities, the presence of criminal activity in the region and the failure by public contractors to meet their contractual obligations to construct certain essential installations in the region.
- ⁸¹ It should be stated in that regard that the procedure provided for in Article 258 TFEU presupposes an objective finding that a Member State has failed to fulfil its obligations under the Treaty or secondary legislation (see Case 301/81 *Commission v Belgium* [1983] ECR 467, paragraph 8, and Case C-508/03 *Commission v United Kingdom* [2006] ECR I-3969, paragraph 67).
- ⁸² Where such a finding has been made, as in the present case, it is irrelevant whether the failure to fulfil obligations is the result of intention or negligence on the part of the Member State responsible, or of technical difficulties encountered by it (Case C-71/97 *Commission v Spain* [1998] ECR I-5991, paragraph 15).
- ⁸³ With regard to the local inhabitants' opposition to the establishment of certain disposal installations, it is settled case-law that a Member State may not plead internal

situations, such as difficulties of implementation which emerge at the stage of putting a Community measure into effect, including difficulties relating to opposition on the part of certain individuals, in order to justify a failure to comply with obligations and time-limits laid down by Community law (see Case C-45/91 *Commission v Greece* [1992] ECR I-2509, paragraphs 20 and 21, and Case C-121/07 *Commission v France* [2008] ECR I-9159, paragraph 72).

- ⁸⁴ As regards the presence of criminal activity, or of persons described as operating ‘on the fringes of the law’, active in the waste management sector, it is sufficient to point out that that fact — even if it were assumed to be established — cannot justify the failure by that Member State to fulfil its obligations under Directive 2006/12 (Case C-263/05 *Commission v Italy*, paragraph 51).
- ⁸⁵ Likewise, with regard to the non-performance of contractual obligations by the undertakings entrusted with the construction of certain waste disposal infrastructures, it need only be stated that, although the notion of force majeure is not predicated on absolute impossibility, it nevertheless requires the non-performance of the act in question to be attributable to circumstances, beyond the control of the party claiming force majeure, which are abnormal and unforeseeable and the consequences of which could not have been avoided despite the exercise of all due diligence (*McNicholl and Others*, paragraph 11).
- ⁸⁶ A diligent authority should have taken the necessary precautions either to guard against the contractual non-performance in question in the region of Campania or to ensure that, despite those shortcomings, actual construction of the infrastructures necessary for waste disposal in the region would be completed on time.

- ⁸⁷ As for the complaint made by the Italian Republic against the Commission, criticising the fact that the Commission did not bring the present proceedings until years after the waste crisis had arisen and at the very time that Italy had adopted the measures enabling the crisis to be brought to an end, it should be borne in mind that the Court has consistently held that the rules laid down in Article 258 TFEU are to be applied without the Commission being required to comply with fixed time-limits (see, *inter alia*, Case C-96/89 *Commission v Netherlands* [1991] ECR I-2461, paragraph 15, and Case C-523/04 *Commission v Netherlands* [2007] ECR I-3267, paragraph 38). The Commission is thus entitled to decide, in its discretion, on what date it may be appropriate to bring an action and it is not for the Court to review the exercise of that discretion (Case C-422/92 *Commission v Germany* [1995] ECR I-1097, paragraph 18).
- ⁸⁸ In the light of the above, it must be held that, by failing to ensure that, for the purposes of regional waste management in Campania, that region has sufficient installations enabling it to dispose of its urban waste close to the place where that waste is produced, the Italian Republic has failed to meet its obligation to establish an integrated and adequate network of disposal installations enabling it, the Italian Republic, to move towards the aim of ensuring disposal of its own waste and, in consequence, has failed to fulfil its obligations under Article 5 of Directive 2006/12.

Infringement of Article 4 of Directive 2006/12

Arguments of the parties

- ⁸⁹ The Commission states that the Italian Republic has never denied the existence of an extremely serious situation for the environment and for human health, arising from the lack of an integrated and adequate network of waste disposal installations. On the contrary, the Italian Republic has explicitly acknowledged this.

- ⁹⁰ Relying, *inter alia*, on Case C-135/05 *Commission v Italy* [2007] ECR I-3475 and the judgment of 24 May 2007 in Case C-361/05 *Commission v Spain*, the Commission argues that it is undeniable that the waste littering the public roads or awaiting treatment at storage sites causes significant degradation of the environment and the landscape, and constitutes also a genuine threat both to the environment and to human health. Such piles of waste are in fact likely to cause contamination of the soil and aquifers, the release of pollutants into the atmosphere through the spontaneous combustion of waste and fires deliberately ignited by the local inhabitants, and the consequent pollution of agricultural produce and drinking water, not to mention foul-smelling emanations.
- ⁹¹ Relying on a study carried out by the department of the *Commissario delegato*, the Italian Republic contends that the situation in Campania in terms of waste management has had no harmful consequences either for public safety or for human health. It maintains also that the Commission's complaint is too general, in that it does not specify which of the three situations envisaged in points (a), (b) and (c), respectively, of Article 4 of Directive 2006/12 is the subject-matter of the present proceedings.
- ⁹² The Italian Republic adds that the Commission has not adduced any evidence in support of its allegations. It merely relies on the Court's findings, in Case C-135/05 *Commission v Italy*, concerning the existence of illegal landfills in Italy. Moreover, according to the Italian Republic, the Commission is suggesting that infringement of Article 5 of Directive 2006/12 automatically entails failure to fulfil obligations under Article 4 of that directive.
- ⁹³ Lastly, the Italian authorities have closely monitored the impact on human health of waste left abandoned along the roads, but no increase linked with the illegal dumping of waste has been observed in the number of infectious illnesses, deaths caused by

tumours, or congenital abnormalities. As for pollution of the aquifers, apart from two cases of sporadic overflow in limited areas, the aquifers and ground water have not shown any chemical or biological anomalies. The same is true of the exposure of the local inhabitants to fumes from fires caused by the piles of waste: apart from one case, no risk has been detected in that connection.

⁹⁴ As regards the study relied on by the Italian Republic and, according to which, 'even during the most acute phase of the crisis in Campania, no specific harmful consequences for public safety or public health have been detected', the Commission states that the results of that study, which was co-signed by the World Health Organisation, 'confirms the concept of abnormality found in the northeastern area of the province of Naples and the southwest of the province of Caserta; that area is also the area with the highest incidence of illegal disposal and incineration of solid urban and hazardous waste'. That study also confirmed 'the theory that the excessive rates of mortality and abnormalities tend to be concentrated in the areas where the presence of known waste disposal sites is highest' and, in any event, states that '... the low resolution of health-related data and ... the insufficiency of environmental data ... probably lead to an underestimation of the risk'.

⁹⁵ Not only is the statement made by the Italian Republic regarding the lack of harmful consequences for health unsupported by scientific evidence produced by that Member State itself, it also seems even to make infringement of Article 4 of Directive 2006/12 conditional upon the materialisation of actual health problems directly attributable to the waste crisis. The Commission argues that, on the contrary, the obligations under Article 4 are preventive in nature. Accordingly, the Member States should take the measures which are appropriate for preventing dangerous situations. As it is, in the present case, the situations which pose a danger to the environment

and public health have been more than satisfactorily demonstrated; they have persisted for a long time; and they are the result of the actions — or rather the inaction — of the competent Italian authorities.

Findings of the Court

⁹⁶ As a preliminary point, it should be borne in mind that whilst Article 4(1) of Directive 2006/12 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 that provision 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 (Case C-365/97 *Commission v Italy* [1999] ECR I-7773, paragraph 67, and Case C-420/02 *Commission v Greece* [2004] ECR I-11175, paragraph 21).

⁹⁷ It follows that, in principle, it cannot be inferred directly from the fact that a situation is not in conformity with the objectives laid down in Article 4(1) of Directive 2006/12 that the Member State concerned has necessarily failed to fulfil its obligations under that provision, that is to say, 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, in particular, if it leads to a significant deterioration in the environment over a protracted period without any action being taken by the competent authorities, this may be an indication that the Member States have exceeded the discretion conferred on them by that provision (Case C-365/97 *Commission v Italy*, paragraph 68, and Case C-420/02 *Commission v Greece*, paragraph 22).

- ⁹⁸ As for the territorial extent of the alleged infringement, the fact that, by the present action, the Commission is seeking a declaration that the Italian Republic has failed to fulfil its obligation to take the necessary measures only with regard to the region of Campania can have no bearing on any finding of such an infringement (Case C-365/97 *Commission v Italy*, paragraph 69).
- ⁹⁹ The consequences of non-compliance with the obligation under Article 4(1) of Directive 2006/12 are likely, given 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 (Case C-365/97 *Commission v Italy*, paragraph 70), as was also the position in the case which led to the judgment in Case C-45/91 *Commission v Greece*.
- ¹⁰⁰ It must therefore be determined whether the Commission has established to the requisite legal standard that, by the time that the deadline set in the reasoned opinion expired, the Italian Republic had failed, over a protracted period, to take the measures necessary to ensure that the waste produced in the region of Campania was recovered or disposed of without endangering human health and without using processes or methods which could harm the environment.
- ¹⁰¹ Although, in proceedings brought under Article 258 TFEU for failure to fulfil an obligation, it is incumbent upon the Commission to prove the infringement alleged by providing the Court with the evidence necessary to enable it to establish that the obligation has not been fulfilled, without being able to rely on any presumption for those purposes (judgment of 22 January 2009 in Case C-150/07 *Commission v Portugal*, paragraph 65 and the case-law cited), account should be taken of the fact that, where it is a question of checking that the national provisions intended to ensure effective implementation of Directive 2006/12 are applied correctly in practice, the Commission, which does not have investigative powers of its own in this area, is largely reliant

on the information provided by complainants, by public or private bodies, by the press or by the Member State concerned (see, to that effect, Case C-494/01 *Commission v Ireland* [2005] ECR I-3331, paragraph 43, and Case C-135/05 *Commission v Italy*, paragraph 28).

¹⁰² It follows, inter alia, that, where the Commission has adduced sufficient evidence to establish certain circumstances in the territory of the defendant Member State, it is for that Member State to challenge in substance and in detail the data produced and the inferences drawn (see, to that effect, Case C-365/97 *Commission v Italy*, paragraphs 84 and 86, and judgment of 22 December 2008 in Case C-189/07 *Commission v Spain*, paragraph 82).

¹⁰³ It should be noted, first of all, that the Italian Republic does not dispute that, when the deadline set in the reasoned opinion expired, the waste littering the public roads totalled 55 000 tonnes, adding to the 110 000 tonnes to 120 000 tonnes of waste awaiting treatment at municipal storage sites. In any event, that information emerges from the memorandum of the *Commissario delegato* of 2 March 2008, appended to the reply of the Italian Republic to the reasoned opinion. Furthermore, according to the statements made by the Italian Republic, the local inhabitants, exasperated by such accumulation, have taken the initiative of igniting fires in the piles of refuse, which is harmful both for the environment and for their own health.

¹⁰⁴ It is therefore clear from the above that, in the region of Campania, the Italian Republic has not succeeded in complying with its obligation under Article 4(2) of Directive 2006/12 to take the necessary measures to prohibit the abandonment, dumping or uncontrolled disposal of waste.

- 105 Next, it should be borne in mind that waste is matter of a special kind, with the result that accumulation of waste, even before it becomes a health hazard, constitutes a danger to the environment, regard being had in particular to the limited capacity of each region or locality for waste reception (Case C-2/90 *Commission v Belgium* [1992] ECR I-4431, paragraph 30).
- 106 The accumulation, as described, of such large quantities of waste along public roads and in temporary storage areas — the situation in Campania at the time when the deadline set in the reasoned opinion expired — has therefore undoubtedly given rise to a ‘risk to water, air or soil, and to plants or animals’ within the meaning of Article 4(1)(a) of Directive 2006/12. Moreover, such quantities of waste inevitably cause ‘a nuisance through noise or odours’ within the meaning of Article 4(1)(b), especially when the waste remains uncovered in streets and along roads over a protracted period.
- 107 Moreover, given the lack of availability of sufficient landfills, the presence of such quantities of waste outside appropriate, approved storage facilities is likely to affect ‘adversely ... the countryside or places of special interest’ within the meaning of Article 4(1)(c) of Directive 2006/12.
- 108 Given the detailed evidence adduced by the Commission, including the various reports drawn up by the Italian authorities themselves and communicated to the European institutions, as well as the press clippings appended to its application, and in the light of the case-law referred to in paragraphs 80 and 81 of this judgment, the Italian Republic cannot simply maintain that the facts complained of have not been proved or that the tipping of waste in the streets, particularly in Naples, is outside its control.

- 109 Furthermore, as the Commission rightly pointed out, the role of Article 4(1) of Directive 2006/12 is preventive, in that the Member States must make sure that operations for the disposal or recovery of waste do not endanger human health.
- 110 The Italian Republic has indeed recognised the danger to human health posed by the situation in Campania, *inter alia*, in the reports and memoranda provided to the European institutions. In that regard, the recitals in the preamble to Decree Law No 90/08, notified by the Italian Republic to the Presidency of the European Union, expressly refer to ‘the gravity of the social, economic and environmental conditions resulting from the state of emergency [in waste management], which are liable to jeopardise seriously the fundamental rights of the inhabitants of the region of Campania, exposed ... to risks relating to hygiene, health and the environment’.
- 111 It follows that the evidence relied on by the Italian Republic in the present proceedings in order to show that that situation has not had any consequences in practice or, in any event, has had only minor repercussions on human health, is not such as to affect the finding that the worrying situation of accumulation of waste along the public roads has exposed the health of the local inhabitants to certain danger, in breach of Article 4(1) of Directive 2006/12.
- 112 The Commission’s complaint alleging infringement of Article 4 of Directive 2006/12 must therefore be held to be well founded.
- 113 In the light of the above, it must be held that, by failing to adopt, for the region of Campania, all the measures necessary to ensure that waste is recovered and disposed

of without endangering human health and without harming the environment and, in particular, by failing to establish an integrated and adequate network of disposal installations, the Italian Republic has failed to fulfil its obligations under Articles 4 and 5 of Directive 2006/12.

Costs

- ¹¹⁴ 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 Italian Republic has been unsuccessful, the latter must be ordered to pay the costs. Under Article 69(4) of the Rules of Procedure, the United Kingdom must bear its own costs.

On those grounds, the Court (Fourth Chamber) hereby:

- 1. Declares that, by failing to adopt, for the region of Campania, all the measures necessary to ensure that waste is recovered and disposed of without endangering human health and without harming the environment and, in particular, by failing to establish an integrated and adequate network of disposal installations, the Italian Republic has failed to fulfil its obligations under Articles 4 and 5 of Directive 2006/12/EC of the European Parliament and of the Council of 5 April 2006 on waste;**
- 2. Orders the Italian Republic to pay the costs;**

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

[Signatures]