JUDGMENT OF THE COURT (Fifth Chamber)
14 December 1995 *

In Case C-17/95,

Commission of the European Communities, represented by Gérard Rozet, Legal Adviser, acting as Agent, with an address for service in Luxembourg at the office of Carlos Gómez de la Cruz, of its Legal Service, Wagner Centre, Kirchberg,

applicant,

v

French Republic, represented by Edwige Belliard, Assistant Director at the Legal Affairs Directorate of the Ministry of Foreign Affairs, and Jean-Louis Falconi, Secretary of Foreign Affairs in that Directorate, acting as Agents, with an address for service in Luxembourg at the French Embassy, 9 Boulevard Prince Henri,

defendant,

APPLICATION for a declaration that, by failing to adopt and communicate, within the prescribed period, the laws, regulations and administrative provisions necessary in order to comply with Council Directive 91/67/EEC of 28 January 1991 concerning the animal health conditions governing the placing on the market of aquaculture animals and products (OJ 1991 L 46, p. 1), Council Directive 91/628/EEC of 19 November 1991 on the protection of animals during transport and amending Directives 90/425/EEC and 91/496/EEC (OJ 1991 L 340, p. 17) and

* Language of the case: French.

Council Directive 92/35/EEC of 29 April 1992 laying down control rules and measures to combat African horse sickness (OJ 1992 L 157, p. 19), the French Republic has failed to fulfil its obligations under the EC Treaty,

THE COURT (Fifth Chamber),

composed of: D. A. O. Edward, President of the Chamber, J. C. Moitinho de Almeida, C. Gulmann (Rapporteur), P. Jann and L. Sevón, Judges,

Advocate General: A. La Pergola,
Registrar: R. Grass,

having regard to the report of the Judge-Rapporteur,

after hearing the Opinion of the Advocate General at the sitting on 9 November 1995,

gives the following

Judgment

1 By application lodged at the Court Registry on 18 January 1995, the Commission of the European Communities brought an action under Article 169 of the EC Treaty for a declaration that, by failing to adopt and communicate within the prescribed period the laws, regulations and administrative provisions necessary in order to comply with Council Directive 91/67/EEC of 28 January 1991 concerning the animal health conditions governing the placing on the market of aquaculture animals and products (OJ 1991 L 46, p. 1), Council Directive 91/628/EEC of 19 November 1991 on the protection of animals during transport and amending Directives 90/425/EEC and 91/496/EEC (OJ 1991 L 340, p. 17) and Council

Directive 92/35/EEC of 29 April 1992 laying down control rules and measures to combat African horse sickness (OJ 1992 L 157, p. 19), the French Republic has failed to fulfil its obligations under the EC Treaty.

2 It appears from Article 29(1) of Directive 91/67, Article 21(1) of Directive 91/628 and Article 20(1) of Directive 92/35 that the Member States are to take the measures necessary to comply therewith no later than 31 December 1992, in respect of Directive 92/35, or 1 January 1993, in respect of Directives 91/67 and 91/628, and that, so far as concerns Directives 91/628 and 92/35, they are to inform the Commission thereof forthwith.

3 In its defence, the French Government indicated that it had taken the necessary steps to transpose Directive 91/67 by the adoption of Decree No 95-100 of 26 January 1995 concerning the health requirements in aquaculture of live molluscs and marine crustaceans, published in the *Journal Officiel de la République Française* (Official Journal of the French Republic) of 2 February 1995, p. 1775.

4 By letter of 15 May 1995, the Commission took formal note of the adoption of that measure and, after finding that Directive 91/67 had been correctly transposed into French law, informed the Court that it wished to discontinue that part of its application, but to proceed with the action in so far as it related to Directives 91/628 and 92/35.

5 The French Republic does not deny that Directives 91/628 and 92/35 were not transposed within the prescribed period, but has stated that work on the regulations intended to transpose them is in progress.

6 Since Directives 91/628 and 92/35 have not been transposed within the prescribed period laid down therein, the failure to fulfil obligations alleged by the Commission has been established.

7 It must therefore be declared that by failing to adopt within the prescribed period the laws, regulations and administrative provisions necessary to comply with Directives 91/628 and 92/35 the French Republic has failed to fulfil its obligations under Article 21(1) of Directive 91/628 and Article 20(1) of Directive 92/35.

Costs

8 Under Article 69(2) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs.

9 According to paragraph 5 of that article, a party who discontinues or withdraws from proceedings is to be ordered to pay the costs, unless such withdrawal or discontinuance is justified by the conduct of the opposite party.

10 The Commission abandoned some of the claims set out in its application since the French Republic adopted, after the action was brought, the measures necessary to ensure the transposition of Directive 91/67 into national law.

11 It follows that the partial withdrawal of the Commission is justified by the conduct of the French Republic which, moreover, was unsuccessful as to the remainder.

12 The French Republic should therefore be ordered to pay the costs.

On those grounds,

THE COURT (Fifth Chamber)

hereby:

1. Declares that, by failing to adopt the laws, regulations and administrative provisions necessary in order to comply with

— Council Directive 91/628/EEC of 19 November 1991 on the protection of animals during transport and amending Directives 90/425/EEC and 91/496/EEC,

and

— Council Directive 92/35/EEC of 29 April 1992 laying down control rules and measures to combat African horse sickness,

the French Republic has failed to fulfil its obligations under Article 21(1) of Directive 91/628 and Article 20(1) of Directive 92/35, referred to above;

2. Orders the French Republic to pay the costs.

Edward Moitinho de Almeida Gulmann

Jann Sevón

Delivered in open court in Luxembourg on 14 December 1995.

R. Grass
Registrar

D. A. O. Edward
President of the Fifth Chamber