JUDGMENT OF THE COURT (Third Chamber)
16 December 1999 *

In Case C-138/99,

Commission of the European Communities, represented by F. Benyon, 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

Grand Duchy of Luxembourg, represented by P. Steinmetz, Head of Legal and Cultural Affairs in the Ministry of Foreign Affairs, acting as Agent, 5 Rue Notre-Dame, Luxembourg,

defendant,

* Language of the case: French.

APPLICATION for a declaration that, by failing to adopt the laws, regulations and administrative provisions necessary to comply with Council Directive 94/56/EC of 21 November 1994 establishing the fundamental principles governing the investigation of civil aviation accidents and incidents (OJ 1994 L 319, p. 14), the Grand Duchy of Luxembourg has failed to fulfil its obligations under that directive,

THE COURT (Third Chamber),

composed of: J.C. Moitinho de Almeida, President of the Chamber, C. Gulmann (Rapporteur) and J.-P. Puissochet, 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 14 October 1999,

gives the following

Judgment

1 By application lodged at the Court Registry on 19 April 1999, the Commission of the European Communities brought an action under Article 169 of the EC Treaty (now Article 226 EC) for a declaration that, by failing to adopt the laws, regulations and administrative provisions necessary to comply with Council Directive 94/56/EC of 21 November 1994 establishing the fundamental principles governing the investigation of civil aviation accidents and incidents (OJ 1994 L 319, p. 14, hereinafter 'the Directive'), the Grand Duchy of Luxembourg has failed to fulfil its obligations under that directive.

2 Under Article 12(1) of the Directive, Member States were required to bring into force the laws, regulations and administrative provisions necessary to comply with the Directive not later than 21 November 1996, and immediately to inform the Commission thereof.

3 On 30 May 1997, having received from the Luxembourg Government no notification of national measures transposing the Directive, the Commission formally requested it to submit its observations in that regard within two months, in accordance with the procedure laid down in Article 169 of the Treaty.

4 The Luxembourg Government replied by letter of 13 August 1997, saying that implementing measures were being drawn up.

5 On 24 February 1998, in the absence of any further information, the Commission sent the Grand Duchy of Luxembourg a reasoned opinion reminding it of its obligation to transpose the Directive into national law and calling on it to adopt the measures necessary to comply with that obligation within two months of notification of the opinion.

6 The Luxembourg Government replied to that reasoned opinion on 26 March 1998, indicating that a draft Grand-Ducal regulation intended to transpose the Directive had been approved by the Government in council and had recently been submitted to the Council of State, to the competent professional body and to the Working Committee of the Chamber of Deputies for their views.

7 On 16 April 1999, having received from the Luxembourg Government no further information indicating that measures to transpose the Directive had been adopted, the Commission decided to bring the present action.

8 The Commission points out that, under the third paragraph of Article 189 of the EC Treaty (now the third paragraph of Article 249 EC), directives are binding, as to the result to be achieved, upon each Member State to which they are addressed, whilst leaving to the national authorities the choice of form and methods, and that under the first paragraph of Article 5 of the EC Treaty (now the first paragraph of Article 10 EC), Member States are required to take all appropriate measures, whether general or particular, to ensure fulfilment of the obligations arising out of the Treaty or resulting from action taken by the institutions of the Community. The Commission adds that those provisions are binding and that the Member States must, therefore, adopt all measures necessary to transpose directives into national law within the prescribed period and must communicate those measures to the Commission immediately.

9 The Luxembourg Government does not dispute that it has not transposed the Directive into national law within the prescribed period. It attributes the delay to the legislative process and states that a draft law is being drawn up.

10 The Court has consistently held, in this regard, that a Member State may not plead provisions, practices or circumstances in its internal legal system in order to justify a failure to comply with the obligations and time-limits laid down in a directive (see, in particular, Case C-401/98 *Commission* v *Greece* [1999] ECR I-5543, paragraph 9).

11 Since the Directive was not transposed within the period laid down therein, the Commission's application must be considered to be well founded.

12 It must therefore be held that, by failing to adopt within the prescribed period the laws, regulations and administrative provisions necessary to comply with the Directive, the Grand Duchy of Luxembourg has failed to fulfil its obligations thereunder.

Costs

13 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 to be awarded against the Grand Duchy of Luxembourg and the latter has been unsuccessful, it must be ordered to pay the costs.

On those grounds,

THE COURT (Third Chamber)

hereby:

1. **Declares that, by failing to adopt within the prescribed period the laws, regulations and administrative provisions necessary to comply with Council Directive 94/56/EC of 21 November 1994 establishing the fundamental principles governing the investigation of civil aviation accidents and incidents, the Grand Duchy of Luxembourg has failed to fulfil its obligations under that directive;**

2. **Orders the Grand Duchy of Luxembourg to pay the costs.**

Moitinho de Almeida Gulmann Puissochet

Delivered in open court in Luxembourg on 16 December 1999.

R. Grass — Registrar

J.C. Moitinho de Almeida — President of the Third Chamber