JUDGMENT OF THE COURT (Second Chamber)

14 September 2004 *

In Case C-168/03,

ACTION under Article 226 EC for failure to fulfil obligations,

brought on 11 April 2003,

Commission of the European Communities, represented by I. Martínez del Peral, acting as Agent, with an address for service in Luxembourg,

applicant,

v

Kingdom of Spain, represented by L. Fragua Gadea, acting as Agent, with an address for service in Luxembourg,

defendant,

* Language of the case: Spanish.

THE COURT (Second Chamber),

composed of: C.W.A. Timmermans, President of the Chamber, J.N. Cunha Rodrigues, J.-P. Puissochet, R. Schintgen and N. Colneric (Rapporteur), Judges,

Advocate General: C. Stix-Hackl,
Registrar: R. Grass,

having regard to the written procedure,

after hearing the Opinion of the Advocate General at the sitting on 30 March 2004,

gives the following

Judgment

1 By its application, the Commission of the European Communities seeks a declaration that, by providing in Article 1 of the sole transitional provision in Royal Decree No 1215/1997 of 18 July 1997, laying down minimum health and safety requirements for the use of work equipment by workers, an additional adjustment period for work equipment already provided to workers at the undertaking and/or establishment prior to 27 August 1997 (BOE No 188 of

7 August 1997, p. 24063) ('the Royal Decree'), the Kingdom of Spain has failed to fulfil its obligations under Articles 10 EC and 249 EC and Article 4(1)(b) of Council Directive 89/655/EEC of 30 November 1989 concerning the minimum safety and health requirements for the use of work equipment by workers at work (second individual Directive within the meaning of Article 16(1) of Directive 89/391/EEC) (OJ 1989 L 393, p. 13), as amended by Council Directive 95/63/EC of 5 December 1995 (OJ 1995 L 335, p. 28) ('Directive 89/655, as amended').

Legal framework

Community legislation

2 Article 4, headed 'Rules concerning work equipment', of Directive 89/655 states:

'1. Without prejudice to Article 3, the employer must obtain and/or use:

(a) work equipment which, if provided to workers in the undertaking and/or establishment for the first time after 31 December 1992, complies with:

(i) the provisions of any relevant Community directive which is applicable;

(ii) the minimum requirements laid down in the Annex, to the extent that no other Community directive is applicable or is so only partially;

(b) work equipment which, if already provided to workers in the undertaking and/or establishment by 31 December 1992, complies with the minimum requirements laid down in the Annex no later than four years after that date.

...'

3 The Annex to Directive 89/655, headed 'Minimum requirements referred to in Article 4(1)(a)(ii) and (b)', provides:

'1. General comment

The obligations laid down in this Annex apply having regard to the provisions of the Directive and where the corresponding risk exists for the work equipment in question.

2. General minimum requirements applicable to work equipment

...

3. Minimum additional requirements applicable to specific work equipment,

as referred to in Article 9(1) of the Directive.'

4 In terms of Article 9(1) of Directive 89/655:

'Addition to the Annex of the supplementary minimum requirements applicable to specific work equipment referred to in point 3 thereof shall be adopted by the Council in accordance with the procedure laid down in Article 118a of the Treaty.'

5 Article 10(1) of Directive 89/655 provides:

'Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 31 December 1992. They shall forthwith inform the Commission thereof.'

6 According to the fourth recital in the preamble to Directive 95/63, which amended Directive 89/655,'... Member States must take measures to facilitate implementation of the provisions of this Directive by undertakings, in particular small and medium-sized undertakings; whereas such measures may include training and information activities adapted to the specific requirements of the various sectors of the economy'.

7 Annex I to Directive 95/63 states:

'The Annex (which becomes Annex I) to Directive 89/655/EEC is amended as follows:

1. The following paragraph shall be added to the general comment:

"The following minimum requirements, inasmuch as they apply to work equipment in use, do not necessarily call for the same measures as the essential requirements concerning new work equipment."

...'

8 Point 3 of Annex I to Directive 89/655, as amended, contains a list of additional minimum requirements applicable to specific types of work equipment.

9 Article 1(1)(a) and (b) of Directive 95/63 amended Article 4 of Directive 89/655 as follows:

'(a) in paragraph 1(a)(ii) and (b), "in the Annex" shall be replaced by "in Annex I";

(b) the following point is inserted in paragraph 1:

"(c) without prejudice to point (a)(i), and notwithstanding point (a)(ii) and point (b), specific work equipment subject to the requirements of point 3 of Annex I, which, if already provided to workers in the undertaking and/or establishment by 5 December 1998, complies with the minimum requirements laid down in Annex I, no later than four years after that date'".

10 The first paragraph of Article 2(1) of Directive 95/63 states:

'Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive before 5 December 1998. They shall forthwith inform the Commission thereof.'

11 In accordance with the second sentence of Article 191(2) of the EC Treaty (now the second sentence of Article 254(2) EC), Directive 95/63 entered into force on 19 January 1996.

National legislation

12 Article 1 of the sole transitional provision of the Royal Decree, which entered into force on 27 August 1997, provides:

'Sole transitional provision. Adjustment of work equipment.

1. Work equipment which is provided to workers in the undertaking or workplace on the date on which this Royal Decree enters into force must be adapted to the requirements of Article 1 of Annex I within 12 months of the said entry into force.

Nevertheless, if certain sectors are not in a position, for specific, duly substantiated, objective reasons relating to their work equipment, to comply with the time-limit laid down in the preceding subparagraph, the employment authorities may in exceptional cases, on receipt of a reasoned request from the most representative associations of employers in the sector and after consultation with the most representative trade unions in the sector, authorise a plan to bring work equipment into conformity having a duration of no more than five years and which reflects the severity, impact and extent of the objective situation relied on. The plan in question must be submitted to the employment authorities within a maximum period of nine months from the entry into force of this Royal Decree and must be approved within a maximum period of three months, after which the absence of an express decision shall mean that the request is rejected.

The conformity plan shall apply to the undertakings concerned on submission of a request by those undertakings to the employment authorities for their approval, its

application must be linked to consultation with workforce representatives, the plan must state the severity, impact and extent of the technical difficulties which prevent the prescribed time-limit being met, and also provide details of the steps taken to comply with it and the alternative preventive measures which guarantee appropriate health and safety conditions for the workplace in question.

...'

13 Article 1 of Annex I to the Royal Decree corresponds to Annex I to Directive 89/655, as amended.

Pre-litigation procedure

14 By judgment in Case C-79/95 *Commission* v *Spain* [1996] ECR I-4679, the Court held that, by failing to adopt within the prescribed period the laws, regulations and administrative measures necessary to comply with Directive 89/655, the Kingdom of Spain had failed to fulfil its obligations under Article 10(1) of that directive.

15 In August 1997, the Spanish authorities sent the text of the Royal Decree to the Commission.

16 As it was of the opinion that, by allowing an additional adjustment period for work equipment already provided to workers in the undertaking and/or establishment prior to 27 August 1997, Article 1 of the sole transitional provision of the Royal Decree was contrary to Article 4(1)(b) of Directive 89/655, the Commission initiated the infringement procedure under Article 226 EC. Having given the Kingdom of Spain notice to submit its observations, the Commission issued a reasoned opinion on 1 July 2002, inviting that Member State to adopt the measures necessary to comply with it within two months of its notification.

17 As it was of the opinion that the observations submitted by the Spanish Government indicated that the infringement mentioned in the reasoned opinion was continuing, the Commission decided to bring the present action.

The action

Arguments of the parties

18 The Commission submits that the Kingdom of Spain has failed to comply with all the obligations imposed on it by Directive 89/655, as amended, and in particular Article 4(1)(b) thereof, in two respects: first, in the first subparagraph of Article 1 of the sole transitional provision in the Royal Decree, the Kingdom of Spain gave undertakings an additional adjustment period of 12 months; secondly, in the second, third and fourth subparagraphs of that article, it gave them an additional period of five years over and above that period. However, the Commission has stated that it does not intend to pursue the first complaint.

19 According to it, there is nothing in the second subparagraph of point 1 of Annex I to Directive 89/655, as amended, which entertains the possibility of allowing further adjustment periods for certain equipment already in use.

20 The Spanish Government states in reply that it does not see that it is necessary for the Commission to maintain its complaints as the plans in question lapsed on 27 August 2003, being the date of expiry of the additional maximum period of five years laid down for the conformity plans.

21 Furthermore, those plans should not be seen as giving an additional period to Spanish undertakings for implementing Directive 89/655, as amended.

22 The approval of the conformity plans presupposes the adoption by the undertaking making the request of specific preventive measures during the adjustment period for the work equipment. Those measures guarantee workers a level of safety which was equivalent to that required by the Royal Decree, that is to say equivalent to the level of safety specified in that directive.

23 According to the Spanish Government, the basis of the procedure for authorising conformity plans can also be found in the general comment in Annex I to the Royal Decree, which is a literal transcription of the general comment in Annex I to Directive 89/655, as amended.

Findings of the Court

24 In accordance with 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 that Member State at the end of the period laid down in the reasoned opinion and the Court cannot take account of any subsequent changes (see, inter alia, Case C-103/00 *Commission* v *Greece* [2002] ECR I-1147, paragraph 23, and Case C-209/02 *Commission* v *Austria* [2004] ECR I-1211, paragraph 16). Even when the default has been remedied after the time-limit prescribed by that opinion, pursuit of the action still has an object. That object may consist in particular in establishing the basis of the liability that a Member State could incur towards those who acquire rights as a result of its default (see, inter alia, Case 154/85 *Commission* v *Italy* [1987] ECR 2717, paragraph 6, and Case C-299/01 *Commission* v *Luxembourg* [2002] ECR I-5899, paragraph 11).

25 It is agreed in the present case that on 1 September 2002, being the date on which the period specified in the reasoned opinion expired, the system of conformity plans had not yet come to an end.

26 It is therefore necessary to consider whether, on that date, the system complied with the obligations of the Republic of Spain under Article 4(1)(b) of Directive 89/655, as amended.

27 In terms of Article 4(1)(b) of Directive 89/655 in its original version, work equipment already provided to workers on 31 December 1992 was to comply with the minimum requirements laid down in the Annex to that directive no later than four years after that date, namely by 31 December 1996.

28 Therefore, according to the original wording of Directive 89/655, that equipment was no longer to be used after 1 January 1997, unless it complied with the minimum requirements referred to in the annex.

29 However, on 19 January 1996, that is to say prior to that date, Directive 95/63 entered into force.

30 The new Article 4(1)(c) of Directive 89/655, as amended, states that, notwithstanding points (a)(ii) and (b) of that article, specific work equipment subject to the requirements of point 3 of Annex I which was already provided to workers in the undertaking and/or establishment by 5 December 1998, was to comply with the minimum requirements laid down in Annex I no later than four years after that date.

31 The Commission's application must be understood as meaning that it refers only to those cases which are not subject to the derogation from Article 4(1)(b) of Directive 89/655, as amended, laid down in Article 4(1)(c) of that directive.

32 The scope of the second paragraph of point 1 of Annex I should be determined in regard to the work equipment subject to Article 4(1)(b) of Directive 89/655, as amended.

33 According to that provision, the minimum requirements laid down in Annex I to Directive 89/655, as amended, inasmuch as they apply to work equipment in use, do not necessarily call for the same measures as the essential requirements concerning new work equipment.

34 That provision must be understood as meaning that it also amends to some extent the scope of Article 4(1)(b) of Directive 89/655. As the Advocate General observed at point 18 of her Opinion, it authorises Member States to adopt provisions under which work equipment in use which, in essence, does 'not necessarily [fulfil] the same' requirements as new work equipment may continue to be used even after 31 December 1996.

35 The concession in relation to work equipment in use must be understood in the light of the minimum requirements laid down in Annex I to Directive 89/655, as amended, which, according to the second paragraph of point 1 thereof, continue to apply to that equipment. Inasmuch as the lastmentioned provision states that, as regards such equipment, the minimum requirements do not necessarily call for the same measures as the essential requirements concerning new work equipment, it must be interpreted as permitting a greater freedom of choice in the field of technical solutions if the measures taken are capable of securing the protection which those provisions are intended to achieve.

36 It should be borne in mind in that regard that, according to settled case-law, in relation to the transposition of a directive into the legal order of a Member State, it is essential for national law to guarantee that the national authorities will effectively apply the directive in full, that the legal position under national law is sufficiently precise and clear and that individuals are made fully aware of their rights and, where appropriate, may rely on them before the national courts (see, inter alia, Case C-365/93 *Commission* v *Greece* [1995] ECR I-499, paragraph 9, and Case C-65/01 *Commission* v *Italy* [2003] ECR I-3655, paragraph 20).

37 In the present case, the application of the conformity plans is admittedly subject to the existence of alternative preventive measures which guarantee appropriate health and safety conditions at the workplaces in question. In that context, however, the

Royal Decree makes no reference to the rules contained in Annex I to Directive 89/655, as amended. Only the first subparagraph of Article 1 of the sole transitional provision refers to Annex I of that provision, which corresponds to Annex I of Directive 89/655, as amended. By contrast, the following subparagraphs, which establish the system of conformity plans by way of derogation to the first subparagraph, do not refer to it. The Royal Decree is accordingly lacking in precision as regards the transposition, under that system, of the minimum requirements of Annex I to Directive 89/655, as amended, for work equipment in use.

38 Given that the second and third subparagraphs of Article 1 of the sole transitional provision of the decree fail, for that reason, to meet the requirements arising from Article 4(1)(b) of Directive 89/655, as amended, read in conjunction with Annex I to that directive, the Kingdom of Spain has therefore granted an additional adjustment period for work equipment already provided to workers in the undertaking and/or establishment before 27 August 1997.

39 It must accordingly be held that, by providing in Article 1 of the sole transitional provision of the Royal Decree laying down minimum health and safety requirements for the use of work equipment by workers an additional adjustment period for work equipment already provided to workers at the undertaking and/or establishment prior to 27 August 1997, the Kingdom of Spain has failed to fulfil its obligations under Article 4(1)(b) of Directive 89/655, as amended.

Costs

40 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.

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

1. **Declares that, by providing in Article 1 of the sole transitional provision of Royal Decree No 1215/1997 of 18 July 1997, laying down minimum health and safety requirements for the use of work equipment by workers an additional adjustment period for work equipment already provided to workers at the undertaking and/or establishment prior to 27 August 1997, the Kingdom of Spain has failed to fulfil its obligations under Article 4(1)(b) of Council Directive 89/655/EEC of 30 November 1989 concerning the minimum safety and health requirements for the use of work equipment by workers at work (second individual Directive within the meaning of Article 16(1) of Directive 89/391/EEC), as amended by Council Directive 95/63/EC of 5 December 1995;**

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

Signatures.