OPINION OF ADVOCATE GENERAL GEELHOED

delivered on 3 May 2001 [1]

1. In the present case, the Commission of the European Communities has applied to the Court, pursuant to Article 226 EC, for a declaration that the Republic of Austria has failed to fulfil its obligations under Commission Directive 97/59/EC of 7 October 1997 adapting to technical progress Council Directive 90/679/EEC on the protection of workers from risks related to exposure to biological agents at work (seventh individual Directive within the meaning of Article 16(1) of Directive 89/391/EEC). [2]

2. Member States were required under Article 2 of the Directive to adopt all necessary laws, regulations and administrative provisions at the latest on 31 March 1998. They were to inform the Commission immediately of such measures.

3. Neither in the pre-litigation nor in the litigation phase has the Government of Austria denied the infringement. It has explained the state of affairs in relation to the legislative process and pointed out that, in view of Austria's constitutional structure internally, a series of special implementing measures are necessary, that is to say at the level of the *Länder*. The Austrian Government adds, in its defence, that, although the time-limit laid down in the reasoned opinion has already expired, a number of measures have been adopted at both the federal and *Länder* levels. The Commission took note of that information, but at the same time found that the Directive has not yet been completely implemented in a number of areas nor at all levels of the Federal State.

4. In an action under Article 226 EC, the issue of whether a Member State has failed to fulfil its obligations must be determined by reference to the situation in the Member State as it was at the end of the period prescribed in the reasoned opinion. As Austria had not fulfilled its obligations and even now has not completely fulfilled its obligations under the Directive, the Commission's application must be allowed. In that regard, I would note that, according to settled case-law, reliance on the internal constitutional structure cannot be pleaded as a defence.

1 — Original language: Dutch.

2 — OJ 1997 L 282, p. 33, hereinafter 'the Directive'.

Conclusion

5. In the light of the facts and circumstances set out above, I propose that the Court should:

(1) declare that, by failing to adopt the laws, regulations and administrative provisions necessary to comply with Commission Directive 97/59/EC of 7 October 1997 adapting to technical progress Council Directive 90/679/EEC on the protection of workers from risks related to exposure to biological agents at work (seventh individual Directive within the meaning of Article 16(1) of Directive 89/391/EEC), the Republic of Austria has failed to fulfil its obligations under that directive.

(2) order the Republic of Austria to pay the costs of the proceedings pursuant to Article 69(2) of the Rules of Procedure.