JUDGMENT OF THE COURT (Fourth Chamber)

21 June 2001 *

In Case C-439/00,

Commission of the European Communities, represented by M. Nolin, acting as Agent, with an address for service in Luxembourg,

applicant,

v

French Republic, represented by G. de Bergues and S. Pailler, acting as Agents, with an address for service in Luxembourg,

defendant,

APPLICATION for a declaration that, by failing to adopt all the laws, regulations and administrative measures necessary to comply with Directive 98/4/EC of the

* Language of the case: French.

European Parliament and of the Council of 16 February 1998 amending Directive 93/38/EEC coordinating the procurement procedures of entities operating in the water, energy, transport and telecommunications sectors (OJ 1998 L 101, p. 1) or, at all events, by failing to communicate the same to the Commission, the French Republic has failed to comply with its obligations under that directive,

THE COURT (Fourth Chamber),

composed of: A. La Pergola, President of the Chamber, S. von Bahr (Rapporteur) and C.W.A. Timmermans, Judges,

Advocate General: J. Mischo,
Registrar: R. Grass,

having regard to the report of the Judge-Rapporteur,

after hearing the Opinion of the Advocate General at the sitting on 2 May 2001,

gives the following

Judgment

1 By application lodged at the Registry of the Court on 28 November 2000, the Commission of the European Communities brought this action under Article 226 EC for a declaration that, by failing to adopt all the laws, regulations and administrative measures necessary to comply with Directive 98/4/EC of the European Parliament and of the Council of 16 February 1998, amending Directive 93/38/EEC coordinating the procurement procedures of entities operating in the water, energy, transport and telecommunications sectors (OJ 1998 L 101, p. 1) or, at all events, by failing to communicate the same to the Commission, the French Republic has failed to comply with its obligations under that directive.

2 Under Article 2(1) of Directive 98/4 Member States were to bring into force the laws, regulations and administrative measures necessary to comply with the directive by 16 February 1999 and to inform the Commission thereof forthwith.

3 Taking the view that Directive 98/4 had not been transposed into French law within the prescribed period, the Commission started the procedure in respect of failure to fulfil Treaty obligations. Having given the French Republic formal notice to submit its observations, the Commission, on 18 February 2000, sent a reasoned opinion to the French Republic requesting it to adopt the measures necessary to comply with it within two months from the date of notification of the opinion. Since it received no information as to whether the transposition of the directive had been completed, the Commission brought the present action.

4 Pointing out the obligations of the Member States under the third paragraph of Article 249 EC, the Commission submits that the French Republic was required to take the measures necessary to comply with Directive 98/4 within the prescribed period.

5 The French Republic, which does not deny the failure, states that Directive 98/4 is in the course of transposition.

6 Since the directive has thus not been transposed within the prescribed period, the Commission's action must be regarded as well founded.

7 It must therefore be held that, by failing to adopt, within the prescribed period, all the laws, regulations and administrative measures necessary to comply with Directive 98/4, the French Republic has failed to fulfil its obligations under that directive.

Costs

8 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 French Republic has been unsuccessful, the latter must be ordered to pay the costs.

On those grounds,

THE COURT (Fourth Chamber),

hereby:

1. Declares that, by failing to adopt, within the prescribed period, all the laws, regulations and administrative measures necessary to comply with Directive 98/4/EC of the European Parliament and of the Council of 16 February 1998 amending Directive 93/38/EEC coordinating the procurement procedures of entities operating in the water, energy, transport and telecommunications sectors, the French Republic has failed to comply with its obligations under that directive.

2. Orders the French Republic to pay the costs.

La Pergola von Bahr Timmermans

Delivered in open court in Luxembourg on 21 June 2001.

R. Grass

Registrar

A. La Pergola

President of the Fourth Chamber