JUDGMENT OF THE COURT (Fifth Chamber)

11 November 1999 *

In Case C-315/98,

Commission of the European Communities, represented by B. Mongin and L. Pignataro, of its Legal Service, acting as Agents, 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

Italian Republic, represented by Professor U. Leanza, Head of the Legal Service of the Ministry of Foreign Affairs, acting as Agent, assisted by D. Del Gaizo, Avvocato dello Stato, with an address for service in Luxembourg at the Italian Embassy, 5 Rue Marie Adélaide,

defendant,

APPLICATION for a declaration that, by failing to adopt the laws, regulations and administrative provisions necessary to implement Council Directive 95/21/

* Language of the case: Italian.

EC of 19 June 1995 concerning the enforcement, in respect of shipping using Community ports and sailing in the waters under the jurisdiction of the Member States, of international standards for ship safety, pollution prevention and shipboard living and working conditions (port State control) (OJ 1995 L 157, p. 1) the Italian Republic has failed to fulfil its obligations under that Directive and the EC Treaty,

THE COURT (Fifth Chamber),

composed of: D.A.O. Edward, President of the Chamber, J.C. Moitinho de Almeida, L. Sevón (Rapporteur), C. Gulmann 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 23 September 1999,

gives the following

Judgment

1 By an application lodged at the Registry of the Court on 12 August 1998, 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 implement Council Directive 95/21/EC of 19 June 1995 concerning the enforcement, in respect of shipping using Community ports and sailing in the waters under the jurisdiction of the Member States, of international standards for ship safety, pollution prevention and shipboard living and working conditions (port State control) (OJ 1995 L 157, p. 1, hereinafter 'the Directive'), the Italian Republic has failed to fulfil its obligations under the directive and the EC Treaty.

2 Article 20(1) of the Directive requires the Member States to adopt the laws, regulations and administrative provisions necessary to implement the Directive not later than 30 June 1996 and forthwith to inform the Commission thereof.

3 By letter of 16 January 1997, the Commission, having received no notification from the Italian Government as to the transposition of the Directive into Italian law and having no access to any other information in that connection, gave the Italian Government formal notice to submit its observations within two months.

4 By letter of 30 April 1997 the Italian Government indicated that the Directive had been included in Annex D to the 1995-1996 Community bill.

5 Observing that no measure had been adopted to transpose the Directive, the Commission sent the Italian Government on 24 November 1997 a reasoned opinion calling upon it to adopt the measures necessary to implement the Directive within two months from the date of service.

6 On 13 February 1998 the Italian Government sent the Commission a draft regulation transposing the Directive. On 26 May 1998 the Italian Government sent the 1995-1996 Community Law No 128 of 24 April 1998, Annex D to which contains the Directive as well as certain other directives which have yet to be implemented by ministerial regulation.

7 However, the Commission, observing that the Directive had still not been implemented pursuant to Law No 128, brought this action.

8 The Italian Government claims that the provisions of the Directive have already been implemented by numerous circulars issued after an initial circular from the Ministry of the Merchant Navy, Series III, No 60 of 22 June 1982, which was adopted in implementation of the 1982 Paris Memorandum of Agreement and of the International Maritime Organisation resolutions on port State control, instruments which were, in substance, essentially incorporated in the Directive.

9 It also points out that the draft ministerial regulation has reached an advanced stage of the adoption procedure.

10 As regards the various circulars produced by the Italian Republic, it is sufficient to observe that it is settled case-law that mere administrative practices, which by their nature are alterable at will by the authorities and are not given the appropriate publicity, cannot be regarded as constituting the proper fulfilment of a Member State's obligations under the Treaty (see, in particular, Case C-316/96 *Commission* v *Italy* [1997] ECR I-7231, paragraph 16).

11 As regards the adoption of the draft ministerial regulation, it should be pointed out that, in an action under Article 169 of the Treaty, the question whether a Member State has failed to fulfil its obligations must be determined by reference to the situation prevailing in the Member State at the end of the period laid down in the reasoned opinion and that the Court cannot take account of any subsequent changes (*Commission* v *Italy*, cited above, paragraph 14).

12 It must therefore be held that, by failing to adopt the laws, regulations and administrative provisions necessary to implement the Directive within the prescribed period, the Italian Republic has failed to fulfil its obligations under the Directive.

Costs

13 Article 69(2) of the Rules of Procedure provides that 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 Italian Republic has been unsuccessful, the Italian Republic must be ordered to pay the costs.

On those grounds,

THE COURT (Fifth Chamber),

hereby rules:

1. **By failing to adopt the laws, regulations and administrative provisions necessary to implement Council Directive 95/21/EC of 19 June 1995 concerning the enforcement, in respect of shipping using Community ports and sailing in the waters under the jurisdiction of the Member States, of international standards for ship safety, pollution prevention and shipboard living and working conditions (port State control) within the prescribed period, the Italian Republic has failed to fulfil its obligations under that directive.**

2. **The Italian Republic is ordered to pay the costs.**

Edward Moitinho de Almeida Sevón

Gulmann Puissochet

Delivered in open court in Luxembourg on 11 November 1999.

R. Grass

Registrar

D.A.O. Edward

President of the Fifth Chamber