JUDGMENT OF THE COURT (Third Chamber)

23 November 2000 *

In Case C-319/99,

Commission of the European Communities, represented by M. Nolin, of its Legal Service, acting as Agent, with an address for service in Luxembourg at the office of C. Gómez de la Cruz, of the same service, Wagner Centre, Kirchberg,

applicant,

v

French Republic, represented by K. Rispal-Bellanger, Head of Subdirectorate in the Legal Affairs Directorate of the Ministry of Foreign Affairs, and A. Maitrepierre, Chargé de Mission in the same directorate, acting as Agents, with an address for service in Luxembourg at the French Embassy, 8B Boulevard Joseph II,

defendant,

* Language of the case: French.

APPLICATION for a declaration that, by not communicating within the prescribed period the laws, regulations and administrative provisions necessary to comply with Directive 95/47/EC of the European Parliament and of the Council of 24 October 1995 on the use of standards for the transmission of television signals (OJ 1995 L 281, p. 51) or by not taking the measures necessary to comply therewith, the French Republic has failed to fulfil its obligations under that directive,

THE COURT (Third Chamber),

composed of: C. Gulmann (Rapporteur), President of the Chamber, J.-P. Puissochet and F. Macken, Judges,

Advocate General: A. Saggio,
Registrar: R. Grass,

having regard to the report of the Judge-Rapporteur,

after hearing the Opinion of the Advocate General at the sitting on 20 June 2000,

gives the following

Judgment

1 By application lodged at the Court Registry on 26 August 1999, the Commission of the European Communities brought an action under Article 226 EC for a declaration that, by not communicating within the prescribed period the laws, regulations and administrative provisions necessary to comply with Directive 95/47/EC of the European Parliament and of the Council of 24 October 1995 on the use of standards for the transmission of television signals (OJ 1995 L 281, p. 51) or by not taking the necessary measures to comply therewith, the French Republic has failed to fulfil its obligations under that directive.

2 Under Article 8 of Directive 95/47, Member States were to bring into force the laws, regulations and administrative provisions necessary to comply with that directive within nine months of its entry into force and forthwith to inform the Commission thereof. As the directive entered into force on 23 November 1995, the period for transposition allowed to the Member States expired on 23 August 1996.

3 Since the French Republic had not informed it of any measure relating to the transposition of Directive 95/47, the Commission sent a letter of formal notice to the French Republic on 16 January 1997, calling on it to submit its observations within a period of two months on what, in the absence of information, was presumed to be the lack of provisions necessary to transpose that directive into domestic law.

4 On 14 October 1998 the Commission, which had still received no information from the French Government concerning the transposition of the directive, sent a reasoned opinion to the French Republic stating that, by not taking, or by not communicating, the laws, regulations and administrative provisions necessary to comply with Directive 95/47, it had failed to fulfil its obligations under that directive and calling on it to comply with that opinion within two months of its notification.

5 By letter of 15 December 1998 the French Government informed the Commission that the delay in transposing Directive 95/47 was due to a change of government. It requested a further two months in order to draw up a precise timetable for the transposition of Directive 95/47 and sought a meeting with the competent services of the Commission in order to present the measures for the transposition of the directive that were being prepared. That meeting took place on 22 January 1999.

6 On 8 June 1999 the French Government informed the Commission that an amendment transposing Directive 95/47 had been adopted by the National Assembly on 26 May 1999 in the debate following the first reading of a bill on radio and television matters. It stated that the bill would be examined in the Senate in autumn 1999.

7 On 23 August 1999, when no measure for the transposition of Directive 95/47 had been communicated by the French authorities, the Commission decided to bring the present action.

8 In its defence, the French Government does not deny that the domestic provisions necessary for the implementation of Directive 95/47 have not been adopted. It confines itself to confirming that the implementing procedures are in progress and that they should result in the definitive adoption of the legislative provisions described in its letter of 8 June 1999 in reply to the reasoned opinion, and also in the adoption of a series of measures of a regulatory nature. In any event, the French Government gives its assurance that it has a made a very great effort to ensure that Directive 95/47 is transposed as soon as possible.

9 The French Government observes that the period of nine months prescribed in Article 8 of Directive 95/47 for its transposition by Member States was particularly short, especially in the light of the fact that, pursuant to Article 7, that directive was to replace, by repealing it, Council Directive 92/38/EEC of 11 May 1992 on the adoption of standards for satellite broadcasting of television signals (OJ 1992 L 137, p. 17). That situation is not at all simple in terms of legal certainty and it makes the transposition of the directive into domestic law particularly complex. The Government recognises, however, that the brevity of the period within which Member States were to transpose the directive cannot validly justify its delay in adopting the national measures necessary for its transposition.

10 In that regard, the Court would point out, first, that, according to settled case-law, a Member State may not plead provisions, practices or circumstances

existing 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-470/98 *Commission* v *Greece* [2000] ECR I-4657, paragraph 11) and, second, that the governments of the Member States participate in the preparatory work for directives and must therefore be in a position to prepare within the period prescribed the legislative provisions necessary for their implementation (see Case 301/81 *Commission* v *Belgium* [1983] ECR 467, paragraph 11).

11 Since, in the present case, Directive 95/47 was not transposed within the period laid down in that directive, the action brought by the Commission must be considered well founded.

12 Accordingly, it must be held that, by failing to adopt within the prescribed period the laws, regulations and administrative provisions necessary to comply with Directive 95/47, the French Republic has failed to fulfil its obligations under that directive.

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 and the French Republic has been unsuccessful, the latter 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 Directive 95/47/EC of the European Parliament and of the Council of 24 October 1995 on the use of standards for the transmission of television signals, the French Republic has failed to fulfil its obligations under that directive.**

2. **Orders the French Republic to pay the costs.**

Gulmann Puissochet Macken

Delivered in open court in Luxembourg on 23 November 2000.

R. Grass C. Gulmann

Registrar President of the Third Chamber