JUDGMENT OF THE COURT (Fourth Chamber)
15 May 2003 *

In Case C-483/01,

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

applicant,

v

French Republic, represented by G. de Bergues and C. Isidoro, acting as Agents,

defendant,

APPLICATION for a declaration that by failing to adopt and, in any event, by failing to communicate to the Commission the laws, regulations and administrative provisions necessary to comply with Council Directive 96/29/Euratom of 13 May 1996 laying down basic safety standards for the protection of the health of workers and the general public against the dangers arising from ionising

* Language of the case: French.

radiation (OJ 1996 L 159, p. 1), the French Republic has failed to fulfil its obligations under that directive,

THE COURT (Fourth Chamber),

composed of: C.W.A. Timmermans (Rapporteur), President of the Chamber, D.A.O. Edward and A. La Pergola, Judges,

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

having regard to the Report of the Judge-Rapporteur,

after hearing the Opinion of the Advocate General at the sitting on 16 January 2003,

gives the following

Judgment

1 By application lodged at the Court Registry on 13 December 2001, the Commission of the European Communities brought an action under the second paragraph of Article 141 EA for a declaration that by failing to adopt and, in any

event, by failing to communicate to it the laws, regulations and administrative provisions necessary to comply with Council Directive 96/29/Euratom of 13 May 1996 laying down basic safety standards for the protection of the health of workers and the general public against the dangers arising from ionising radiation (OJ 1996 L 159, p. 1; 'the Directive'), the French Republic has failed to fulfil its obligations under that directive.

Relevant provisions

The EAEC Treaty

2 Article 2(b) EA states that the Community must, as provided in the EAEC Treaty, 'establish uniform safety standards to protect the health of workers and of the general public and ensure that they are applied'.

3 In this context, the first paragraph of Article 30 EA requires in particular the establishment in the Community of 'basic standards for the protection of the health of workers and the general public against the dangers arising from ionising radiations'.

4 As provided in the second paragraph of that article, the expression 'basic standards' means:

'(a) maximum permissible doses compatible with adequate safety;

(b) maximum permissible levels of exposure and contamination;

(c) the fundamental principles governing the health surveillance of workers'.

5 Article 31 EA lays down the procedure for working out and adopting those basic standards, whilst the first paragraph of Article 32 EA enables them to be revised or updated, at the request of the Commission or of a Member State, in accordance with the procedure laid down in Article 31 EA.

6 Finally, Article 33 EA provides:

'Each Member State shall lay down the appropriate provisions, whether by legislation, regulation or administrative action, to ensure compliance with the basic standards which have been established and shall take the necessary measures with regard to teaching, education and vocational training.

The Commission shall make appropriate recommendations for harmonising the provisions applicable in this field in the Member States.

To this end, the Member States shall communicate to the Commission the provisions applicable at the date of entry into force of this Treaty and any subsequent draft provisions of the same kind.

Any recommendations the Commission may wish to issue with regard to such draft provisions shall be made within three months of the date on which such draft provisions are communicated.'

The Directive

7 The Directive, which was adopted on the basis of Articles 31 and 32 of the EAEC Treaty, has the objective of revising the existing basic standards by taking account of the development of scientific knowledge concerning radiation protection. As stated in the ninth recital in its preamble, the Directive provides in particular that the Member States are required to submit certain practices involving a hazard from ionising radiation to a system of reporting and prior authorisation or to prohibit such practices.

8 As regards implementation of the Directive in national law, Article 55 thereof provides:

'1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive before 13 May 2000. They shall forthwith inform the Commission thereof.

...

2. Member States shall communicate to the Commission the text of the main laws, regulations or administrative provisions which they adopt in the field governed by this Directive.'

Pre-litigation procedure

9 By letter received on 17 April 2000, the French authorities sent to the Commission, in accordance with the third paragraph of Article 33 EA, the text of draft provisions intended to transpose the Directive into national law. The draft provisions were not the subject of any recommendation within the meaning of the fourth paragraph of that article.

10 Since the Commission had not been informed by the French Government of the provisions finally adopted to comply with the Directive and, moreover, did not have any other information from which it could conclude that the French Republic had complied with its obligations in that regard, on 28 July 2000 it initiated the procedure provided for in Article 141 EA by sending to that Member State a letter of formal notice calling on it to submit its observations on the alleged infringement within a period of two months from receipt of the letter.

11 The French authorities replied by letter of 2 October 2000. Stating first of all that publication of Directive 96/29 and Council Directive 97/43/Euratom of 30 June 1997 on health protection of individuals against the dangers of ionising radiation in relation to medical exposure, and repealing Directive 84/466/Euratom (OJ 1997 L 180, p. 22) had generated a vast amount of rewriting of existing laws and regulations in the Public Health Code and the Employment Code, they contended that Parliament's workload made it difficult, indeed even impossible, to adopt rapidly the legislative measures necessary to implement those directives. Consequently, they had decided to propose to Parliament that it empower the French Government to implement the directives by means of orders, so as to reduce to a minimum the periods needed in order to legislate. According to the French Government, implementation was, however, to be effective from the autumn of 2001 only, given the periods necessary for approval of the enabling Law and for adoption of the orders and decrees needed in order to transpose the directives.

12 In those circumstances the Commission, taking the view that the French Republic had not adopted the measures necessary for implementation of the Directive or, in any event, had not communicated them to it, issued a reasoned opinion on 17 January 2001 in which it called on that Member State to adopt the measures required in order to comply with the obligations arising under the Directive within a period of two months from receipt of the reasoned opinion.

13 The French authorities responded to the reasoned opinion in four stages.

14 By letter of 5 March 2001, received by the Commission on 12 March 2001, the French authorities responded to the reasoned opinion by essentially reiterating the terms of the draft Law and regulations intended to transpose the Directive into national law.

15 By letter of 30 May 2001, they notified to the Commission, pursuant to Article 33 EA, the text of ordonnance no 2001-270, du 28 mars 2001, relative à la transposition de directives communautaires dans le domaine de la protection contre les rayonnements ionisants (Order No 2001-270 of 28 March 2001 relating to the implementation of Community directives in the field of protection against ionising radiation), published in the *Journal officiel de la République française* of 31 March 2001, p. 5056.

16 By letter of 20 July 2001, the French authorities sent, pursuant to the third paragraph of Article 33 EA, a copy of a draft decree concerning 'the obligation to maintain, and the quality control of, the medical devices envisaged in Article L. 5212-1 of the Public Health Code'.

17 Finally, by letter of 18 September 2001, they sent the text of décret no 2001-215, du 8 mars 2001, modifiant le décret no 66-450 du 20 juin 1966, relatif aux principes généraux de protection contre les rayonnements ionisants (Decree No 2001-215 of 8 March 2001 amending Decree No 66-450 of 20 June 1966 relating to the general principles of protection against ionising radiation), published in the *Journal officiel de la République française* of 10 March 2001, p. 3869.

18 Since the Commission considered that those legislative texts implemented the Directive only partially, it decided to bring the present action.

The failure to fulfil obligations

19 The Commission contends that the French Republic has failed to fulfil its obligations under the Directive because, notwithstanding expiry of the period prescribed by Article 55(1) thereof, it has not yet adopted all the measures necessary for transposition of the Directive into domestic law and, in any event, has not communicated those measures to it.

20 The French Government does not contest the breach of obligations alleged. It merely states that the procedure for adoption of the legislation implementing Order No 2001-270 is proving lengthier than envisaged in particular because of the need to seek the opinion of a number of bodies and that that legislation will be submitted to the Court and the Commission as soon as it has been adopted.

21 It need merely be observed with regard to that submission that, in accordance with settled case-law, a Member State may not plead provisions, practices or

situations in its internal legal order to justify a failure to comply with the obligations and time-limits laid down in a directive (see, *inter alia*, Case C-286/01 *Commission* v *France* [2002] ECR I-5463, paragraph 13).

22 In those circumstances, the action brought by the Commission must be considered well founded since it is not disputed that on expiry of the period laid down in the reasoned opinion — a time-limit which is decisive when establishing whether a Member State has failed to fulfil its obligations (see, *inter alia*, Case C-173/01 *Commission* v *Greece* [2002] ECR I-6129, paragraph 7) — the French Government had not adopted all the measures necessary for transposition of the Directive.

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

Costs

24 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, the laws, regulations and administrative provisions necessary to comply with Council Directive 96/29/Euratom of 13 May 1996 laying down basic safety standards for the protection of the health of workers and the general public against the dangers arising from ionising radiation, the French Republic has failed to fulfil its obligations under that directive;

2. Orders the French Republic to pay the costs.

Timmermans Edward La Pergola

Delivered in open court in Luxembourg on 15 May 2003.

R. Grass
Registrar

C.W.A. Timmermans
President of the Fourth Chamber