JUDGMENT OF THE COURT (Fourth Chamber)

18 January 2001 *

In Case C-151/00,

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

applicant,

v

French Republic, represented by K. Rispal-Bellanger and A. Lercher, acting as Agents, with an address for service in Luxembourg,

defendant,

APPLICATION for a declaration that, by failing to bring into force and to communicate to the Commission within the prescribed period the national measures transposing Articles 4(2), 6(1), (3) and (4), 7, 8(2), (3), (4) and (6), 11(2) and 12 of Directive 97/66/EC of the European Parliament and of the Council of 15 December 1997 concerning the processing of personal data and the protection of privacy in the telecommunications sector (OJ 1998 L 24, p. 1), the

* Language of the case: French.

French Republic has failed to fulfil its obligations under Article 15 of that directive,

THE COURT (Fourth Chamber),

composed of: A. La Pergola, President of the Chamber, D.A.O. Edward (Rapporteur) and S. von Bahr, Judges,

Advocate General: S. Alber,
Registrar: R. Grass,

having regard to the report of the Judge-Rapporteur,

after hearing the Opinion of the Advocate General at the sitting on 26 October 2000,

gives the following

Judgment

1 By application lodged at the Court Registry on 19 April 2000, the Commission of the European Communities brought an action under Article 226 EC for a

declaration that, by failing to bring into force and to communicate to the Commission within the prescribed period the national measures transposing Articles 4(2), 6(1), (3) and (4), 7, 8(2), (3), (4) and (6), 11(2) and 12 of Directive 97/66/EC of the European Parliament and of the Council of 15 December 1997 concerning the processing of personal data and the protection of privacy in the telecommunications sector (OJ 1998 L 24, p. 1), the French Republic has failed to fulfil its obligations under Article 15 of that directive.

2 Under Article 15(1) of Directive 97/66, Member States were to bring into force the laws, regulations and administrative provisions necessary for them to comply with that directive not later than 24 October 1998 or, with regard to Article 5 thereof, not later than 24 October 2000. In addition, under Article 15(4), Member States were to communicate to the Commission the text of the provisions of national law which they had adopted in the field governed by that directive.

3 Since it had not received any communication from the French Government concerning measures to transpose Directive 97/66, by letter of 3 February 1999 the Commission gave the French Government formal notice to submit its observations in that regard within two months from the date of receipt of that letter.

4 By letter of 12 April 1999, the Permanent Representation of France to the European Union informed the Commission that Directive 97/66 had already been

partially transposed into French law. The French authorities explained that the articles of Directive 97/66 which had not yet been transposed would be transposed by a decree amending Article D.98-1 of the Code des postes et télécommunications (Postal and Telecommunications Code), the adoption of which was announced for the end of the first half of 1999. They further added that Article 12 of Directive 97/66 would be transposed at the same time as Directive 97/7/EC of the European Parliament and of the Council of 20 May 1997 on the protection of consumers in respect of distance contracts (OJ 1997 L 144, p. 19), and that the need to refer to the provisions of Article 3(3) of Directive 97/66 was under consideration.

5 Since the measures announced had not been adopted by the French Government or, in any event, had not been communicated, the Commission sent a reasoned opinion to the French Republic on 23 July 1999 requesting it to complete the transposition of Directive 97/66 within two months of the notification of the opinion. On 22 October 1999, in a reply common to several sets of infringement proceedings, the French authorities gave details of the preparations in progress for the transposition of Directive 97/66.

6 Having received no further information from the French Government to indicate that the measures necessary for the transposition of Directive 97/66 had been definitively adopted and had entered into force, the Commission brought the present action.

7 The French Government does not dispute its obligation to transpose the provisions of Directive 97/66 into national law and acknowledges its delay in

transposing that directive. It points out that the transposition of Directive 97/66 requires a revision of the Code des postes et télécommunications, that the transposition process has been started and that it will reach its completion very shortly.

8 Since the directive was not transposed within the period laid down therein, the Commission's application must be considered to be well founded.

9 It must therefore be held that, by failing to bring into force within the prescribed period the national measures transposing Articles 4(2), 6(1), (3) and (4), 7, 8(2), (3), (4) and (6), 11(2) and 12 of Directive 97/66, the French Republic has failed to fulfil its obligations under Article 15 of that directive.

Costs

10 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 bring into force within the prescribed period the national measures transposing Articles 4(2), 6(1), (3) and (4), 7, 8(2), (3), (4) and (6), 11(2) and 12 of Directive 97/66/EC of the European Parliament and of the Council of 15 December 1997 concerning the processing of personal data and the protection of privacy in the telecommunications sector, the French Republic has failed to fulfil its obligations under Article 15 of that directive;**

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

La Pergola Edward von Bahr

Delivered in open court in Luxembourg on 18 January 2001.

R. Grass

Registrar

A. La Pergola

President of the Fourth Chamber