JUDGMENT OF THE COURT (Second Chamber)

8 June 2000 *

In Case C-46/99,

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

applicant,

v

French Republic, represented by K. Rispal-Bellanger, Head of the Subdirectorate in the Legal Affairs Directorate of the Ministry of Foreign Affairs, and C. Bergeot, 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,

APPLICATION for a declaration that, by failing to adopt and, in the alternative, by failing to communicate to the Commission within the prescribed period, the

* Language of the case: French.

laws, regulations and administrative provisions necessary fully to comply with Council Directive 93/104/EC of 23 November 1993 concerning certain aspects of the organisation of working time (OJ 1993 L 307, p. 18) the French Republic has failed to fulfil its obligations under the EC Treaty and that directive,

THE COURT (Second Chamber),

composed of: R. Schintgen, President of the Chamber, G. Hirsch and V. Skouris (Rapporteur), 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 22 February 2000,

gives the following

Judgment

1 By application lodged at the Registry of the Court on 16 February 1999 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 and, in the alternative, by failing to communicate to the Commission within the prescribed period, the laws, regulations and administrative provisions necessary fully to comply with Council Directive 93/104/EC of 23 November 1993 concerning certain aspects of the organisation of working time (OJ 1993 L 307, p. 18, hereinafter 'the Directive'), the French Republic has failed to fulfil its obligations under the EC Treaty and the Directive.

2 Articles 18(1)(a) and (c) of the Directive provide that the Member States are to adopt the laws, regulations and administrative provisions necessary to comply with the Directive by 23 November 1996, or to ensure by that date that the two sides of industry establish the necessary measures by agreement, the Member States being obliged to take any necessary steps to enable them to guarantee at all times that the provisions laid down by the Directive are fulfilled; and that the Member States are to inform the Commission thereof forthwith.

3 By letter of 13 March 1997 the French Government informed the Commission that French law already complied with most of the provisions in the Directive and that, before the end of the first half of 1997, it would be submitting to the Parliament a draft law containing the supplementary provisions necessary to effect complete transposition of the Directive.

4 Since the French Republic had not communicated to it the provisions adopted in order to comply with the Directive, and in the absence of any other information

enabling it to conclude that the French Republic had taken the requisite measures to that end, the Commission initiated the procedure under Article 169 of the Treaty.

5 By letter of 30 May 1997 the Commission sent the French Republic a letter of formal notice calling upon it to submit within two months its observations on the failure of which it was accused.

6 The French authorities did not reply to that letter.

7 Since the Commission received no communication concerning the measures adopted by the French Republic, by letter of 20 January 1998 it sent a reasoned opinion to the French Republic in which it repeated the observations in the letter of formal notice and requested the French Republic to comply with that opinion within two months of notification thereof.

8 By letter of 13 March 1998 the French authorities replied to the reasoned opinion, first of all by reiterating that numerous national provisions already complied with the Directive and, secondly, by pointing out that the provision in the Directive on the period of weekly rest was soon to be transposed by a draft law which also transposes Council Directive 94/33/EC of 22 June 1994 on the protection of young people at work (OJ 1994 L 216, p. 12).

9 Since it considered that the French Republic had not fully complied with its obligations under the Directive, the Commission brought this action.

10 The French Republic, repeating its claim that national law on working time, weekly rest and paid holidays already complies with the corresponding provisions of the Directive, does not dispute that it has failed to fulfil its obligations as alleged, since it accepts that the provisions relating to night work (Section III of the Directive) and the 24-hour weekly rest period, plus the 11-hour daily rest period, have yet to be transposed into French law. The French Government points out in that connection that in order to transpose those provisions, it has been necessary, owing to the difficulties which they raise in connection with French social law, to obtain a detailed expert's report from the competent authorities. It adds that the law which will fully transpose the Directive is in the course of being approved.

11 It follows from the foregoing that the Directive has not been completely transposed within the period prescribed therein, and that the Commission's action must therefore be held to be well founded.

12 Consequently, it must 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

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

On those grounds,

THE COURT (Second Chamber),

hereby:

1. **Declares that, by failing to adopt within the prescribed period all the laws, regulations and administrative provisions necessary to comply with Council Directive 93/104/EC of 23 November 1993 concerning certain aspects of the organisation of working time, the French Republic has failed to fulfil its obligations under that directive;**

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

Schintgen Hirsch Skouris

Delivered in open court in Luxembourg on 8 June 2000.

R. Grass

Registrar

R. Schintgen

President of the Second Chamber