JUDGMENT OF THE COURT (Fourth Chamber)

8 March 2001 *

In Case C-97/00,

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

applicant,

v

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

defendant,

APPLICATION for a declaration that, by failing to communicate the laws, regulations and administrative provisions necessary to comply with all the provisions of European Parliament and Council Directive 97/52/EC of 13 October 1997 amending Directives 92/50/EEC, 93/36/EEC and 93/37/EEC concerning the coordination of procedures for the award of public service contracts, public supply contracts and public works contracts respectively (OJ 1997 L 328, p. 1),

* Language of the case: French.

or by failing to adopt the measures necessary to comply therewith, the French Republic has failed to fulfil its obligations under that directive,

THE COURT (Fourth Chamber),

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

Advocate General: J. Mischo,

Registrar: R. Grass,

having regard to the Report of the Judge-Rapporteur,

after hearing the Opinion of the Advocate General at the sitting on 14 December 2000,

gives the following

Judgment

1 By application lodged at the Court Registry on 13 March 2000, the Commission of the European Communities brought an action under Article 226 EC for a

declaration that, by failing to communicate the laws, regulations and administrative provisions necessary to comply with all the provisions of European Parliament and Council Directive 97/52/EC of 13 October 1997 amending Directives 92/50/EEC, 93/36/EEC and 93/37/EEC concerning the coordination of procedures for the award of public service contracts, public supply contracts and public works contracts respectively (OJ 1997 L 328, p. 1; 'the Directive'), or by failing to adopt the measures necessary to comply therewith, the French Republic has failed to fulfil its obligations under the Directive.

2 As provided by the first subparagraph of Article 4(1) of the Directive, the Member States were to bring into force the laws, regulations and administrative provisions necessary to comply with the Directive by 13 October 1998 and forthwith to inform the Commission thereof.

3 Since the Commission received no communication from the French Government concerning measures for transposing the Directive and had no other information from which it could conclude that the French Republic had adopted the provisions necessary for that purpose, it gave that Member State formal notice by letter of 18 December 1998 to submit its observations in that regard within two months.

4 The letter of formal notice remained unanswered by the French authorities. In those circumstances the Commission, by letter of 3 September 1999, sent a reasoned opinion to the French Republic and called on it to comply with the opinion within two months from notification.

5 By letter of 6 January 2000 the French authorities informed the Commission that the process for adoption of a decree intended to transpose the Directive was underway and that the draft would be submitted shortly to the French Conseil d'État (Council of State). They also indicated that the Directive had already been partly transposed into French law by an Order of the Minister for Economic Affairs, Finance and Industry of 22 April 1998, setting the thresholds above which contract notices had to be published in the *Official Journal of the European Communities*.

6 Since the Commission received no information to the effect that the above-mentioned draft decree had been adopted, it brought the present action.

7 In its defence the French Government does not deny the infringement alleged against it. However, it asks the Court to find that the process for transposition of the Directive is in the course of being completed.

8 In this connection, the French Government points out, first, that the Directive has already been partly transposed by the Order of 22 April 1998 referred to in paragraph 5 of this judgment. Second, it states that a draft decree is undergoing interdepartmental examination and will be submitted to the Conseil d'État very shortly.

9 It should be remembered that, under the first paragraph of Article 10 EC, the Member States are to take all appropriate measures, whether general or

particular, to ensure fulfilment of the obligations arising out of the EC Treaty or resulting from action taken by the institutions of the Community. Such action includes directives which, pursuant to the third paragraph of Article 249 EC, are binding as to the result to be achieved upon each Member State to which they are addressed. That obligation involves, for each Member State to which a directive is addressed, the adoption, within the framework of its national legal system, of all the measures necessary to ensure that the directive is fully effective, in accordance with the objective which it pursues (see Case C-336/97 *Commission* v *Italy* [1999] ECR I-3771, paragraph 19).

10 In the present case, since the Directive was not fully transposed within the period set by it, the Commission's action must be considered well founded.

11 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

12 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 European Parliament and Council Directive 97/52/EC of 13 October 1997 amending Directives 92/50/EEC, 93/36/EEC and 93/37/EEC concerning the coordination of procedures for the award of public service contracts, public supply contracts and public works contracts respectively, the French Republic has failed to fulfil its obligations under that directive;**

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

La Pergola Edward von Bahr

Delivered in open court in Luxembourg on 8 March 2001.

R. Grass

Registrar

A. La Pergola

President of the Fourth Chamber