JUDGMENT OF THE COURT (Second Chamber)

13 February 2003 *

In Case C-85/02,

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

applicant,

v

French Republic, represented by G. de Bergues and S. Pailler, acting as Agents, with an address for service in Luxembourg,

defendant,

APPLICATION for a declaration that, by failing to adopt the laws, regulations and administrative provisions to implement point 12 of Annex II to Council Directive 91/439/EEC of 29 July 1991 on driving licences (OJ 1991 L 237, p. 1), and in any event by failing to notify the Commission of such provisions, the French Republic has failed to fulfil its obligations under that directive,

* Language of the case: French.

THE COURT (Second Chamber),

composed of: R. Schintgen (Rapporteur), President of the Chamber, V. Skouris and N. Colneric, Judges,

Advocate General: F.G. Jacobs,
Registrar: R. Grass,

having regard to the Report for the Hearing,

after hearing the Opinion of the Advocate General at the sitting on 12 December 2002,

gives the following

Judgment

1 By an application lodged at the Registry of the Court on 13 March 2002, the Commission of the European Communities brought an action under Article 226 EC for a declaration that, by failing to adopt the laws, regulations and administrative provisions to implement point 12 of Annex II to Council Directive 91/439/EEC of 29 July 1991 on driving licences (OJ 1991 L 237, p. 1, hereinafter the 'Directive'), and, in any event, by failing to notify such provisions to it, the French Republic has failed to fulfil its obligations under that Directive.

2 Under Article 7(1)(a) of the Directive, the issue of a driving licence is subject, *inter alia*, to the applicant's passing a test of skills and behaviour and a theoretical test, in accordance with the provisions of Annex II.

3 Under point 12 of Annex II to the Directive, the time spent driving in order to assess behaviour must in no circumstances be less than 25 minutes for licences in categories A, B and B + E.

4 Under Article 12(1) of the Directive, the Member States were, before 1 July 1994, to adopt the laws, regulations and administrative provisions necessary to comply with the Directive as of 1 July 1996.

5 In France the average duration of the practical test for obtaining a category B driving licence, which is laid down by administrative circular, is 22 minutes.

6 Taking the view that point 12 of Annex II to the Directive had not yet been implemented in French law, the Commission initiated the infringement procedure. After giving the French Republic formal notice to submit its observations, on 17 January 2001 the Commission sent a reasoned opinion to that Member State requesting it to adopt the measures necessary to comply with the Directive within a period of two months from the date of its notification.

7 On 28 March 2001, the French Government informed the Commission that it intended to implement the provision in question as soon as possible.

8 Since no measure implementing that provision was subsequently notified to it, the Commission decided to bring the present action.

9 Pointing to the obligations incumbent on the Member States under the first paragraph of Article 10 EC and the third paragraph of Article 249 EC, the Commission maintains that the French Republic was required to take all the necessary measures to comply with the Directive within the prescribed period and to notify them to the Commission forthwith.

10 The French Government does not deny that it failed to implement the Directive within the prescribed period. However, it states that at the time of its implementation it encountered problems of a practical nature, relating to the number of inspectors needed to ensure proper implementation of point 12 of Annex II to the Directive. Measures are in the process of being adopted to bring an end to the infringement. New inspectors have thus already been recruited and further posts created for recruitment.

11 In that regard, it must be observed that it is settled case-law that the question whether a Member State has failed to fulfil its obligations must be determined by reference to the situation prevailing in that Member State at the end of the period laid down in the reasoned opinion and that the Court cannot take account of any subsequent changes (see, *inter alia*, Case C-394/00 *Commission* v *Ireland* [2002] ECR I-581, paragraph 12).

12 It is common ground in this case that the French Republic failed to take the necessary measures to comply with the reasoned opinion within the period allowed.

13 Furthermore, the Court has repeatedly held that a Member State may not rely on provisions, practices or circumstances in its own legal order to justify failure to implement a directive within the prescribed period (see, *inter alia*, Case C-352/01 *Commission* v *Spain* [2002] ECR I-10263, paragraph 8).

14 Accordingly, the Commission's application is well founded.

15 It must therefore be held that, by failing to adopt the laws, regulations and administrative provisions necessary to comply with point 12 of Annex II to the Directive within the prescribed period, the French Republic has failed to fulfil its obligations under that directive.

Costs

16 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 (Second Chamber)

hereby:

1. **Declares that, by failing to adopt the laws, regulations and administrative provisions necessary to comply with point 12 of Annex II to Council Directive 91/439/EEC of 29 July 1991 on driving licences within the prescribed period, the French Republic has failed to fulfil its obligations under that directive;**

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

Schintgen Skouris Colneric

Delivered in open court in Luxembourg on 13 February 2003.

R. Grass

Registrar

R. Schintgen

President of the Second Chamber