JUDGMENT OF THE COURT (Fourth Chamber)
11 October 2001 *

In Case C-254/00,

Commission of the European Communities, represented by H. van Lier, acting as Agent, with an address for service in Luxembourg,

applicant,

v

Kingdom of the Netherlands, represented initially by M.A. Fierstra, and subsequently by J. van Bakel, acting as Agents,

defendant,

APPLICATION for a declaration that by failing to bring into force or to communicate all of the laws, regulations and administrative provisions necessary to comply with Directive 95/47/EC of the European Parliament and of the Council of 24 October 1995 on the use of standards for the transmission of television signals (OJ 1995 L 281, p. 51) the Kingdom of the Netherlands has failed to fulfil its obligations under that directive,

* Language of the case: Dutch.

THE COURT (Fourth Chamber),

composed of: S. von Bahr, President of the Chamber, D.A.O. Edward (Rapporteur) 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 14 June 2001,

gives the following

Judgment

1 By application lodged at the Court Registry on 26 June 2000, the Commission of the European Communities brought an action under Article 226 EC for a declaration that by failing to bring into force or to communicate all of the laws, regulations and administrative provisions necessary to comply with Directive 95/47/EC of the European Parliament and of the Council of 24 October 1995 on the use of standards for the transmission of television signals (OJ 1995 L 281, p. 51) the Kingdom of the Netherlands has failed to fulfil its obligations under that directive.

2 Article 8 of Directive 95/47 provides that the Member States are to bring into force the laws, regulations and administrative provisions necessary for them to comply with that Directive within nine months of its entry into force and are forthwith to inform the Commission thereof. Under its Article 9, Directive 95/47 entered into force on the date of its publication in the *Official Journal of the European Communities*, that is to say, on 23 November 1995.

3 Taking the view that Directive 95/47 had not been implemented in Dutch law within the prescribed period, the Commission initiated the infringement procedure. After giving the Kingdom of the Netherlands formal notice to submit its observations, the Commission, on 14 October 1998, issued a reasoned opinion calling on that Member State to take the measures necessary to comply within two months of its notification. As it received no information from the Kingdom of the Netherlands to indicate that it had implemented Directive 95/47, the Commission brought this action.

4 The Netherlands Government accepts that its implementation of Directive 95/47 has been tardy and adds that it will be fully implemented in Netherlands law once the bill amending the Telecommunicatiewet (Telecommunications Law) has been passed by the Netherlands Parliament, which should happen in the near future.

5 However, it points out that, in practice, Directive 95/47 is already observed in the Netherlands and that existing national legislation, *inter alia* on patents and competition, applies a number of the provisions of that directive, with the result that its delayed implementation prejudices neither consumers nor operators of telecommunications networks and services.

6 It is, therefore, common ground that the Kingdom of the Netherlands has not fully implemented Directive 95/47 in its national legal order.

7 As regards the argument of the Netherlands Government that Directive 95/47 is already observed in the Netherlands in practice although it has not yet been fully implemented in Netherlands law, suffice it to observe that mere administrative practices, which by their nature are alterable at will by the authorities and are not given the appropriate publicity, cannot be regarded as constituting the proper fulfilment of a Member State's obligations under the Treaty (see, in particular, Case C-159/99 *Commission* v *Italy* [2001] ECR I-4007, paragraph 32). This is all the more true of mere practices of economic operators.

8 As regards the argument of the Netherlands Government that the Netherlands legal order was already consistent with Directive 95/47, it is sufficient to note, without there being any need to rule on the question whether the national legislation in question actually implements Directive 95/47, that it is not disputed that that national legislation was not communicated to the Commission, in breach of the requirements of Article 8 of Directive 95/47.

9 Accordingly, it must be held that by failing to bring into force and to communicate all of the laws, regulations and administrative provisions necessary to comply with Directive 95/47 the Kingdom of the Netherlands has failed to fulfil its obligations under 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 Kingdom of the Netherlands 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 and to communicate all of the laws, regulations and administrative provisions necessary to comply with Directive 95/47/EC of the European Parliament and of the Council of 24 October 1995 on the use of standards for the transmission of television signals the Kingdom of the Netherlands has failed to fulfil its obligations under that directive;

2. Orders the Kingdom of the Netherlands to bear the costs.

von Bahr Edward La Pergola

Delivered in open court in Luxembourg on 11 October 2001.

R. Grass

Registrar

S. von Bahr

President of the Fourth Chamber