JUDGMENT OF THE COURT (Fifth Chamber)
2 May 1996 *

In Case C-234/95,

Commission of the European Communities, represented by Hendrik van Lier, Legal Adviser, acting as Agent, with an address for service in Luxembourg at the office of Carlos Gómez de la Cruz, of its Legal Service, Wagner Centre, Kirchberg,

applicant,

v

French Republic, represented by Catherine de Salins, Assistant Director at the Legal Affairs Directorate of the Ministry of Foreign Affairs, and Philippe Martinet, Secretary of Foreign Affairs in that directorate, acting as Agents, with an address for service in Luxembourg at the French Embassy, 9 Boulevard Prince Henri,

defendant,

APPLICATION for a declaration that, by failing to adopt the laws, regulations and administrative provisions needed in order to comply with Council Directive 92/50/EEC of 18 June 1992 relating to the coordination of procedures for the award of public service contracts (OJ 1992 L 209, p. 1) and, in the alternative, by failing to inform the Commission of such measures forthwith, the French Republic has failed to fulfil its obligations under that directive and, in particular, Article 44 thereof,

* Language of the case: French.

THE COURT (Fifth Chamber),

composed of: D. A. O. Edward, President of the Chamber, J.-P. Puissochet, P. Jann (Rapporteur), L. Sevón and M. Wathelet, Judges,

Advocate General: A. La Pergola,
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 March 1996,

gives the following

Judgment

1 By application lodged at the Court Registry on 5 July 1995, the Commission of the European Communities brought an action under Article 169 of the EC Treaty for a declaration that, by failing to adopt the laws, regulations and administrative provisions needed in order to comply with Council Directive 92/50/EEC of 18 June 1992 relating to the coordination of procedures for the award of public service contracts (OJ 1992 L 209, p. 1) and, in the alternative, by failing to inform the Commission of such measures forthwith, the French Republic has failed to fulfil its obligations under that directive and, in particular, Article 44 thereof.

2 Under the first paragraph of Article 44(1) of the directive, Member States were to bring into force the laws, regulations and administrative provisions needed in order to comply with the directive before 1 July 1993 and to inform the Commission thereof forthwith.

3 Since it had not been notified of the provisions adopted by the French Republic in order to comply with the directive, the Commission gave the French Government formal notice on 9 August 1993 to submit its observations within two months.

4 In the absence of a reply, the Commission sent a reasoned opinion to the French Government on 26 September 1994 calling upon it to adopt the requisite measures in order to comply with that opinion within two months.

5 In reply to that reasoned opinion, the French Government informed the Commission that a draft law concerning in particular service contracts had been submitted to the Senate. In the absence of any other information on that legislative procedure, the Commission brought the present action.

6 The French Government does not deny the infringement.

7 However, since private bodies operating in the general interest and under public control are involved, it states that a draft law has been submitted which is intended primarily to extend Law No 91-3 of 3 January 1991 on the transparency and legality of award procedures to service contracts awarded by those bodies. That law, which makes the award of certain contracts subject to rules on publication and competition, at present concerns only works contracts awarded by those bodies. Those procedures are to be extended to service contracts by the adoption of an implementing decree amending Decree No 92-311 of 31 March 1992.

8 The French Government emphasizes that, as regards contracts concluded by the State and local authorities, the directive is to be transposed into national law by means of a decree of the Conseil d'État which is at present the subject of final inter-ministerial consultations as to its wording.

9 Since the directive has not been transposed into national law within the prescribed period, the Commission's action in that respect must be considered to be well founded.

10 It must therefore be held that, by failing to adopt, within the prescribed period, the laws, regulations and administrative provisions needed to comply with the directive, the French Government has failed to fulfil its obligations under Article 44(1) thereof.

Costs

11 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. The Commission has applied for costs and, since the French Republic has been unsuccessful in its defence, it must be ordered to pay the costs.

On those grounds,

THE COURT (Fifth Chamber)

hereby:

1. Declares that, by failing to adopt, within the prescribed period, the laws, regulations and administrative provisions needed in order to comply with Council Directive 92/50/EEC of 18 June 1992 relating to the coordination of

procedures for the award of public service contracts, the French Republic has failed to fulfil its obligations under Article 44(1) of that directive;

2. Orders the French Republic to pay the costs.

Edward Puissochet Jann

Sevón Wathelet

Delivered in open court in Luxembourg on 2 May 1996.

R. Grass D. A. O. Edward

Registrar President of the Fifth Chamber