JUDGMENT OF THE COURT
9 June 1993 *

In Case C-95/92,

Commission of the European Communities, represented by Antonio Aresu, of its Legal Service, acting as Agent, with an address for service in Luxembourg at the office of Nicola Annecchino, also of its Legal Service, Wagner Centre, Kirchberg,

applicant,

v

Italian Republic, represented by Professor Luigi Ferrari Bravo, Head of the Department for Legal Affairs at the Ministry of Foreign Affairs, acting as Agent, assisted by Oscar Fiumara, Avvocato dello Stato, with an address for service in Luxembourg at the Italian Embassy, 5 Rue Marie-Adélaïde,

defendant,

APPLICATION for a declaration that, by failing to adopt the laws, regulations and administrative provisions necessary to comply with Articles 1, 2(1) and (2), 3 and 5 of Council Directive 84/466/Euratom of 3 September 1984 laying down basic measures for the radiation protection of persons undergoing medical examination or treatment (OJ 1984 L 265, p. 1), the Italian Republic has failed to fulfil its obligations under Community law.

THE COURT,

composed of: O. Due, President, M. Zuleeg and J. L. Murray (Presidents of Chambers), G. F. Mancini, F. A. Schockweiler, J. C. Moitinho de Almeida, F. Grévisse, M. Diez de Velasco and P. J. G. Kapteyn, Judges,

* Language of the case: Italian.

Advocate General: W. Van Gerven,
Registrar: D. Louterman-Hubeau, Principal Administrator,

having regard to the Report for the Hearing,

after hearing oral argument from the parties at the hearing on 30 March 1993,

after hearing the Opinion of the Advocate General at the sitting on 28 April 1993,

gives the following

Judgment

1 By application lodged at the Court Registry on 23 March 1992, the Commission of the European Communities brought an action under Article 141 of the Euratom Treaty for a declaration that by failing to adopt the laws, regulations and administrative provisions necessary to comply with Articles 1, 2(1) and (2), 3 and 5 of Council Directive 84/466/Euratom of 3 September 1984 laying down basic measures for the radiation protection of persons undergoing medical examination or treatment (OJ 1984 L 265, p. 1, hereinafter 'the Directive'), the Italian Republic has failed to fulfil its obligations under the Euratom Treaty.

2 Article 7 of the Directive provides that 'Member States shall take the measures necessary to comply with this Directive before 1 January 1986. Member States shall inform the Commission of the provisions they have adopted to comply with this Directive'.

3 Reference is made to the Report for the Hearing for a fuller account of the facts, the procedure and the pleas and arguments of the parties, which are mentioned or discussed hereinafter only in so far as is necessary for the reasoning of the Court.

4 The Commission claims that under Article 161 of the Euratom Treaty and Article 7 of the Directive the Italian Republic was required to adopt the provisions necessary to transpose the Directive into national law.

5 The Italian Republic accepts that the Directive has not yet been formally transposed into national law, but claims that its formal transposition is unnecessary. The requirements set out in the Directive already had a precise equivalent in Circular No 62 of 2 August 1984 issued by the Ministry of Health on 'the radiation protection of the sick during diagnostic examination and therapeutic treatment using radiology and nuclear medicine', which was sent to all the competent authorities and services.

6 The Italian Republic's argument cannot be accepted.

7 According to the consistent case-law of the Court, each Member State must implement directives in a manner which fully meets the requirement of legal certainty and must consequently transpose their terms into national law as binding provisions (see Case 239/85 *Commission* v *Belgium* [1986] ECR 3645, paragraph 7).

8 It is apparent from the pleadings and oral arguments of the parties that Circular No 62 has never been officially published, that it may be amended by the Italian authorities at will and that it contains only recommendations which have no binding force.

9 It follows that the Italian Republic has not adopted the measures necessary to implement the Directive.

10 The declaration must therefore be granted in the terms sought by the Commission.

Costs

11 Under Article 69(2) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs. Since the defendant has failed in its submissions, it must be ordered to pay the costs.

On those grounds,

THE COURT

hereby:

1. **Declares that by failing to adopt the laws, regulations and administrative provisions necessary to comply with Articles 1, 2(1) and (2), 3 and 5 of Council Directive 84/466/Euratom of 3 September 1984 laying down basic measures for the radiation protection of persons undergoing medical examination or treatment, the Italian Republic has failed to fulfil its obligations under the Euratom Treaty;**

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

Due Zuleeg Murray Mancini Schockweiler

Moitinho de Almeida Grévisse Diez de Velasco Kapteyn

Delivered in open court in Luxembourg on 9 June 1993.

J.-G. Giraud

Registrar

O. Due

President