JUDGMENT OF THE COURT (Fourth Chamber)
21 June 2001 *

In Case C-119/00,

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

applicant,

v

Grand Duchy of Luxembourg, represented by P. Steinmetz, acting as Agent,

defendant,

APPLICATION for a declaration that, by failing to adopt the laws, regulations and administrative provisions necessary to comply with Directive 97/36/EC of the

* Language of the case: French.

European Parliament and of the Council of 30 June 1997 amending Council Directive 89/552/EEC on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the pursuit of television broadcasting activities (OJ 1997 L 202, p. 60), and/or by failing to inform the Commission thereof, the Grand Duchy of Luxembourg 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 (Rapporteur) and S. von Bahr, Judges,

Advocate General: L.A. Geelhoed,
Registrar: R. Grass,

having regard to the report of the Judge-Rapporteur,

after hearing the Opinion of the Advocate General at the sitting on 5 April 2001,

gives the following

Judgment

1 By application lodged at the Registry of the Court on 29 March 2000, the Commission of the European Communities brought this action under Article 226 EC for a declaration that, by failing to adopt the laws, regulations and administrative provisions necessary to comply with Directive 97/36/EC of the European Parliament and of the Council of 30 June 1997 amending Council Directive 89/552/EEC on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the pursuit of television broadcasting activities (OJ 1997 L 202, p. 60) and/or by failing to inform the Commission thereof, the Grand Duchy of Luxembourg has failed to fulfil its obligations under that directive.

Community legislation

2 Council Directive 89/552/EEC of 3 October 1989 on the coordination of certain provisions laid down by law, regulation or administrative action in Member

States concerning the pursuit of television broadcasting activities (OJ 1989 L 298, p. 23) constitutes the legal framework for television broadcasting in the internal market.

3 Article 26 of Directive 89/552 provides:

'Not later than the end of the fifth year after the date of adoption of this Directive and every two years thereafter, the Commission shall submit to the European Parliament, the Council, and the Economic and Social Committee a report on the application of this Directive and, if necessary, make further proposals to adapt it to developments in the field of television broadcasting.'

4 In accordance with this provision Directive 97/36, which amended Directive 89/552 by clarifying certain definitions and obligations of Member States, was adopted on 30 June 1997.

5 The first subparagraph of Article 2(1) of Directive 97/36 provides:

'Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive not later than 31 December 1998. They shall immediately inform the Commission thereof.'

Pre-litigation procedure

6 In accordance with the procedure under the first paragraph of Article 226 EC, having given the Grand Duchy of Luxembourg formal notice to submit its observations regarding the implementation in its national law of Directive 97/36, the Commission, by letter dated 9 July 1999, sent a reasoned opinion to that Member State, requesting it to adopt the measures necessary to comply with its obligations under that directive within two months of the date of the notification of the opinion.

7 Since the information sent to the Commission by the Luxembourg Government following the opinion showed that Directive 97/36 had still not been implemented in Luxembourg law, the Commission decided to bring this action.

Arguments of the parties

8 It is not disputed that under Article 2(1) of Directive 97/36, the Grand Duchy of Luxembourg was required to adopt by 31 December 1998 the necessary measures at national level to comply with that directive, and immediately to inform the Commission thereof.

9 Bearing in mind the obligations which bind the Member states under the third paragraph of Article 249 EC, the first paragraph of Article 10 CE, and

Article 2(1) of Directive 97/36, the Commission decided that the Grand Duchy of Luxembourg had failed to fulfil its obligations by not adopting the measures necessary to comply with that directive and/or by not informing the Commission of them.

10 The Luxembourg Government does not deny that it has not implemented Directive 97/36 within the prescribed period. It notes that it is being implemented and points out that draft law No 4584 amending the Law of 27 July 1991 on the electronic media, which should bring about the implementation, was submitted to the Conseil d'État and the Chambre des députés on 30 June 1997.

11 In its defence the Luxembourg Government states that, notwithstanding its insistence before the Conseil d'État that it should urgently consider the draft law, its enactment was delayed by reason of Government amendments introduced as a result of the advice given by professional bodies. The delay was due to the technical complexity of the subject-matter and to consultations undertaken with the business community. The Luxembourg Government submits, however, that the law will be adopted in the near future, and considers that this action is no longer necessary.

Findings of the Court

12 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-97/00 *Commission* v *France* [2001] ECR I-2053, paragraph 9).

13 The Court cannot accept the arguments of the Luxembourg Government to the effect that the impending adoption of the law intended to implement Directive 97/36 in national law renders this action unnecessary, and, the draft law having been submitted to the Conseil d'État in due time, the delay in its adoption is attributable to the technical complexity of the subject-matter and to consultations with the business community.

14 First, it is settled case-law that whether a Member State has failed to fulfil its obligations must be determined by reference to the situation in the 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, in particular, Case C-147/00 *Commission* v *France* [2001] ECR I-2387, paragraph 26).

15 In this case the reasoned opinion set a time-limit of two months from the date of its notification for the Grand Duchy of Luxembourg to comply with it. Since the reasoned opinion was notified on 9 July 1999, the time-limit expired on 9 September 1999. It is therefore at that date that the existence or not of the alleged failure must be determined. The fact that the Luxembourg Government considers that the draft law will be swiftly approved is therefore irrelevant.

16 Secondly, a Member State may not plead provisions, practices or circumstances existing in its internal legal order in order to justify a failure to comply with the obligations and time-limits laid down in a directive (see, in particular, Case C-470/98 *Commission* v *Greece* [2000] ECR I-4657, paragraph 11).

17 Lastly, even if a Member State's breach of obligations is remedied after the expiry of the time-limit prescribed by the reasoned opinion, there is still an interest in pursuing the action in order to establish the basis for liability which a Member State may incur as a result of its breach of obligations with regard to other Member States, the Community and individuals (see, *inter alia*, Case C-29/90 *Commission* v *Greece* [1992] ECR I-1971, paragraph 12).

18 It is clear from the documents before the Court that the draft law was not adopted before the expiry of the period prescribed by the reasoned opinion.

19 It must therefore be held that, by not implementing within the prescribed period the laws, regulations and administrative measures necessary to comply with Directive 97/36, the Grand Duchy of Luxembourg has failed to fulfil its obligations under that directive.

Costs

20 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 Grand Duchy of Luxembourg has been unsuccessful, the latter must be ordered to pay the costs.

On those grounds,

THE COURT (Fourth Chamber)

hereby:

1. Declares that by not implementing within the prescribed period the laws, regulations and administrative measures necessary to comply with Directive 97/36/EC of the European Parliament and of the Council of 30 June 1997 amending Council Directive 89/552/EEC on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the pursuit of television broadcasting activities, the Grand Duchy of Luxembourg has failed to fulfil its obligations under that directive;

2. Orders the Grand Duchy of Luxembourg to pay the costs.

La Pergola Edward von Bahr

Delivered in open court in Luxembourg on 21 June 2001.

R. Grass

Registrar

A. La Pergola

President of the Fourth Chamber