JUDGMENT OF THE COURT (Sixth Chamber)
17 July 1997 *

In Case C-43/97,

Commission of the European Communities, represented by Paolo Stancanelli, of its Legal Service, 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

Italian Republic, represented by Professor Umberto Leanza, Head of the Legal Department in the Ministry of Foreign Affairs, acting as Agent, assisted by Ivo M. Braguglia, 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 within the prescribed period the laws, regulations and administrative provisions necessary to comply with Council Directive 93/36/EEC of 14 June 1993 coordinating procedures for

* Language of the case: Italian.

the award of public supply contracts (OJ 1993 L 199, p. 1) and by failing to notify those provisions, the Italian Republic has failed to fulfil its obligations under the first subparagraph of Article 34(1) of that directive,

THE COURT (Sixth Chamber),

composed of: G. F. Mancini, President of the Chamber, J. L. Murray, G. Hirsch, H. Ragnemalm (Rapporteur) and R. Schintgen, Judges,

Advocate General: C. O. Lenz,
Registrar: R. Grass,

having regard to the report of the Judge-Rapporteur,

after hearing the Opinion of the Advocate General at the sitting on 12 June 1997,

gives the following

Judgment

By application lodged at the Court Registry on 3 February 1997, the Commission of the European Communities brought an action under Article 169 of the EC Treaty, seeking a declaration that, by failing to adopt within the prescribed period the laws, regulations and administrative provisions necessary to comply with

Council Directive 93/36/EEC of 14 June 1993 coordinating procedures for the award of public supply contracts (OJ 1993 L 199, p. 1) and by failing to notify those provisions, the Italian Republic has failed to fulfil its obligations under the first subparagraph of Article 34(1) of that directive.

2 Under the first subparagraph of Article 34(1) of Directive 93/36, Member States were to bring into force the laws, regulations and administrative provisions necessary to comply with the directive before 14 June 1994 and immediately to inform the Commission thereof.

3 On 9 August 1994, not having been informed of the measures taken to transpose Directive 93/36 and not having any other information from which it was possible to conclude that the Italian Republic had fulfilled its obligations, the Commission gave the Italian Government notice to submit its observations within two months.

4 On 25 October 1995, not having received any reply, the Commission sent the Italian Government a reasoned opinion, requesting it to adopt the necessary measures within a period of two months from that notification.

5 The Commission did not receive any reply from the Italian authorities and therefore brought the present action.

6 The Italian Republic does not deny that it has failed to fulfil its obligations as set out in the application and merely states that it will shortly adopt measures to remedy the situation. It states that under the draft 1995/1996 Community Law, currently before the Italian Parliament, responsibility is to be delegated to the Government for transposing Directive 93/96 into national law by means of a legislative decree which will be adopted as soon as the 1995/1996 Community Law enters into force.

7 Since Directive 93/96 has not been transposed within the period laid down therein, the Italian Republic must be found to have failed to fulfil its obligations as contended by the Commission.

8 That conclusion cannot be called into question by the Italian Government's argument that the failure with which it is charged is of minor importance inasmuch as the basic provisions concerning procedures for the award of public supply contracts have long formed part of the national legal system as a result of the implementation of Council Directive 77/62/EEC of 21 December 1976 coordinating procedures for the award of public supply contracts (OJ 1977 L 13, p. 1), as amended on several occasions.

9 The Italian Government does not deny that Directive 93/96 imposes new obligations on the Member States, which they were to implement by 14 June 1994 at the latest.

10 Contrary to what the Commission claims, however, the Court does not have to take account of the failure to notify the laws, regulations or administrative provisions necessary to comply with the directive, since the Italian Republic did not adopt those provisions within the period prescribed in the reasoned opinion (see Case C-147/94 *Commission* v *Spain* [1995] ECR I-1015, paragraph 7).

11 It must therefore be found that, by failing to adopt within the prescribed period the laws, regulations and administrative provisions necessary to comply with Directive 93/36, the Italian Republic has failed to fulfil its obligations under the first subparagraph of Article 34(1) of that directive.

Costs

12 Under Article 69(2) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs. Since the Italian Republic has been unsuccessful, it must be ordered to pay the costs.

On those grounds,

THE COURT (Sixth Chamber)

hereby:

1. **Declares that, by failing to adopt within the prescribed period the laws, regulations and administrative provisions necessary to comply with Council Directive 93/36/EEC of 14 June 1993 coordinating procedures for the award of public supply contracts, the Italian Republic has failed to fulfil its obligations under the first subparagraph of Article 34(1) of that directive;**

2. Dismisses the remainder of the application;

3. Orders the Italian Republic to pay the costs.

Mancini Murray Hirsch

Ragnemalm Schintgen

Delivered in open court in Luxembourg on 17 July 1997.

R. Grass G. F. Mancini

Registrar President of the Sixth Chamber