JUDGMENT OF THE COURT (Third Chamber)

14 June 2001 *

In Case C-473/99,

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

applicant,

v

Republic of Austria, represented by C. Pesendorfer, acting as Agent, with an address for service in Luxembourg,

defendant,

* Language of the case: German.

APPLICATION for a declaration that, by failing to adopt, within the prescribed period, all the laws, regulations and administrative provisions necessary to comply with Commission Directive 95/30/EC of 30 June 1995 adapting to technical progress Council Directive 90/679/EEC on the protection of workers from risks related to exposure to biological agents at work (seventh individual Directive within the meaning of Article 16(1) of Directive 89/391/EEC) (OJ 1995 L 155, p. 41), the Republic of Austria has failed to fulfil its obligations under the EC Treaty,

THE COURT (Third Chamber),

composed of: C. Gulmann, President of the Chamber, J.-P. Puissochet and J.N. Cunha Rodrigues (Rapporteur), 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 10 December 1999, the Commission of the European Communities brought an action under Article 226 EC for a declaration that, by failing to adopt, within the prescribed period, all the laws, regulations and administrative provisions necessary to comply with Commission Directive 95/30/EC of 30 June 1995 adapting to technical progress Council Directive 90/679/EEC on the protection of workers from risks related to exposure to biological agents at work (seventh individual Directive within the meaning of Article 16(1) of Directive 89/391/EEC) (OJ 1995 L 155, p. 41, hereinafter 'the Directive'), the Republic of Austria has failed to fulfil its obligations under the EC Treaty.

2 Under Article 2(1) of the Directive the Member States were to bring into force, by 30 November 1996, the laws, regulations and administrative provisions necessary to comply with the Directive, and immediately inform the Commission thereof.

3 As is had received no communication from the Austrian Government concerning measures implementing the Directive, by letter of 30 May 1997, the Commission sent the Austrian Republic formal notification to submit its observations in this regard within two months.

4 In their reply of 29 July 1997 the Austrian authorities stated that such measures would probably be adopted during the month of December 1997.

5 On 2 July 1998 the Commission sent a reasoned opinion to the Republic of Austria requesting it to take the necessary measures to comply with its obligations under the Directive within two months from the date of notification of the opinion.

6 By letter of 3 September 1998, the Austrian Government informed the Commission that some of the measures necessary for implementation of the Directive had already been adopted, and the others were being prepared. By letters of 4 and 15 September, 16 October and 23 November 1998, 10 February, and 8 and 9 April 1999, the Austrian Government informed the Commission that further provisions had been adopted with a view to ensuring implementation of the Directive in national law.

7 In its application, the Commission claims that the Republic of Austria has not fully implemented the Directive in Austrian law. In various fields, particularly at the level of the *Länder* (Regions), local authorities and groups of local authorities, many measures have not yet been adopted.

8 The Commission therefore takes the view that the Republic of Austria has clearly failed to fulfil its obligations under the Treaty by not having adopted, within the period prescribed by the Directive, all the measures necessary to comply with its obligations thereunder.

9 The Republic of Austria points out, first, that, because of the division of powers under its Federal Constitution, competence to adopt provisions relating to implementation of the Directive is characterised by being split between the Federal State and the *Länder* to a very considerable degree. This situation is made more difficult by the particular division of powers in the fields of education and employment law in the *Länder* and local authorities. Furthermore, the various legislative bodies have to proceed in a coordinated manner so as to ensure a uniform level of protection.

10 The Austrian Government then sets out various measures which have been adopted in order to implement the Directive in national law.

11 In its rejoinder, the Austrian Government points to other measures which were adopted after the commencement of the action and observes that those which have still to be adopted should be in place before the summer of 2000, a situation which ought to be taken into account in these proceedings.

12 In answer to the arguments of the Republic of Austria, it must be pointed out that, in accordance with the settled case-law of the Court, a Member State may not invoke provisions, practices or circumstances existing in its internal legal order, including those resulting from its federal organisation, to justify a failure to comply with the obligations and time-limits laid down in a directive (see, in particular, Case C-298/95 *Commission* v *Germany* [1996] ECR I-6747, paragraph 18, and Case C-236/99 *Commission* v *Belgium* [2000] ECR I-5657, paragraph 23).

13 Moreover, the Court has repeatedly held that the question whether a Member State has failed to fulfil its obligations must be determined by reference to the situation in the Member State as it stood at the end of the period laid down in the

reasoned opinion, and that the Court may not take account of any subsequent changes (see, *inter alia*, Case C-266/99 *Commission* v *France* [2001] ECR I-1781, paragraph 38).

14 It follows from the defence and the rejoinder, and from the Austrian Government's reply to a question put by the Court, that the Republic of Austria admits that it had not adopted, prior to the expiry of the period of two months set by the reasoned opinion, the measures necessary to implement the Directive fully in national law. In accordance with the case-law cited in the previous paragraph, the various measures which the Republic of Austria claims to have adopted after the expiry of that period, even if they constitute proper implementation of the Directive, are not relevant in the context of the present action.

15 In those circumstances, the action brought by the Commission must be considered to be well founded.

16 Consequently, it must be held that, by not adopting, within the prescribed period, all the laws, regulations and administrative provisions necessary to comply with the Directive, the Republic of Austria has failed to fulfil its obligations thereunder.

Costs

17 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 Republic of Austria has been unsuccessful, the latter must be ordered to pay the costs.

On those grounds,

THE COURT (Third Chamber)

hereby:

1. **Declares that, by not adopting, within the prescribed period, all the laws, regulations and administrative provisions necessary to comply with Commission Directive 95/30/EC of 30 June 1995 adapting to technical progress Council Directive 90/679/EEC on the protection of workers from risks related to exposure to biological agents at work (seventh individual Directive within the meaning of Article 16(1) of Directive 89/391/EEC), the Republic of Austria has failed to fulfil its obligations under the Directive;**

2. **Orders the Republic of Austria to pay the costs.**

Gulmann Puissochet Cunha Rodrigues

Delivered in open court in Luxembourg on 14 June 2001.

R. Grass C. Gulmann

Registrar President of the Third Chamber