OPINION OF ADVOCATE GENERAL RUIZ-JARABO COLOMER

delivered on 14 July 1998 *

1. By the present action, brought under Article 169 of the EC Treaty, the Commission seeks a declaration by the Court that by failing to adopt within the prescribed period the laws, regulations or administrative provisions needed in order to comply with Council Directive 92/29/EEC of 31 March 1992 on the minimum safety and health requirements for improved medical treatment on board vessels, [1] the Grand Duchy of Luxembourg has failed to fulfil its obligations under that Directive.

2. During the pre-litigation procedure, the Commission sent the Grand Duchy of Luxembourg a letter of formal notice (on 16 May 1995) calling upon it to adopt the measures necessary in order to comply with the Directive, which were to have been adopted by 31 December 1994 at the latest. In reply to the letter of formal notice, the Luxembourg authorities informed the Commission (12 September 1996) that they were preparing to approve their legislation in that matter, to which end they had submitted a draft decree before the Council of State.

3. Since it subsequently received no further communication, the Commission sent the Grand Duchy of Luxembourg a reasoned opinion (16 December 1996) calling upon it to adopt the measures necessary in order to implement the Directive. The Luxembourg Government again replied that it was preparing to amend its legislation in the matter (23 January 1997).

4. In the absence of any evidence of the Grand Duchy of Luxembourg having subsequently brought its legislation into line with the abovementioned Directive, the Commission brought its action before the Court on 21 October 1997.

5. In the observations it submitted before the Court, the Grand Duchy of Luxembourg admits the infringement with which it is charged and acknowledges not having brought its legal system into line with the Directive within the prescribed time-limit. It states, none the less, that it sent to its Parliament in March 1998 a draft law to that end, in view of the fact that the Council of State in July 1997 voted down the draft law which had been submitted before it.

* Original language: Spanish.

1 — OJ 1992 L 113, p. 19.

6. Since, as the Commission charges, the Grand Duchy of Luxembourg has manifestly failed to fulfil its obligations and although the tonnage of Luxembourg's shipping does not lead to the conclusion that the infringement complained of is especially serious, the application must be upheld.

7. The defendant must bear the costs, pursuant to Article 69(2) of the Rules of Procedure, since the applicant has applied for costs.

Conclusion

8. I therefore propose that the Court should uphold the Commission's application and:

(1) declare that, by failing to adopt, within the prescribed period, the laws, regulations or administrative provisions needed in order to comply with Council Directive 92/29/EEC of 31 March 1992 on the minimum safety and health requirements for improved medical treatment on board vessels, the Grand Duchy of Luxembourg has failed to fulfil its obligations under the EC Treaty;

(2) order the Grand Duchy of Luxembourg to pay the costs.