JUDGMENT OF THE COURT (First Chamber)

21 September 1999 *

In Case C-362/98,

Commission of the European Communities, represented by Pieter Jan Kuijper, Legal Adviser, and Antonio Aresu, of its Legal Service, acting as Agents, with an address for service in Luxembourg at the office of Carlos Gómez de la Cruz, also of its Legal Service, Wagner Centre, Kirchberg,

applicant,

v

Italian Republic, represented by Umberto Leanza, Head of the Legal Department in the Ministry of Foreign Affairs, acting as Agent, assisted by Danilo Del Gaizo, 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 and/or by not communicating to the Commission the laws, regulations and administrative provisions necessary to comply with Council Directive 93/103/EC of 23 Novem-

* Language of the case: Italian.

ber 1993 concerning the minimum safety and health requirements for work on board fishing vessels (thirteenth individual Directive within the meaning of Article 16(1) of Directive 89/391/EEC) (OJ 1993 L 307, p. 1), the Italian Republic has failed to fulfil its obligations under the EC Treaty,

THE COURT (First Chamber),

composed of: P. Jann (Rapporteur), President of the Chamber, L. Sevón and M. Wathelet, Judges,

Advocate General: J. Mischo,
Registrar: R. Grass,

having regard to the report of the Judge-Rapporteur,

after hearing the Opinion of the Advocate General at the sitting on 1 July 1999,

gives the following

Judgment

1 By application lodged at the Court Registry on 9 October 1998, the Commission of the European Communities brought an action under Article 169 of the EC

Treaty (now Article 226 EC) for a declaration that, by failing to adopt and/or by not communicating to the Commission the laws, regulations and administrative provisions necessary to comply with Council Directive 93/103/EC of 23 November 1993 concerning the minimum safety and health requirements for work on board fishing vessels (thirteenth individual Directive within the meaning of Article 16(1) of Directive 89/391/EEC) (OJ 1993 L 307, p. 1, hereinafter 'the Directive'), the Italian Republic has failed to fulfil its obligations under the EC Treaty.

2 Under Article 13(1) of the Directive, Member States were required to bring into force the laws, regulations and administrative provisions necessary to comply with the Directive by 23 November 1995 at the latest.

3 Having received no notification of any provision intended to transpose the Directive into Italian law, and in the absence of any other information from which it could conclude that Italy had fulfilled its obligation to do so, the Commission initiated against that State infringement proceedings as provided for by Article 169 of the Treaty by sending it a letter of formal notice on 27 February 1996.

4 Having received no reply thereto, the Commission sent Italy a reasoned opinion by letter of 23 December 1996, requesting it to adopt the necessary measures to comply with the Directive within two months of notification of the opinion.

5 When no formal reply to that opinion was forthcoming, the Commission brought the present proceedings.

6 In its defence, the Italian Government does not deny the infringement, but states that a law delegating to it the power to transpose the Directive was adopted on

24 April 1998 and that that law entered into force in May 1998. The implementation process had thus been started and would most likely be completed shortly thereafter.

7 Since the Directive was not transposed within the period prescribed, the action brought by the Commission must be held to be well founded.

8 It must therefore be held that, by failing to adopt within the prescribed period the laws, regulations and administrative provisions necessary to comply with the Directive, the Italian Republic has failed to fulfil its obligations under Article 13(1) thereof.

Costs

9 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 to be awarded against the Italian Republic and the latter has been unsuccessful, it must be ordered to pay the costs.

On those grounds,

THE COURT (First 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 93/103/EC of 23 November 1993 concerning the minimum safety and health requirements for work on board fishing vessels (thirteenth individual Directive within the meaning of Article 16(1) of Directive 89/391/EEC), the Italian Republic has failed to fulfil its obligations under Article 13(1) thereof;**

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

Jann Sevón Wathelet

Delivered in open court in Luxembourg on 21 September 1999.

R. Grass

Registrar

P. Jann

President of the First Chamber