JUDGMENT OF THE COURT (First Chamber)
8 July 1999 *

In Case C-354/98,

Commission of the European Communities, represented by Marie Wolfcarius, of its Legal Service, acting as Agent, with an address for service in Luxembourg at the office of Carlos Gómez de la Cruz, also of the Legal service, Wagner Centre, Kirchberg,

applicant,

v

French Republic, represented by Kareen Rispal-Bellanger, Head of the Sub-directorate for International Economic Law and Community Law in the Legal Affairs Directorate of the Ministry of Foreign Affairs, and Anne de Bourgoing, Chargé de Mission in the same directorate, acting as Agents, with an address for service in Luxembourg at the French Embassy, 8B Boulevard Joseph II,

defendant,

APPLICATION for a declaration that, by failing to adopt the laws, regulations and administrative provisions necessary to comply with Council Directive 96/97/

* Language of the case: French.

EC of 20 December 1996 amending Directive 86/378/EEC on the implementation of the principle of equal treatment for men and women in occupational social security schemes (OJ 1997 L 46, p. 20), the French Republic has failed to fulfil its obligations under that directive,

THE COURT (First Chamber),

composed of: P. Jann, President of the Chamber, D.A.O. Edward (Rapporteur) and L. Sevón, Judges,

Advocate General: A. La Pergola,
Registrar: R. Grass,

having regard to the report of the Judge-Rapporteur,

after hearing the Opinion of the Advocate General at the sitting on 20 May 1999,

gives the following

Judgment

1 By application lodged at the Registry of the Court on 25 September 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 the laws, regulations and administrative provisions necessary to comply with Council Directive 96/97/EC of 20 December 1996 amending Directive 86/378/EEC on the implementation of the principle of equal treatment for men and women in occupational social security schemes (OJ 1997 L 46, p. 20, hereinafter 'the Directive'), the French Republic had failed to fulfil its obligations under the Directive.

2 The Directive amended the provisions of Council Directive 86/378/EEC of 24 July 1986 (OJ 1986 L 225, p. 40) which were affected by the judgment in Case C-262/88 *Barber* v *Guardian Royal Exchange Assurance Group* [1990] ECR I-1889.

3 Under Article 3(1) of the Directive, the Member States were to adopt the necessary measures to comply with the Directive by 1 July 1997 and to inform the Commission thereof forthwith.

4 Having noted that that date had passed without it being informed of any measures adopted by the French Republic, the Commission gave France formal notice by letter of 9 September 1997 to submit its observations within two months.

5 By letter of 26 November 1997 the French authorities indicated that the measures needed to comply with the Directive were in the process of being drawn up.

6 In view of the fact that it had not been informed of the provisions adopted to comply with the Directive, the Commission sent a reasoned opinion to the French Republic by letter of 22 April 1998, requesting it to adopt the necessary measures to fulfil its obligations under the Directive within two months of notification of the opinion.

7 By letter of 17 July 1998 the French authorities replied that the legislative provisions relating to employed persons would appear in the next draft law introducing a number of social security measures, which was shortly to be laid before Parliament. The French authorities also pointed out that the occupational schemes in question were freely determined and modified by workers and employers both in the national legislative context and in accordance with Community law and that a large proportion of the private schemes had undergone the necessary modifications prior to adoption of the Directive as a direct result of the *Barber* case, with which those responsible for the schemes were now familiar.

8 The Commission received no further communication from the French Republic and therefore brought the present action.

9 The French Government does not dispute the fact that the Directive has not been implemented within the prescribed period. It states that a draft law which will implement the Directive is about to be adopted by Parliament.

10 None the less it maintains, first, that the occupational schemes in question are freely determined and modified by workers and employers both in the national legislative context and in accordance with Community law, secondly, that a large proportion of the private schemes had already undergone the necessary modifications prior to adoption of the Directive, and lastly that, in accordance with the principles of the direct effect and primacy of Community law, the last paragraph of Article L 913-1 of the Social Security Code, which permits discrimination in the determination of retirement age and the conditions for awarding reversionary pensions, may not be relied upon by parties to proceedings in French courts.

11 It is enough to observe in this regard that the Court has consistently held that the incompatibility of national legislation with Community provisions, even provisions which are directly applicable, can be finally remedied only by means of national provisions of a binding nature which have the same legal force as

those which must be amended, and that the provisions of a directive must be implemented with unquestionable binding force and with the specificity, precision and clarity required in order to satisfy the requirement of legal certainty, under which, in the case of a directive intended to confer rights on individuals, persons concerned must be enabled to ascertain the full extent of their rights (Case C-197/96 *Commission* v *France* [1997] ECR I-1489, paragraphs 14 and 15).

12 In those circumstances it must be held that, as the Directive has not been transposed within the period it lays down, the Commission's action is well founded.

13 Consequently, it must be held that, by failing to adopt all the laws, regulations and administrative provisions necessary to comply with the Directive, the French Republic has failed to fulfil its obligations under the Directive.

Costs

14 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 the French Republic to be ordered to pay the costs 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 all the laws, regulations and administrative provisions necessary to comply with Council Directive 96/97/EC of 20 December 1996 amending Directive 86/378/EEC on the implementation of the principle of equal treatment for men and women in occupational social security schemes, the French Republic has failed to fulfil its obligations under that directive;**

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

Jann Edward Sevón

Delivered in open court in Luxembourg on 8 July 1999.

R. Grass

Registrar

P. Jann

President of the First Chamber