JUDGMENT OF THE COURT (Third Chamber)

3 July 2001 *

In Case C-297/00,

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

applicant,

v

Grand Duchy of Luxembourg, represented initially by P. Steinmetz, and subsequently by J. Faltz, acting as Agents,

defendant,

APPLICATION for a declaration that, by failing to bring into force within the prescribed period the laws, regulations and administrative provisions, including any penalties, necessary to comply with Council Directive 98/35/EC of 25 May 1998 amending Directive 94/58/EC on the minimum level of training of seafarers

* Language of the case: French.

(OJ 1998 L 172, p. 1), the Grand Duchy of Luxembourg has failed to fulfil its obligations under Article 249 EC and Article 2 of that directive,

THE COURT (Third Chamber),

composed of: C. Gulmann, President of the Chamber, J.-P. Puissochet and J.N. Cunha Rodrigues (Rapporteur), Judges,

Advocate General: C. Stix-Hackl,
Registrar: R. Grass,

having regard to the report of the Judge-Rapporteur,

after hearing the Opinion of the Advocate General at the sitting on 10 May 2001,

gives the following

Judgment

1 By application lodged at the Registry of the Court on 3 August 2000, the Commission of the European Communities brought this action under Article 226 EC for a declaration that, by failing to bring into force within the prescribed

period the laws, regulations and administrative provisions, including any penalties, necessary to comply with Council Directive 98/35/EC of 25 May 1998 amending Directive 94/58/EC on the minimum level of training of seafarers (OJ 1998 L 172, p. 1, hereinafter 'the Directive'), the Grand Duchy of Luxembourg has failed to fulfil its obligations under Article 249 EC and Article 2 of the Directive.

2 Under Article 2 of the Directive:

'1. The Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 1 July 1999 or within one year of the adoption of this Directive, whichever is earlier.

2. When the Member States adopt those measures they shall contain references to this Directive or shall be accompanied by such references on the occasion of their official publication. The methods of making such references shall be laid down by the Member States.

3. Member States shall lay down systems of penalties for breaching the national provisions adopted pursuant to this Directive and shall take all the measures necessary to ensure that those penalties are applied. The penalties thus provided for shall be effective, proportionate and dissuasive.

4. The Member States shall immediately communicate to the Commission the texts of all the provisions of national law which they adopt in the field governed by this Directive. The Commission shall inform the other Member States thereof.'

3 As the Directive was adopted on 25 May 1998, the measures necessary for its implementation should have been brought into force no later than 25 May 1999.

4 Since it had received no notification from the Luxembourg Government regarding measures implementing the Directive, by letter dated 20 August 1999, the Commission gave the Grand Duchy of Luxembourg formal notice to submit its observations in this respect within two months.

5 On 24 January 2000, having received no reply to that letter, the Commission issued a reasoned opinion stating that, by not adopting the measures necessary to comply with the Directive, the Grand Duchy of Luxembourg had failed in its obligations under the Directive. The Commission requested the Grand Duchy of Luxembourg to take the measures necessary to comply with the reasoned opinion within two months from the date of its notification.

6 In its reply of 13 April 2000, the Luxembourg Government pointed out that both the International Convention on the Standards of Training, Certification and Watchkeeping for Seafarers, 1978 (hereinafter 'the STCW Convention') and the Code of Training, Certification and Watchkeeping for Seafarers, (hereinafter 'the STCW Code') as well as its technical annexes, are applicable in Luxembourg law, and that the measures implementing those provisions at the administrative level have been notified to the International Maritime Organisation (hereinafter 'the IMO'). According to the Luxembourg Government, to the extent that the Directive largely reproduces the contents of the STCW Code and its technical annexes, the Grand Duchy of Luxembourg was already largely fulfilling the obligations arising from the Directive. However, the Luxembourg Government admitted that the national measures made no reference to the Directive, and that its formal implementation was necessary to fulfil the obligations arising from Community law. It added that a draft law to this effect was going to be submitted to Parliament in the near future.

7 At a meeting, which was held on 12 July 2000, of the committee set up under Article 13 of Council Directive 94/58/EC of 22 November 1994 on the minimum level of training of seafarers (OJ 1994 L 319, p. 28), the Luxembourg Delegation confirmed that the measures implementing the Directive in Luxembourg law were in the course of adoption.

8 In its application the Commission points out that, in accordance with the third paragraph of Article 249 EC and the first paragraph of Article 10 EC, the Member States are required to adopt the measures necessary for the implementation of directives in their national legal order prior to the expiry of the prescribed time-limit, and to notify the Commission of such measures. Those obligations are repeated in Article 2 of the Directive.

9 However, the Luxembourg Government has not notified it of the provisions of national law adopted in the areas governed by the Directive. In addition, the Commission is not in possession of other information enabling it to determine that the Grand Duchy of Luxembourg has complied with the Directive and, in particular, with Article 2 thereof. Therefore the Grand Duchy of Luxembourg has failed to fulfil its obligations under Community law.

10 In its reply the Commission observes that implementation of a directive can take the form of ratification of an international convention, the provisions of which are identical to those of the directive in question. Nevertheless, it is still necessary in that case that the ratification and the convention be published in such a way that the conditions of clarity and certainty in legal situations are fulfilled in accordance with the Court's case-law (Case 102/79 *Commission* v *Belgium* [1980] ECR 1473). In this respect the Member State must make provision for a precise regulatory framework which guarantees the full application of the convention, in particular for the benefit of individuals if it creates rights in their favour. Moreover, operators must be informed that the convention has been incorporated into Community law by the Directive, and that it is therefore indirectly amenable to the jurisdiction of the Court.

11 According to the Commission it is clear that those conditions have not been fulfilled in the present case, as is evidenced by the intention of the Grand Duchy of Luxembourg formally to implement the Directive by amending the Law of 9 November 1990 whose object was the setting up of a public register of Luxembourg shipping (hereinafter, 'the Law of 9 November 1990'), and the Law of 14 April 1992 establishing a disciplinary and criminal code for its merchant fleet (hereinafter, 'the Law of 14 April 1992').

12 The Luxembourg Government points out that the Law of 9 November 1990, as amended, mentions the STCW Convention as constituting an integral part of that Law. Furthermore, by Grand Ducal Decrees of 29 January 1997 and 13 September 1999, the STCW Code and the amendments to its technical annexes have been published in the *Mémorial* (Official Journal of the Grand Duchy of Luxembourg) so as to bring them into effect. Therefore, both the STCW Convention and the STCW Code and the technical annexes are applicable in Luxembourg law. In addition, the measures putting them into effect at administrative level have been notified to the IMO.

13 Since the Directive largely reproduces the contents of the STCW Code and the technical annexes, the Grand Duchy of Luxembourg has already fulfilled, in large measure, the obligations arising from the Directive. However, in order fully to fulfil its Community obligations, the Luxembourg Government has submitted a draft law intended to implement Directives 98/35 and 94/58 by amendment to the Laws of 9 November 1990 and 14 April 1992.

14 In its rejoinder, the Luxembourg Government points out that a draft Grand Ducal Regulation implementing the Directive has been sent to the Conseil de gouvernement, which should approve it in the very near future. It therefore requests the Commission to withdraw the present action and the Court to dismiss it or to order a stay of proceedings pending withdrawal by the Commission.

15 It must be observed, at the outset, that there are no grounds for the Court to stay the proceedings (see, in particular, Case C-47/99 *Commission* v *Luxembourg* [1999] ECR I-8999, paragraph 12).

16 So far as the substance is concerned, the Grand Duchy of Luxembourg does not deny that it has not adopted within the period allowed the implementing measures necessary to comply with the Directive. In those circumstances, the failure to fulfil its obligations must be held to be established.

17 Consequently, it must be held that, by failing to bring into force within the prescribed period the laws, regulations and administrative provisions, including any penalties, necessary to comply with the Directive, the Grand Duchy of Luxembourg has failed to fulfil its obligations under Article 2 of the Directive.

Costs

18 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 Grand Duchy of Luxembourg has been unsuccessful, it must be ordered to pay the costs.

On those grounds,

THE COURT (Third Chamber)

hereby:

1. Declares that, by failing to bring into force within the prescribed period the laws, regulations and administrative provisions, including any penalties, necessary to comply with Council Directive 98/35/EC of 25 May 1998 amending Directive 94/58/EC on the minimum level of training of seafarers, the Grand Duchy of Luxembourg has failed to fulfil its obligations under Article 2 of that directive;

2. Orders the Grand Duchy of Luxembourg to pay the costs.

Gulmann Puissochet Cunha Rodrigues

Delivered in open court in Luxembourg on 3 July 2001.

R. Grass — Registrar

C. Gulmann — President of the Third Chamber