

4. The contested judgment is also vitiated by a breach of Community law by the Court of First Instance inasmuch as it misapplied the principle of proportionality, misassessed the Commission's power of discretionary power and broke with precedent.

Action brought on 22 December 1999 by the Commission of the European Communities against the French Republic

(Case C-501/99)

(2000/C 79/18)

An action against the French Republic was brought before the Court of Justice on 22 December 1999 by the Commission of the European Communities, represented by Christopher Van der Hauwaert, of its Legal Service, acting as Agent, with an address for service in Luxembourg at the office of Carlos Gómez de la Cruz, of its Legal Service, Wagner Centre, Kirchberg.

The applicant claims that the Court should:

- declare that, by failing to adopt within the prescribed time-limit the laws, regulations and administrative provisions necessary to comply with Council Directive 95/69/EC laying down the conditions and arrangements for approving and registering certain establishments and intermediaries operating in the animal feed sector and amending Directives 70/524/EEC, 74/63/EEC, 79/373/EEC and 82/471/EEC⁽¹⁾, the French Republic has failed to comply with its obligations under the Treaty;
- order the French Republic to pay the costs.

Pleas in law and main arguments

The pleas in law and main arguments are analogous to those in Case C-495/99⁽²⁾; the period prescribed by Article 21 of Directive 95/69/EC expired on 1 April 1998.

⁽¹⁾ OJ L 332 of 30.12.1995, p. 15.

⁽²⁾ OJ C 63, 4.3.2000, p. 16.

Action brought on 22 December 1999 by the Commission of the European Communities against the French Republic

(Case C-502/99)

(2000/C 79/19)

An action against the French Republic was brought before the Court of Justice on 22 December 1999 by the Commission of the European Communities, represented by Christopher Van der Hauwaert, of its Legal Service, acting as Agent, with an address for service in Luxembourg at the office of Carlos Gómez de la Cruz, of its Legal Service, Wagner Centre, Kirchberg.

The Commission of the European Communities claims that the Court should:

- declare that, by failing to adopt within the prescribed time-limit the laws, regulations and administrative provisions necessary to comply with Council Directive 97/61/EC of 20 October 1997 amending the Annex to Directive 91/492/EEC laying down the health conditions for the production and placing on the market of live bivalve molluscs⁽¹⁾, the French Republic has failed to comply with its obligations under the Treaty;
- order the French Republic to pay the costs.

Pleas in law and main arguments

The pleas in law and main arguments are analogous to those in Case C-495/99⁽²⁾; the period prescribed by Article 2 of Directive 97/61/EC expired on 1 July 1998.

⁽¹⁾ OJ L 295 of 29.10.1997, p. 35.

⁽²⁾ OJ C 63, 4.3.2000, p. 16.

Action brought on 22 December 1999 by the Commission of the European Communities against the Kingdom of Belgium

(Case C-503/99)

(2000/C 79/20)

An action against the Kingdom of Belgium was brought before the Court of Justice on 22 December 1999 by the Commission of the European Communities, represented by Maria Patakia, of its Legal Service, acting as Agent, with an address for service in Luxembourg at the office of Carlos Gómez de la Cruz, Wagner Centre, Kirchberg.

The Commission of the European Communities claims that the Court should:

(1) declare that, by maintaining in force

— the provisions of the Royal Decree of 10 June 1994 vesting in the State a 'golden share' in the Société Nationale de Transport par Canalisation S.A. (SNTC), to which the following special rights attach:

(i) advance notice of any transfer, use as security or change in the intended use of the company's system of lines and conduits providing extensive infrastructures which are used or are capable of being used for the domestic conveyance of energy products, must be given to the Minister responsible, who is entitled to oppose such operations if he considers that they adversely affect the national interest in the energy field;

(ii) the Minister may appoint two representatives of the Federal Government to the board of directors of the company. Those representatives may propose to the Minister the annulment of any decision of the board of directors which they regard as contrary to the guidelines for the country's energy policy, including the Government's objectives concerning the country's energy supply;

— the provisions of the Royal Decree of 16 June 1994 vesting in the State a 'golden share' in Distrigaz S.A., to which the following special rights attach:

(i) advance notice of any transfer, use as security or change in the company's strategic assets must be given to the Minister responsible, who is entitled to oppose such operations if he considers that they adversely affect the national interest in the energy field;

(ii) the Minister may appoint two representatives of the Federal Government to the board of directors of the company. Those representatives may propose to the Minister the annulment of any decision of the board of directors or of the management committee which they regard as contrary to the guidelines for the country's energy policy,

and by failing to lay down precise, objective and permanent criteria for approval of, or opposition to, the operations referred to above, the Kingdom of Belgium has failed to comply with its obligations under Articles 43 and 56 EC (formerly Articles 52 and 73b of the EC Treaty);

(2) order the Kingdom of Belgium to pay the costs.

Pleas in law and main arguments

National rules laying down general authorisation and veto procedures may create, even where they are applicable without distinction, obstacles to the right of establishment and to the free movement of capital, inasmuch as they may impede, or render less attractive, the exercise of the fundamental freedoms guaranteed by the EC Treaty. Consequently, the Belgian rules referred to in the form of order sought cannot be held to be compatible with Articles 56 EC and 43 EC (formerly Articles 73b and 52 of the EC Treaty) unless they fall within the exceptions referred to in Articles 46 and 58 EC or are justified by overriding public-interest considerations and coupled with criteria which are objective and permanent and which have been publicly promulgated, in such a way as to restrict to an absolute minimum the discretion exercisable by the national authorities.

Although the supply of natural gas constitutes a matter of public interest, and although Distrigaz continues to occupy a semi-monopolistic position on the Belgian market, and whilst, as regards the situation in respect of SNTC, the need to ensure the existence of infrastructures for the conveyance of energy products could also, in certain circumstances, fall within the ambit of 'overriding public-interest reasons', the various restrictions imposed are not the most appropriate means of ensuring supplies in Belgium. Moreover, the Belgian authorities have not explained why, although they have abolished the authorisation procedure regarding the holding of interests in the capital of the companies concerned in excess of the relevant ceilings, they have not abolished the State powers relating to the management of those undertakings. Lastly, Directive 98/30/EC provides a Community framework for the exercise of State powers with regard to the public-service obligations imposed on undertakings, with a view to making it possible to apply the tests of necessity and proportionality.

By the same token, the obligation imposed by Belgian administrative law requiring the Minister to give 'adequate formal reasons' for the exercise of special powers and the option given to any party claiming to have suffered damage to bring proceedings for suspension and annulment cannot make up for the absence of objective, permanent and clear criteria.