

Pleas in law and main arguments

The Commission considers that it is the duty of the authorities of the United Kingdom to initiate, in due time, the procedures necessary for incorporating Directive 1999/31/EC into domestic law so that such process is complete within the time limit laid down, irrespective of the nature of such procedures, and to inform the Commission thereof.

Since the United Kingdom has not informed the Commission of the provisions adopted to comply fully with the Directive, and since the Commission is in possession of no other information enabling it to conclude that the United Kingdom has adopted the necessary provisions, it is compelled to assume that the United Kingdom has not yet adopted such provisions and has thus failed to fulfil its obligations under the Directive.

(¹) OJ L 182, 16.07.1999, p. 1.

Action brought on 22 November 2002 by the Commission of the European Communities against the United Kingdom of Great Britain and Northern Ireland

(Case C-424/02)

(2003/C 19/33)

An action against the United Kingdom of Great Britain and Northern Ireland was brought before the Court of Justice of the European Communities on 22 November 2002 by the Commission of the European Communities, represented by X. Lewis and M. Konstantinidis, acting as agents, with an address for service in Luxembourg.

The Applicant claims that the Court should:

- 1) declare that by failing to adopt the laws, regulations or administrative provisions necessary to comply with Article 3(1) of Council Directive 75/439/EEC requiring Member States to take the measures necessary to give priority to the processing of waste oils by regeneration (¹), as amended by Directive 87/101/EEC on waste oils (²) or, in any event, by failing to notify such provisions to the Commission, the United Kingdom of Great Britain and Northern Ireland has failed to fully fulfil its obligations under that Directive;
- 2) order the United Kingdom of Great Britain and Northern Ireland to pay the costs.

Pleas in law and main arguments

Article 249 EC, under which a directive shall be binding as to the result to be achieved, upon each Member State, carries by implication an obligation on the Member States to observe the period for compliance laid down in the directive. That period expired on 1 January 1990 without the United Kingdom of Great Britain and Northern Ireland having enacted the provisions necessary to comply with the directive referred to in the conclusions of the Commission.

(¹) OJ L 194, 25.07.1975, p. 23.

(²) OJ L 42, 12.02.1987, p. 43.

Reference for a preliminary ruling by the Cour Administrative (Grand-Duché de Luxembourg) by judgment of that Court of 21 November 2002 in the appeal brought by Johanna Maria Boor, née Delahaye, against the Minister for Public Service and Administrative Reform

(Case C-425/02)

(2003/C 19/34)

Reference has been made to the Court of Justice of the European Communities by order of the Cour Administrative (Grand-Duché de Luxembourg) (Administrative Court, Grand Duchy of Luxembourg) of 21 November 2002, received at the Court Registry on 25 November 2002, for a preliminary ruling in the appeal brought by Johanna Maria Boor, née Delahaye, against the Minister for Public Service and Administrative Reform on the following question:

Having regard to the provisions of Directives 77/187/EEC (¹), 98/50/EC (²) and 2001/23/EC (³) identified herein, in the event of the transfer of an undertaking from a non-profit-making association, which is a legal person under private law, to the State as transferee, is it permissible for the transferor's rights and obligations to be taken over only in so far as they are compatible with the State's own rules of public law, in particular in the area of remuneration, where the detailed provisions and amounts of compensation are laid down by grand ducal regulation, bearing in mind that the status of public-sector employee confers legal benefits in the areas of, *inter alia*, career development and job stability on the staff concerned, and that, in the event of disagreement as regards 'substantial changes' to the employment relationship within

the meaning of Article 4(2) of those Directives, the staff concerned retain the right to request termination of that relationship according to the detailed rules in the relevant provisions?

- (1) Council Directive 77/187/EEC of 14 February 1977 on the approximation of the laws of the Member States relating to the safeguarding of employees' rights in the event of transfers of undertakings, businesses or parts of businesses (OJ L 61 of 05.03.1977, p. 26).
- (2) Council Directive 98/50/EC of 29 June 1998 amending Directive 77/187/EEC on the approximation of the laws of the Member States relating to the safeguarding of employees' rights in the event of transfers of undertakings, businesses or parts of businesses (OJ L 201 of 17.07.1998, p. 88).
- (3) Council Directive 2001/23/EC of 12 March 2001 on the approximation of the laws of the Member States relating to the safeguarding of employees' rights in the event of transfers of undertakings, businesses or parts of undertakings or businesses (OJ L 82 of 22.03.2001, p. 16).

Appeal brought on 25 November 2002 by Giuseppe Di Pietro against the order delivered on 27 September 2002 by the Third Chamber of the Court of First Instance of the European Communities in Case T-254/01 between Giuseppe Di Pietro and Court of Auditors of the European Communities

(Case C-427/02 P)

(2003/C 19/35)

An appeal against the order delivered on 27 September 2002 by the Third Chamber of the Court of First Instance of the European Communities in Case T-254/01 between Giuseppe Di Pietro and Court of Auditors of the European Communities was brought before the Court of Justice of the European Communities on 25 November 2002 by Giuseppe Di Pietro, represented by Giuseppe Monforte, whose chambers are in Messina.

The appellant claims that the Court should:

- acquire the documents relating to the candidates admitted to the examination;
- find that the documents do not comply with the requirements objectively discernable from the competition notice, declare inadmissible the non-complying appli-

cations, annul the decision of the Court of Auditors in that respect and adopt any appropriate consequent measure;

- acquire the documents submitted by the end of the period prescribed by the notice confirming the claims made relating to whether Mr. Hervé meets all the requirements;
- in any event, find that the requirements do not comply with the requirements objectively discernable from the competition notice, annul Mr Hervé's appointment and adopt any appropriate consequent measure;
- in the event that the applicant's is the only candidature suited to the post and meeting the requirements to have been put forward for appointment as Secretary General of the Court of Auditors, declare that Mr Di Pietro is entitled to be appointed Secretary General, in view of the fact that the notice did not reserve a discretion to the Court regarding the appointment of those candidates deemed suitable;
- order the reimbursement of the costs and fees disbursed by the applicant and compensation for the damage suffered as a result of not being appointed to the post.

Pleas and main arguments

The applicant challenges the fact that the Court of First Instance declared his application manifestly inadmissible and upheld the objection of the Court of Auditors that his statement of 2 August 2001 cannot be deemed to be a complaint.

According to the Court of First Instance, in his letter of 2 August 2000 the applicant does not challenge the legality of the decision which adversely affects him nor does it seek any means of settling the dispute out of court. Instead, it merely sets out a number of questions and requires the production of a number of documents. Therefore the aforementioned letter cannot be deemed a complaint within the meaning of Article 90(2) of the Staff Regulations.

The applicant argues that the Court of First Instance is wrong in that his statement of 2 August 2001 contains a request that action be taken.