

— order the Italian Republic to pay the costs.

Pleas in law and main arguments

The time-limit for implementing the directive expired on 30 June 2002.

(1) OJ L 167 of 2.7.1999, p. 33.

Reference for a preliminary ruling by the Tribunal Administratif de Paris by judgment of that Court of 3 July 2003 in the case of Serge Briheche against Minister for the Interior, Internal Security and Local Freedoms

(Case C-319/03)

(2003/C 226/16)

Reference has been made to the Court of Justice of the European Communities by judgment of the Tribunal Administratif de Paris (Administrative Court, Paris) of 3 July 2003, received at the Court Registry on 24 July 2003, for a preliminary ruling in the case of Serge Briheche against Minister for the Interior, Internal Security and Local Freedoms on the following question:

Does Directive 76/207/EEC of 9 February 1976 (1) preclude France from maintaining in force the provisions of Article 8 of Law No 75-3 of 3 January 1975, as amended by Law No 79-569 of 7 July 1979 and Law No 2001-397 of 9 May 2001, concerning widows who have not remarried?

(1) Council Directive 76/207/EEC of 9 February 1976 on the implementation of the principle of equal treatment for men and women as regards access to employment, vocational training and promotion, and working conditions (OJ L 39, 14.2.1976, p. 40).

Action brought on 24 July 2003 by the Commission of the European Communities against the Republic of Austria

(Case C-320/03)

(2003/C 226/17)

An action against the Republic of Austria was brought before the Court of Justice of the European Communities on 24 July 2003 by the Commission of the European Communities,

represented by Claudia Schmidt of the Commission's Legal Service, with an address for service in Luxembourg.

The applicant claims that the Court should:

1. Rule that the imposition of a ban on the use of a section of the A 12 Inntal motorway between kilometre 20,359 in the Kundl local authority area and kilometre 66,780 in the Ampass local authority area by heavy goods vehicles with a total weight exceeding 7,5 tonnes which carry certain goods is incompatible with the Republic of Austria's obligations under Articles 1 and 3 of Council Regulation (EEC) No 881/92 (1), Articles 1 and 6 of Council Regulation (EEC) No 3118/93 (2) and Articles 28 EC to 30 EC;
2. Order the Republic of Austria to pay the costs of the proceedings.

Pleas in law and main arguments

On 27 May 2003, the First Minister of the Land of Tyrol imposed, on the basis of the Austrian Immissionsschutzgesetz — Luft (Immission Control Act — air), a ban on the use by heavy goods vehicles carrying certain goods of a 46 km stretch of the A 12 Inntal motorway. This absolute ban applies to the vehicles covered with immediate effect from 1 August 2003 for an indefinite period.

The Commission takes the view that, in imposing this ban, the Republic of Austria has acted in breach of the abovementioned obligations of primary and secondary law.

The transit ban or the 'pressure to use railways' creates additional delays and costs for the heavy goods vehicles and undertakings concerned. The ban thus constitutes a manifest obstacle to the free movement of goods. The approach chosen by the Republic of Austria in applying the ban only to transit traffic, approximately 80 % of which is effected by foreign hauliers, thus entails preferential treatment of the national/local movement of goods or, in other words, indirect discrimination of the transport of goods by foreign carriers. That discrimination cannot be justified on the ground of environmental protection. For that reason alone, it must be found that the Republic of Austria has infringed Article 28 EC.

The Commission argues alternatively that, even if the measure is not discriminatory, the argument based on protection of the environment cannot be accepted because the Austrian measure does not meet the requirements of the principle of proportionality. There are less stringent measures, that is to say, measures which appear equally suitable to achieve the aim sought but which present less of an obstacle to the free movement of goods. Since it cannot be justified on the grounds of environmental protection, the measure ultimately infringes Article 28 EC.

It is clear from Regulation (EEC) No 881/92 and Regulation (EEC) No 3118/93 that, in principle, conditions for the free circulation of goods transport other than those laid down in those regulations are impermissible. There is no exception limiting the scope of that principle. There has thus been a