JUDGMENT OF THE COURT (Fifth Chamber)
15 November 2001 *

In Case C-49/00,

Commission of the European Communities, represented by E. Traversa and N. Yerrell, acting as Agents, with an address for service in Luxembourg,

applicant,

v

Italian Republic, represented by U. Leanza, acting as Agent, assisted by D. Del Gaizo, avvocato dello Stato, with an address for service in Luxembourg,

defendant,

APPLICATION for a declaration that:

— by failing to require employers to evaluate all health and safety risks in the work place,

* Language of the case: Italian.

— by allowing employers to decide whether or not to enlist external services for the adoption of protective and preventive measures when the skills available within the undertaking are insufficient, and

— by failing to define the capabilities and aptitudes which the persons responsible for protective and preventive measures against occupational risks to workers' health and safety must possess,

the Italian Republic has failed to fulfil its obligations under Articles 6(3)(a) and 7(3), (5) and (8) of Council Directive 89/391/EEC of 12 June 1989 on the introduction of measures to encourage improvements in the safety and health of workers at work (OJ 1989 L 183, p. 1),

THE COURT (Fifth Chamber),

composed of: S. von Bahr (Rapporteur), President of the Fourth Chamber, acting for the President of the Fifth Chamber, D.A.O. Edward, A. La Pergola, L. Sevón and M. Wathelet, 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 31 May 2001,

gives the following

Judgment

1 By application lodged at the Registry of the Court of Justice on 16 February 2000, the Commission of the European Communities brought an action under Article 226 EC for a declaration that:

— by failing to require employers to evaluate all health and safety risks in the work place;

— by allowing employers to decide whether or not to enlist external services for the adoption of protective and preventive measures when the skills available within the undertaking are insufficient, and

— by failing to define the capabilities and aptitudes which the persons responsible for protective and preventive measures against occupational risks to workers' health and safety must possess,

the Italian Republic has failed to fulfil its obligations under Articles 6(3)(a) and 7(3), (5) and (8) of Council Directive 89/391/EEC of 12 June 1989 on the introduction of measures to encourage improvements in the safety and health of workers at work (OJ 1989 L 183, p. 1) (hereinafter 'the directive').

Community legislation

2 Article 6(3)(a) of the directive requires employers, 'taking into account the nature of the activities of the enterprise and/or the establishment', to 'evaluate the risks to the safety and health of workers, *inter alia* in the choice of work equipment, the chemical substances or preparations used, and the fitting-out of work places'.

3 Article 7 of the directive, entitled 'Protective and preventive services', provides in paragraphs 1 and 3:

'1. Without prejudice to the obligations referred to in Articles 5 and 6, the employer shall designate one or more workers to carry out activities related to the protection and prevention of occupational risks for the undertaking and/or establishment.

...

3. If such protective and preventive measures cannot be organised for lack of competent personnel in the undertaking and/or establishment, the employer shall enlist competent external services or persons.'

4 Article 7(5) of the directive provides:

'In all cases:

— the workers designated must have the necessary capabilities and the necessary means,

— the external services or persons consulted must have the necessary aptitudes and the necessary personal and professional means, and

— the workers designated and the external services or persons consulted must be sufficient in number

to deal with the organisation of protective and preventive measures, taking into account the size of the undertaking and/or establishment and/or the hazards to which the workers are exposed and their distribution throughout the entire undertaking and/or establishment.'

5 Under the first subparagraph of Article 7(8) of the directive:

'Member States shall define the necessary capabilities and aptitudes referred to in paragraph 5.'

National legislation

6 The directive was implemented in Italian law by Decree-Law No 626 of 19 September 1994 (*GURI* No 265 of 12 November 1994, *Ordinary Supplement* No 141, p. 5), as amended by Decree-Law No 242 of 19 March 1996 (*GURI* No 104 of 6 May 1996, *Ordinary Supplement* No 75, p. 5) (hereinafter 'the Decree-Law').

7 Article 4(1) of the Decree-Law provides:

'The employer shall, taking into account the nature of the activities of the undertaking or place of production, evaluate the risks, in the choice of work

equipment, the chemical substances or preparations used and the fitting-out of work places, to the safety and health of workers, including those for groups of workers who are exposed to particular risks.'

8 Article 8 of the Decree-Law, entitled 'Prevention and Protection Service', provides:

'1. Without prejudice to the provisions of Article 10 the employer shall organise a prevention and protection service within the undertaking or production unit, or shall entrust that task to external persons or services in accordance with the provisions of this article.

2. The employer shall, after consultation with the safety representative, designate, within the undertaking or production unit, one or more of its workers, including the person in charge of the service who must possess the necessary aptitudes and capabilities, to carry out the tasks laid down in Article 9.

3. The workers mentioned in paragraph 2 shall be sufficient in number, possess the necessary capabilities, and have appropriate time and means at their disposal, in order to carry out the tasks with which they have been entrusted. They may not be placed at any disadvantage, as a result their activity, as regards the performance of their own duties.

4. Without prejudice to the provisions of paragraph 2, the employer may have recourse to persons external to the undertaking who have the necessary professional expertise to provide for prevention and protection.

5. The organisation of a prevention and protection service within the undertaking or production unit is nonetheless obligatory in the following cases: (a) in industrial undertakings covered by Article 1 of Decree of the President of the Republic No 175 of 17 May 1988, as amended, which are subject to the duty of disclosure or notification in accordance with Articles 4 and 6 of that decree; (b) in thermo-electric power stations; (c) in nuclear installations and laboratories; (d) in undertakings for the manufacture and separate storage of explosives, gunpowder and munitions; (e) in industrial undertakings with more than 200 workers; (f) in mining undertakings with more than 50 workers; (g) in public or private nursing homes.

6. Without prejudice to the provisions of paragraph 5, if the capabilities of the workers within the undertaking or production unit are insufficient, the employer may, after consulting the safety representative, have recourse to external persons or services.

7. The external service must be suitable to the characteristics of the undertaking or production unit for which it is called upon to provide the appropriate services, and with reference to the number of workers involved.

8. The person in charge of the external service must have the appropriate aptitudes and capabilities.

9. The Minister for Labour and Social Security may, with the agreement of the Minister for Health and the Minister for Industry, Trade and Business, having heard the permanent consultative commission, lay down by decree specific requirements, rules and procedures for the certification of services, as well as the minimum number of workers for the purposes of paragraphs 3 and 7.

10. If the employer has recourse to external persons or services, he shall not thereby be relieved of his liability in the matter.

11. The employer shall notify the labour inspectorate and the responsible local health bodies of the name of the person designated as being in charge of the internal or external prevention and protection service. Such notification shall be accompanied by a declaration in relation to the designated person concerning: (a) the tasks carried out with regard to prevention and protection; (b) the period during which such tasks were carried out; (c) his curriculum vitae.'

Facts and pre-litigation procedure

9 In accordance with the procedure under the first paragraph of Article 226 EC, and having given the Italian Republic formal notice to submit its observations, the Commission, by letter dated 19 October 1998, sent a reasoned opinion to that Member State, requesting it to adopt the measures necessary to comply with its obligations under the directive within two months of the date of the notification of that opinion. Since the Italian Republic did not respond to that opinion, the Commission brought this action.

Findings of the Court

The first complaint

10 According to the Commission, Article 6(3)(a) of the directive requires employers to evaluate all the risks to the safety and health of workers at work. The three types of risk mentioned in that provision are only examples of particular risks which must be evaluated. That is why, by its first complaint, the Commission claims that the Italian measure transposing the directive, namely Article 4(1) of the Decree-Law, which merely requires the employer to evaluate those three specific types of risk, is contrary to the directive.

11 The Italian Government replies that that complaint is without foundation. First, the three types of risk specified in the directive and reproduced in the national legislation include, in reality, all sources of risks in work places. Further, the other provisions of the Decree-Law, as well as other national measures, impose specific obligations of evaluation of risks by the employer. Finally, Article 2087 of the Civil Code requires employers to take measures to protect the physical and mental health of workers, an obligation which cannot be fulfilled without prior evaluation of the relevant risks.

12 It must be noted, at the outset, that it follows both from the purpose of the directive, which, according to the 15th recital, applies to all risks, and from the wording of Article 6(3)(a) thereof, that employers are obliged to evaluate all risks to the safety and health of workers.

13 It should also be noted that the occupational risks which are to be evaluated by employers are not fixed once and for all, but are continually changing in relation, particularly, to the progressive development of working conditions and scientific research concerning such risks.

14 It follows that Article 4(1) of the Decree-Law, which certainly requires employers to evaluate specific risks, but which limits the extent of that obligation to the three sorts of risk mentioned as examples in Article 6(3)(a) of the directive, does not properly transpose that provision into national law.

15 With regard to the argument of the Italian Government that other provisions of the Decree-Law, as well as other national measures, impose on employers specific obligations to evaluate risks, it must be rejected since the failure to transpose the general obligation, under the directive, to evaluate all the risks to the safety and health of workers cannot be made good by the adoption of specific measures relating to only some of the risks concerned.

16 As for the argument drawn by the Italian Government from Article 2087 of the Civil Code, it is sufficient to state that the general obligation of the employer to take measures to protect the physical and mental health of workers does not correspond to the specific obligation to evaluate all the risks to the health and safety of workers for the purposes of the directive and in the legal framework established by it.

17 The existence of Article 2087 of the Civil Code cannot relieve the Italian Republic of the duty to transpose Article 6(3)(a) of the directive properly into national law.

18 In those circumstances, the first complaint of the Commission, that of breach of Article 6(3)(a) of the directive, must be upheld.

The second complaint

19 By its second complaint, the Commission claims that Article 8(6) of the Decree-Law, which leaves to the employer the choice of whether or not to call upon external services if the capabilities of the employees of the undertaking are insufficient, is obviously contrary to the mandatory rule contained in Article 7(3) of the directive.

20 The Italian Government contends that Article 8(6) of the Decree-Law, read with the other provisions of that article and, particularly, paragraphs 1 and 5 thereof, is to be understood as meaning that, if the employer does not have available sufficient capabilities to organise protection and prevention within the undertaking, he must engage staff with the appropriate capabilities or have recourse to external persons or services.

21 On that point, it must be recalled that it is settled law that transposing a directive into national law does not necessarily require its provisions to be reproduced verbatim in a specific, express law or regulation; a general legal context may be sufficient, provided that it does effectively ensure the full application of the directive in a sufficiently clear and precise manner (see, inter alia, Case C-214/98 *Commission* v *Greece* [2000] ECR I-9601, paragraph 49, and Case C-38/99 *Commission* v *France* [2000] ECR I-10941, paragraph 53).

22 It is particularly important, in order to satisfy the requirement of legal certainty, that individuals should have the benefit of a clear and precise legal situation enabling them to ascertain the full extent of their rights and duties and, where appropriate, to rely on them before the national courts (Case C-236/95 *Commission* v *Greece* [1996] ECR I-4459, paragraph 13).

23 In that regard, it must be noted that Article 7(1) and (3) of the directive require employers to arrange a service of prevention and protection from occupational risks within the undertaking or, if its internal capabilities are insufficient, to enlist external help.

24 However, under the terms of Article 8(6) of the Decree-Law, an employer has the option, but not the obligation, to have recourse to persons or services outside the undertaking if the capabilities of the employees within it are insufficient.

25 Therefore it does not follow from Article 8(6) of the Decree-Law taken on its own that the employer must, in all circumstances, engage staff with the appropriate capabilities or call upon external persons or services to ensure protection from and prevention of occupational risks within the undertaking concerned.

26 Therefore, it remains to consider whether Article 8(6) of the Decree-Law, read in the light of the other paragraphs of that provision, and particularly of paragraphs 1 and 5 thereof, must none the less be given the interpretation advocated by the Italian Government.

27 Whilst Article 8(1) of the Decree-Law states the principle that the employer shall organise the service of protection and prevention within the undertaking or shall entrust that to persons or services outside it, that provision refers to the other paragraphs of Article 8 for the actual application of the principle and does not appear apt to give paragraph 6 a meaning other than that which results from its text.

28 Thus it does not clearly follow from Article 8(1) of the Decree-Law that paragraph 6 of that provision is to be interpreted as requiring employers, in all circumstances, to engage staff with the requisite capabilities or to enlist persons or services outside the undertaking if the capabilities within it are insufficient.

29 Article 8(5) of the Decree-Law, which is also relied upon by the Italian Government, requires employers to organise, in certain exhaustively specified cases, the service of prevention and protection within the undertaking. If that provision is to be interpreted as requiring employers to provide, in all circumstances, a service of prevention and protection in the cases set out therein, it does not necessarily follow from it that the employer must provide such services in all the other cases, particularly those which are mentioned in Article 8(6) of the Decree-Law.

30 Furthermore, a reading of Article 8(6) of the Decree-Law in the light of the other provisions of that article does not lead to a different interpretation.

31 In those circumstances, it must be held that the interpretation of Article 8(6) of the Decree-Law relied upon by the Italian Government according to which the employer must, in all circumstances, engage persons with the requisite capabilities or enlist persons or services outside the undertaking, does not result in a sufficiently clear and precise way from the text of that provision or from its legal context.

32 It follows that the second complaint of the Commission, that of breach of Article 7(3) of the directive, must be upheld.

The third complaint

33 By its third complaint, the Commission claims that, by not laying down sufficiently clear and detailed rules relating to the capabilities required of the persons responsible for protection from and prevention of occupational risks within the undertaking, the Italian Republic is in breach of Article 7(5) and (8) of the directive.

34 The Italian Government submits that it has made employers responsible for deciding the criteria for determining whether the capabilities and aptitudes necessary to carry out the relevant functions are met. Furthermore, Article 8(9) of the Decree-Law provides that the responsible minister may lay down rules for the certification of services of protection and prevention of occupational risks. Also, Article 8(11) of the Decree-Law requires employers to communicate to the competent national authorities information concerning the persons in charge of the said services.

35 In that regard, it must be noted that under Article 7(8) of the directive it is for the Member State to define the capabilities and aptitudes necessary for the persons or

services covered by paragraph 5 of that provision, who are responsible for protection from and prevention of occupational risks in undertakings.

36 In order to implement that obligation, Member States must adopt laws or regulations which comply with the requirements of the directive and which are brought to the attention of the undertakings concerned by appropriate means, so as to enable them to be aware of their obligations in the matter and the competent national authorities to check that those measures are complied with.

37 The approach taken by the Italian Republic, consisting of entrusting the employer with the responsibility to determine the capabilities and aptitudes necessary to ensure protection from and prevention of occupational risks, obviously does not satisfy the requirements of Article 7(5) and (8) of the directive.

38 As for Article 8(9) of the Decree-Law, which provides that the national authorities may adopt measures relating to protection from and prevention of occupational risks, it must be noted that it provides an option and that the Italian Government has led no evidence to establish that the national authorities have made use of that option.

39 Finally, with regard to Article 8(11) of the Decree-Law it is sufficient to point out that the purpose of that provision is not to establish rules relating to the capabilities and aptitudes of the persons in charge of services of protection and prevention of occupational risks, but to deal with the communication by the employer of information concerning such persons to the competent national authorities.

40 It follows that the third complaint of the Commission, that of breach of Article 7(5) and (8) of the directive, must also be upheld.

41 Having regard to all the preceding considerations it must be held that:

— by failing to require employers to evaluate all health and safety risks in the work place;

— by allowing employers to decide whether or not to enlist external services for the adoption of protective and preventive measures when the skills available within the undertaking are insufficient, and

— by failing to define the capabilities and aptitudes which the persons responsible for protective and preventive measures against occupational risks to workers' health and safety must possess,

the Italian Republic has failed to fulfil its obligations under Articles 6(3)(a) and 7(3), (5) and (8) of the directive.

Costs

42 Article 69(2) of the Rules of Procedure provides that 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 Italian Republic has been unsuccessful, the Italian Republic must be ordered to pay the costs.

On those grounds,

THE COURT (Fifth Chamber)

hereby:

1. Declares that,

— by failing to require employers to evaluate all health and safety risks in the work place;

— by allowing employers to decide whether or not to enlist external services for the adoption of protective and preventive measures when the skills available within the undertaking are insufficient, and

— by failing to define the capabilities and aptitudes which the persons responsible for protective and preventive measures against occupational risks to workers' health and safety must possess,

the Italian Republic has failed to fulfil its obligations under Articles 6(3)(a) and 7(3), (5) and (8) of Council Directive 89/391/EEC of 12 June 1989 on the introduction of measures to encourage improvements in the safety and health of workers at work.

2. Orders the Italian Republic to pay the costs.

von Bahr Edward La Pergola

Sevón Wathelet

Delivered in open court in Luxembourg on 15 November 2001.

R. Grass P. Jann

Registrar President of the Fifth Chamber