

JUDGMENT OF THE COURT (Fifth Chamber)
22 June 2004 [\(1\)](#)

(Failure of a Member State to fulfil its obligations – Maritime Transport – Directive 95/21/EC – Maritime safety – Port State control of vessels – Insufficient number of inspections)

In Case C-439/02,

Commission of the European Communities, represented by K. Simonsson and W. Wils, acting as Agents, with an address for service in Luxembourg,

applicant,

v

French Republic, represented by G. de Bergues and P. Boussaroque, acting as Agents,

defendant,

APPLICATION for a declaration that, by failing to carry out a total number of annual inspections corresponding to at least 25% of the number of individual vessels which entered its ports in 1999 and 2000, the French Republic has failed to fulfil its obligations under Article 5(1) of Council Directive 95/21/EC of 19 June 1995 concerning the enforcement, in respect of shipping using Community ports and sailing in the waters under the jurisdiction of the Member States, of international standards for ship safety, pollution prevention and shipboard living and working conditions (port State control) (OJ 1995 L 157, p. 1),

THE COURT (Fifth Chamber),

composed of: C. Gulmann, President of the Chamber, S. von Bahr and R. Silva de Lapuerta (Rapporteur), Judges,

Advocate General: F.G. Jacobs,

Registrar: R. Grass,

having regard to the Report of the Judge-Rapporteur

having decided, after hearing the Advocate General, to proceed to judgment without an Opinion,

gives the following

Judgment

1

By application lodged at the Court Registry on 4 December 2002, the Commission of the European Communities brought an action under Article 226 EC for a declaration that, by failing to carry out a total number of annual inspections corresponding to at least 25% of the number of individual vessels entering its ports in 1999 and 2000, the French Republic has failed to fulfil its obligations under Article 5(1) of Council Directive 95/21/EC of 19 June 1995 concerning the enforcement, in respect of shipping using Community ports and sailing in the waters under the jurisdiction of the Member States, of international standards for ship safety, pollution prevention and shipboard living and working conditions (port State control) (OJ 1995 L 157, p. 1).

Legal background and pre-litigation procedure

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Article 1 of Directive 95/21 provides:

‘The purpose of this Directive is to help drastically to reduce substandard shipping in the waters under the jurisdiction of Member States by:

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increasing compliance with international and relevant Community legislation on maritime safety, protection of the marine environment and living and working conditions on board ships of all flags,

— establishing common criteria for control of ships by the port State and harmonising procedures on inspection and detention, taking proper account of the commitments made by the maritime authorities of the Member States under the Paris Memorandum of Understanding on Port State Control (MOU) [“the Paris memorandum”].’

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Article 5(1) of Directive 95/21 provided, in the version in force at the material time:

‘The competent authority of each Member State shall carry out an annual total number of inspections corresponding to at least 25% of the number of individual ships which entered its ports during a representative calendar year.’

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Since it considered that the French Republic had not, during 1999, achieved the level of vessel inspections set by Directive 95/21, the Commission initiated against that Member State the proceedings for failure to fulfil obligations provided for in Article 226 EC by sending a formal letter of notice to it on 20 December 2000.

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In their reply of 26 March 2001 to that letter of notice, the French authorities stated that they were under constraints in their use of human resources and the organisation of their services.

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Meanwhile, the Commission, which had received information indicating that the number of inspections carried out during 2000 corresponded to 12.2% of the number of vessels which had entered French ports, sent a further letter of formal notice to the French Republic on 7 May 2001.

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Since it considered that the insufficient number of inspections carried out in 1999 and 2000 constituted a failure to fulfil its obligations under Directive 95/21, on 19 September 2001 the Commission sent a reasoned opinion to the French Republic requesting it to take the measures necessary to comply with that directive within two months of receipt of the opinion.

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In its replies of 22 November and 21 December 2001, the French Government stated the reasons for its failure to achieve the set levels. According to it, because of the demographic structure of the bodies carrying out vessel inspections, numerous members of staff had retired. Those retirements coincided with a suspension of certain types of recruitment linked to the creation of a body of inspectors of maritime affairs. Thus, the number of inspectors able to carry out the inspections required by Directive 95/21 fell from 70 to 54 between 1994 and 1999. The budgetary and recruitment efforts made since that time have made it possible to increase the inspection percentages by a substantial proportion.

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Moreover, the French authorities point to the quality of the inspections carried out, which is shown by a percentage of ship detentions higher than the European average (11% of ships detained in 1999 and 17% in 2000, compared to the European average of 9.15% in 1999 and 9.50% in 2000).

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Subsequently, since the French authorities had merely informed the Commission of the financial measures brought into force to increase the number of ship inspectors, the Commission decided to bring the present action.

The application

Arguments of the parties

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In support of its application, the Commission states that, by carrying out inspections of only 14.1% and 12.2% respectively of individual foreign vessels which entered its ports during 1999 and 2000, the French Republic has manifestly failed to fulfil its obligation under Article 5(1) of the directive, according to which each Member State must carry out inspections of at least 25% of the number of individual vessels entering its ports during a representative calendar year. Failure to fulfil that obligation inevitably leads to an increased risk of maritime accidents and therefore to loss of life and to sea and coastal pollution. In the Commission’s view, a lack of staff is not sufficient justification for a failure to fulfil the obligations under that provision.

12

On the basis of the annual report for 2001 of the Paris memorandum, which shows that 9.63% of the vessels which entered French ports in 2001 were inspected, the Commission finds not only that the French Republic has failed to achieve the level of 25% set by Article 5(1) of Directive 95/21, but also that that percentage appears to be decreasing.

13

The French Government, without disputing the alleged failure to fulfil its obligations, states firstly that, according to the figures in its possession, the percentages of inspections of ships calling at French ports were in fact 13.83% in 1999 and 12.13% in 2000. Secondly, it refers to an exceptional multi-annual recruitment plan, which will continue until 2006, whose aim is to double the number of ship safety inspectors. Finally, according to the French Government, that plan will ensure, in the medium term, an increase in the number of inspections without affecting their quality in order that the level set by Directive 95/21 may be achieved.

Findings of the Court

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In the present case, it is common ground that the French Republic has failed to fulfil its obligation under Article 5(1) of the

directive, which requires each Member State to carry out inspections of at least 25% of the number of individual vessels entering its ports during a representative calendar year.

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Furthermore, the Court has repeatedly held that a Member State cannot plead provisions, practices or situations in its internal legal order to justify the absence of implementation of a directive within the period prescribed (see, *inter alia*, Case C-352/01 *Commission v Spain* [2002] ECR I-10263, paragraph 8).

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The action brought by the Commission must therefore be considered well founded.

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Consequently, it must be held that, by failing to carry out inspections of at least 25% of the number of individual vessels which entered its ports in 1999 and 2000, the French Republic has failed to fulfil its obligations under Article 5(1) of Directive 95/21.

Costs

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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. As the Commission has applied for costs to be awarded against the French Republic and the latter has been unsuccessful, the French Republic must be ordered to pay the costs.

On those grounds,

THE COURT (Fifth Chamber)

hereby:

1.

Declares that, by failing to carry out inspections of at least 25% of the number of individual vessels which entered its ports in 1999 and 2000, the French Republic has failed to fulfil its obligations under Article 5(1) of Council Directive 95/21/EC of 19 June 1995 concerning the enforcement, in respect of shipping using Community ports and sailing in the waters under the jurisdiction of the Member States, of international standards for ship safety, pollution prevention and shipboard living and working conditions (port State control);

2.

Orders the French Republic to pay the costs.

Gulmann

von Bahr

Silva de Lapuerta

Delivered in open court in Luxembourg on 22 June 2004.

R. Grass

C. Gulmann

Registrar

President of the Fifth Chamber

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Language of the case: French.