

## JUDGMENT OF THE COURT (Seventh Chamber)

4 February 2010 (\*)

(Failure of a Member State to fulfil obligations – Directive 2004/113/EC – Equal treatment for men and women – Access to and supply of goods and services – Failure to transpose within the prescribed period as regards Gibraltar)

In Case C-186/09,

ACTION under Article 226 EC for failure to fulfil obligations, brought on 26 May 2009,

**European Commission**, represented by M. van Beek and P. Van den Wyngaert, acting as Agents, with an address for service in Luxembourg,

applicant,

v

**United Kingdom of Great Britain and Northern Ireland**, represented by H. Walker, acting as Agent,

defendant,

THE COURT (Seventh Chamber)

composed of R. Silva de Lapuerta, President of the Chamber, E. Juhász and J. Malenovský (Rapporteur), Judges,

Advocate General: P. Mengozzi,

Registrar: R. Grass,

having regard to the written procedure,

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

gives the following

### Judgment

- 1 By its application, the Commission of the European Communities requests the Court to declare that, by failing to adopt the laws, regulations and administrative provisions necessary to comply with Council Directive 2004/113/EC of 13 December 2004 implementing the principle of equal treatment between men and women in the access to and supply of goods and services (OJ 2004 L 373, p. 37; 'Directive 2004/113'), or, in any event, by failing to notify such measures to the Commission, the United Kingdom of Great Britain and Northern Ireland has failed to fulfil its obligations under that directive.
- 2 Pursuant to Article 17 of Directive 2004/113, the Member States were to bring into force the laws, regulations and administrative provisions necessary to comply with that directive by 21 December 2007 at the latest and to communicate to the Commission the text thereof forthwith.
- 3 Since it was not informed of provisions adopted by the United Kingdom to ensure the full

transposition of Directive 2004/113 within the period prescribed in the directive, the Commission initiated the infringement procedure provided for in Article 226 EC. By letter of 29 January 2008, it thus gave the United Kingdom formal notice and called on it to submit its observations.

4 In their reply of 1 April 2008, the United Kingdom authorities indicated, first, that the legislative procedure relating to the transposition of Directive 2004/113 for the purposes of the application of that directive in Great Britain and Northern Ireland was almost completed and, secondly, that the draft transposing legislation applicable to Gibraltar was awaiting ministerial approval.

5 On 21 April 2008, the United Kingdom notified the Commission of the Sex Discrimination (Amendment of Legislation) Regulations 2008, applicable in Great Britain and Northern Ireland.

6 Since it had no other information available to it concerning the transposition process in Gibraltar, the Commission delivered a reasoned opinion on 23 September 2008 calling on the United Kingdom to take all the necessary measures to comply with Directive 2004/113 within two months from the date of notification of that opinion.

7 The United Kingdom authorities replied to that opinion on 18 November 2008, reiterating in this connection only the information already provided on the state of transposition in Gibraltar and stating that the Government of Gibraltar expected to have the necessary legislation enacted before the end of 2008.

8 As it did not subsequently receive any information concerning the measures necessary to transpose Directive 2004/113 in Gibraltar, the Commission decided to bring the present action.

9 In its defence, the United Kingdom admits that it has only partially transposed the provisions of Directive 2004/113 into domestic law. It states that the draft transposing legislation applicable to Gibraltar is awaiting approval for publication and should be in place before the end of 2009.

10 It must be pointed out in this regard that, according to settled case-law, the question whether a Member State has failed to fulfil its obligations must be determined by reference to the situation obtaining in the Member State at the end of the period laid down in the reasoned opinion and the Court cannot take account of any subsequent changes (see, *inter alia*, judgments of 8 May 2008 in Case C-233/07 *Commission v Portugal*, paragraph 31, and 3 September 2009 in Case C-527/08 *Commission v United Kingdom*, paragraph 9).

11 In this case it is common ground that, at the end of the period prescribed in the reasoned opinion, measures to ensure the full transposition of Directive 2004/113 into the domestic legal order of the United Kingdom had not been adopted.

12 Therefore, the action brought by the Commission must be considered to be well founded.

13 Consequently, it must be held that, by failing to adopt, within the prescribed period, all the laws, regulations and administrative provisions necessary to comply with Directive 2004/113, the United Kingdom has failed to fulfil its obligations under that directive.

### **Costs**

14 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. Since the Commission has applied for costs and the United Kingdom has been unsuccessful, the United

Kingdom must be ordered to pay the costs.

On those grounds, the Court (Seventh Chamber) hereby:

- 1. Declares that, by failing to adopt, within the prescribed period, all the laws, regulations and administrative provisions necessary to comply with Council Directive 2004/113/EC of 13 December 2004 implementing the principle of equal treatment between men and women in the access to and supply of goods and services, the United Kingdom of Great Britain and Northern Ireland has failed to fulfil its obligations under that directive;**
- 2. Orders the United Kingdom of Great Britain and Northern Ireland to pay the costs.**

Silva de Lapuerta

Juhász

Malenovský

Delivered in open court in Luxembourg on 4 February 2010.

[Signatures]