OPINION OF ADVOCATE GENERAL ELMER

delivered on 9 March 1995 *

1. In the present Treaty-infringement proceedings the Commission, by application lodged at the Registry of the Court of Justice on 26 April 1994, seeks a declaration that, by maintaining in force the provisions of Article 70 of Decree-Law No 2545/1940 and Decision No 46508 of 10/17 May 1976 of the Minister for National Education and Religious Affairs (as subsequently amended), the Hellenic Republic has failed to fulfil its obligations under Article 48(2) of the EC Treaty and Article 3(1) of Regulation (EEC) No 1612/68 of the Council of 15 October 1968 on freedom of movement for workers within the Community. [1]

2. Before the Commission instituted the proceedings, it sent to the defendant a letter of formal notice on 1 July 1992, followed by a reasoned opinion on 26 August 1993.

3. The Commission argues that it follows from the above provisions that the recruitment of non-Greek language teachers (including nationals of other Member States) in private foreign-language schools is subject to more stringent conditions than is the recruitment of Greek nationals.

The Commission has also pointed out, in its reply to a question put by the Court, that Article 70 of Decree-Law No 2545/1940 requires teachers in private schools to have the same specific qualifications as those required for recruitment to a similar post in an institute of public education. Under Article 18(1) of Presidential Decree No 611/27/6-15/7/1977 on recruitment of, *inter alia*, officials to State and other public bodies, including schools, a person cannot be recruited as an official unless he or she is a Greek national. The Commission refers in this connection to the Greek Government's replies to the questions put by the Court in Case 147/86, [2] in which the Greek Government confirmed that the above rules require teachers in private schools to be Greek nationals.

* Original language: Danish.

1 — OJ, English Special Edition 1968 (II), p. 475; original reference JO 1968 L 257, p. 2.

2 — Judgment in Case 147/86 *Commission* v *Greece* [1988] ECR 1637.

4. The Hellenic Republic has not denied in the present case that the rules in question are at variance with Community law.

In its submissions to the Court, however, the Hellenic Republic has stated that a Presidential Decree amending the disputed rules to ensure that the conditions imposed on nationals of other Member States will in future be identical to those imposed on Greek nationals has already been signed by the ministers responsible and now awaits signature by the President of the Republic and subsequent publication, for which reason it argues that the case no longer serves any purpose.

5. It is thus not disputed that the defendant Member State has failed to fulfil its obligations under Community law.

It is also clear from the Court's established case-law [3] that the subject-matter of proceedings brought under Article 169 of the EC Treaty is set out in the Commission's reasoned opinion. Even in the case where a Treaty infringement ceases while the case is pending before the Court, there continues to be an interest in maintaining the action with a view to establishing the basis of the liability which a Member State may, as a result of the Treaty infringement, incur in respect of other Member States, the Community or private individuals.

Conclusion

6. For the above reasons I propose that the Court should rule as follows:

(1) By maintaining in force the provisions of Article 70 of Decree-Law No 2545/1940 and Decision No 46508 of 10/17 May 1976 of the Minister for National Education and Religious Affairs (as subsequently amended), the Hellenic Republic has failed to fulfil its obligations under Article 48(2) of the EC Treaty and Article 3(1) of Regulation (EEC) No 1612/68 of the Council.

(2) The Hellenic Republic is ordered to pay the costs of the proceedings.

3 — See, *inter alia*, the judgment in Case C-37/93 *Commission* v *Belgium* [1993] ECR I-6295.