OPINION OF ADVOCATE GENERAL ALBER

delivered on 4 March 1999 *

A — Facts

1. In this action the Commission is alleging that, by requiring economic operators from other Member States of the Community to be resident or established in Belgium for at least one year before they can register aircraft there, the Kingdom of Belgium has failed to fulfil its obligations under Articles 6 and 52 of the EC Treaty.

2. The requirement of residency or establishment is laid down in the second subparagraph, points (c) and (d), of Article 3(3) of the Royal Decree of 15 March 1954 regulating air traffic.

3. The Commission first drew the Belgian Government's attention to what it viewed as the problem of the compatibility of that Belgian provision with Articles 6, 52 and 59 of the EC Treaty in a letter of 31 October 1995. In its reply the Belgian Government pointed to draft legislation amending the existing legal position.

4. The Commission, upon receiving no further information indicating that the relevant Belgian legislation had been amended, on 19 June 1997 sent the Belgian Government a reasoned opinion requesting it to comply with that opinion within two months of receipt thereof.

5. In its reply of 28 July 1997 the Belgian Government acknowledged that the compatibility of the Belgian legislation with Community law was a matter for concern. However, the residency or establishment requirement is still in force.

6. The Commission therefore brought an action on 28 May 1998 requesting that the Court should:

1. declare that, by requiring that Community operators be resident or established for one year in Belgium before they can register aircraft there under the second subparagraph, points (c) and (d), of Article 3(3) of the Royal Decree of 15 March 1954 regulating air traffic, the Kingdom of Belgium has failed to fulfil its obligations under Articles 6 and 52 of the EC Treaty;

* Original language: German.

2. order the Kingdom of Belgium to pay the costs.

7. In its reply the Commission withdrew the allegation made in the initiating application of infringement of Article 59 of the EC Treaty.

8. Although the Belgian Government did not make any explicit proposals in its defence, it stated that the relevant provisions on the registration of aircraft would be amended in accordance with the Commission's concerns. The Belgian legislation would then comply with the requirements of Articles 6 and 52 of the Treaty.

9. The Belgian Government contended that, until the new provisions entered into force, the competent authorities were under an obligation not to give effect to the contested provisions in relation to legal or natural persons from other Member States. It claimed that it had been administrative practice since 1996 to ensure that Belgian nationals and nationals of other Member States were treated equally.

B — Opinion

10. Articles 6 and 52 of the EC Treaty have been infringed in this case since it is impossible for nationals of other Member States to register aircraft unless they have been resident or established in Belgium for at least one year. That amounts to discrimination on grounds of nationality. The resultant infringement of Articles 6 and 52 of the EC Treaty as such is not expressly denied.

11. As regards Belgium's argument that it has been administrative practice since 1996 not to apply the provisions of the Royal Decree of 15 March 1994, it is the Court's consistent case-law that that argument cannot justify an infringement of the Treaty. [1]

12. The existence of draft legislation does nothing to alter that result.

Costs

13. Under Article 69(2) of the Rules of Procedure, the Kingdom of Belgium is to be ordered to pay the costs.

1 — Judgment in Case C-334/94 *Commission* v *France* [1996] ECR I-1307, paragraphs 30 and following.

C — Conclusion

14. In conclusion therefore I propose that the Court should:

(1) declare that, by requiring Community economic operators to be resident or established for one year in Belgium before they can register aircraft there under the second subparagraph, points (c) and (d), of Article 3(3) of the Royal Decree of 15 March 1954 regulating air traffic, the Kingdom of Belgium has failed to fulfil its obligations under Articles 6 and 52 of the EC Treaty;

(2) order the Kingdom of Belgium to pay the costs.