JUDGMENT OF THE COURT (Sixth Chamber)
23 March 1995 *

In Case C-365/93,

Commission of the European Communities, represented by Dimitrios Gouloussis, Legal Adviser, acting as Agent, with an address for service in Luxembourg at the office of Georgios Kremlis, of its Legal Service, Wagner Centre, Kirchberg,

applicant,

v

Hellenic Republic, represented by Vassileios Kontolaimos, Assistant Legal Adviser at the State Legal Service, and Vassileia Pelekou, legal representative for the same service, acting as Agents, with an address for service in Luxembourg at the Greek Embassy, 117 Val Sainte-Croix,

defendant,

APPLICATION for a declaration that by failing to adopt and by failing to communicate to the Commission within the prescribed period the laws, regulations and administrative provisions needed to comply fully with Council Directive 89/48/EEC of 21 December 1988 on a general system for the recognition of higher-education diplomas awarded on completion of professional education and training of at least three years' duration (OJ 1989 L 19, p. 16) the Hellenic Republic has failed to fulfil its obligations under the EEC Treaty,

* Language of the case: Greek.

THE COURT (Sixth Chamber),

composed of: F. A. Schockweiler, President of the Chamber, P. J. G. Kapteyn, C. N. Kakouris, J. L. Murray (Rapporteur) and G. Hirsch, Judges,

Advocate General: C. O. Lenz,
Registrar: H. A. Rühl, Principal Administrator,

having regard to the Report for the Hearing,

after hearing oral argument from the parties at the hearing on 12 January 1995,

after hearing the Opinion of the Advocate General at the sitting on 9 February 1995,

gives the following

Judgment

1 By application lodged at the Court Registry on 27 July 1993 the Commission of the European Communities brought an action under Article 169 of the EEC Treaty for a declaration that by failing to adopt and by failing to communicate to the Commission within the prescribed period the laws, regulations and administrative provisions needed to comply with Council Directive 89/48/EEC of 21 December 1988 on a general system for the recognition of higher-education diplomas awarded on completion of professional education and training of at least three years' duration (OJ 1989 L 19, p. 16, hereinafter 'the directive') the Hellenic Republic had failed to fulfil its obligations under the EEC Treaty.

2 The main purpose of the directive is to introduce a general scheme for recognition of diplomas in all the Member States. The first paragraph of Article 12 provides that the Member States are to take the measures necessary to comply with the directive within two years of its notification and shall inform the Commission thereof forthwith. That period expired on 4 January 1991.

3 The Commission received no communication whatsoever regarding measures to implement the directive and had received no other indication that the Hellenic Republic had met its obligations under the directive, and therefore concluded that it had failed to comply with its obligations under the first paragraph of Article 12 of the directive. Accordingly, it addressed a formal letter of warning followed by a reasoned opinion to that State pursuant to Article 169 of the Treaty. Since the Hellenic Republic failed to comply with the reasoned opinion the Commission brought this action.

4 The Commission acknowledges that the Greek Government informed it on 1 February 1993, that is to say after the period allowed by the reasoned opinion had expired, of a joint decree issued by the Ministers for the National Economy, Health, Welfare and Social Security on 24 July 1992 which partially incorporated the directive into national law, but was restricted to the health and welfare professions. The Commission concluded that the directive had been only partly implemented, in a manner insufficient to remedy the alleged breach of the Treaty.

5 The Greek Government argues in its defence, first, that a draft Presidential Decree has been submitted to the President of the Republic for signature which will ensure that the directive is fully transposed into national law. It then points out that as regards the health profession, lawyers and auditors, the directive has already been transposed by the adoption of three separate presidential decrees. Lastly, it claims that other measures ensuring satisfactory application of the directive's provisions have already been adopted. The Minister of National Education

and Religion has already designated a coordinator and a deputy for the purposes of Article 9(2) of the directive. The Minister has also designated the bodies responsible for supplying the necessary information regarding recognition of diplomas, in accordance with Article 9(3) of the directive. Although the competent authorities referred to in Article 9(1) of the directive have not yet been designated the existing services and procedures are sufficient to enable all the applications from nationals of other Member States to be dealt with properly.

6 It must be noted, first, that on the expiry of the period laid down in the reasoned opinion the Greek Government had not adopted all the measures necessary to ensure full incorporation of the directive into national law.

7 The Commission acknowledges that the presidential decrees adopted in connection with the directive for certain professions implement the directive in part, and that the procedural requirements have been met by the designation of a coordinator for the purposes of Article 9(2) and an information centre for the purposes of Article 9(3). However, the directive has still not been transposed into national law for all the professions to which it relates.

8 The argument that the existing procedures and services were sufficient to meet the requirements of Article 9(1) of the directive cannot be upheld.

9 It is settled law (see Case 29/84 *Commission* v *Germany* [1985] ECR 1661, paragraph 23) that whilst legislative action on the part of each Member State is not nec-

essarily required in order to implement a directive, it is essential for national law to guarantee that the national authorities will effectively apply the directive in full, that the legal position under national law should be sufficiently precise and clear and that individuals are made fully aware of their rights and, where appropriate, may rely on them before the national courts. That last condition is of particular importance where the directive in question is intended, as here, to accord rights to nationals of other Member States.

10 The Greek Government has failed to show in this case, however, that those requirements were satisfied by its national law. In particular, it has failed to indicate to what extent and on what basis the existing bodies were already legally responsible for exercising the new powers provided for by the directive. Moreover, from its admission that the competent authorities provided for in Article 9(1) have 'yet' to be designated it may, and indeed must, be inferred that it is aware that the directive has not been fully implemented in that regard.

11 Since the directive was not fully implemented within the period laid down in Article 12 of the directive the failure to comply with Treaty obligations alleged by the Commission must be confirmed.

12 However, despite the Commission's argument to the contrary, the Court need not take into account the failure to communicate the laws, regulations and administrative provisions which ought to have been adopted in order to comply with the directive, precisely because the Greek Government did not adopt all those provisions within the prescribed period (see Case C-303/93 *Commission* v *Italy* [1994] ECR 1901, paragraph 6).

13 It must therefore be held that by failing to adopt within the prescribed period the laws, regulations and administrative provisions necessary to comply fully with Directive 89/48 the Greek Government has failed to fulfil its obligations under the Treaty. The remainder of the application must be dismissed.

Costs

14 Under Article 69(2) of the Rules of Procedure the unsuccessful party is to be ordered to pay the costs. Since the defendant has been unsuccessful, it must be ordered to pay the costs.

On those grounds,

THE COURT (Sixth Chamber)

hereby:

1. **Declares that by failing to adopt within the prescribed period the laws, regulations and administrative provisions necessary to comply fully with Council Directive 89/48/EEC of 21 December 1988 on a general system for the recognition of higher-education diplomas awarded on completion of professional education and training of at least three years' duration, the Hellenic Republic has failed to fulfil its obligations under the EEC Treaty;**

2. **Dismisses the remainder of the application;**

3. Orders the Hellenic Republic to pay the costs.

Schockweiler Kapteyn Kakouris

Murray Hirsch

Delivered in open court in Luxembourg on 23 March 1995.

R. Grass
Registrar

F. A. Schockweiler
President of the Sixth Chamber