JUDGMENT OF THE COURT
7 November 1991 *

In Case C-313/89,

Commission of the European Communities, represented by Daniel Calleja y Crespo, a member of its Legal Service, acting as Agent, with an address for service in Luxembourg at the office of Roberto Hayder, a member of its Legal Service, Centre Wagner, Kirchberg,

applicant,

v

Kingdom of Spain, represented initially by Javier Conde de Saro, Director-General for Coordination in Matters involving Community Law and Institutions, then by Carlos Bastarreche Sagües, in the same capacity, and by Antonio Hierro Hernandez-Mora, Abogado del Estado, acting as Agents, with an address for service in Luxembourg at the Spanish Embassy, 4-6 Boulevard E. Servais,

defendant,

APPLICATION for a declaration that, by not adopting within the period prescribed the measures necessary to comply with Council Directive 80/155/EEC of 21 January 1980 concerning the coordination of provisions laid down by law, regulation or administrative action relating to the taking up and pursuit of the activities of midwives, the Kingdom of Spain has failed to fulfil its obligations under the EEC Treaty,

THE COURT,

composed of: O. Due, President, Sir Gordon Slynn, R. Joliet, F. A. Schockweiler and F. Grévisse (Presidents of Chambers), J. C. Moitinho de Almeida and G. C. Rodríguez Iglesias, Judges,

* Language of the case: Spanish.

Advocate General: C. O. Lenz,
Registrar: D. Louterman, Principal Administrator,

having regard to the Report for the Hearing,

after hearing the oral argument of the parties at the hearing on 2 July 1991, at which the Kingdom of Spain was represented by Rosario Silva de Lapuerta, Abogado del Estado, acting as Agent,

after hearing the Opinion of the Advocate General at the sitting on 19 September 1991,

gives the following

Judgment

1 By an application lodged at the Court Registry on 11 October 1989, the Commission of the European Communities brought an action under Article 169 of the EEC Treaty for a declaration that, by not adopting within the prescribed period the measures necessary to comply with Directive 80/155/EEC of 21 January 1980 concerning the coordination of provisions laid down by law, regulation or administrative action relating to the taking up and pursuit of the activities of midwives (Official Journal 1980 L 33, p. 8, hereinafter referred to as 'the Directive'), the Kingdom of Spain had failed to fulfil its obligations under the Treaty.

2 As its first recital indicates, the Directive lays down minimum standards for the training of midwives.

3 Article 1(2) of the Directive provides that such training must comprise:

'— either a full-time course in midwifery comprising at least three years of practical and theoretical studies, admission to which is subject to completion of at least the first 10 years of general school education,

— or a full-time course in midwifery lasting at least 18 months, admission to which is subject to possession of a diploma, certificate or other evidence of formal qualifications of nurses responsible for general care referred to in Article 3 of Directive 77/452/EEC'.

4 At the time of the accession of the Kingdom of Spain to the European Communities the training of midwives in that State was governed by a Decree of 18 January 1957 (BOE of 12 February 1957). Royal Decree 992/1987 of 3 July 1987 regulating the acquisition of the formal qualification of specialist nurse (BOE of 1 August 1987, No 183, p. 23642) subsequently established a formal qualification of specialist nurse, which comprises seven specialities, including that of 'nurse in obstetrics and gynaecology (midwife)'. This Royal Decree provided for the organization of a new system of training for these specialities and repealed the contrary provisions of the Decree of 18 January 1957.

5 Considering that the Kingdom of Spain had not complied with the Directive within the prescribed period, the Commission brought the present action for infringement of the Treaty.

6 Reference is made to the Report for the Hearing for a fuller account of the relevant Community and national provisions, the course of the procedure and the pleas in law and arguments of the parties, which are mentioned or discussed hereinafter only in so far as is necessary for the reasoning of the Court.

7 The Kingdom of Spain acknowledges that the Directive was not transposed within the prescribed period, that is to say neither by the date of accession nor subsequently by the expiry of the period of two months laid down by the Commission in its reasoned opinion of 19 April 1989.

8 The Kingdom of Spain nevertheless presents a number of observations, which must be assessed in order to ascertain whether they provide grounds for not finding that the Kingdom of Spain, which thus recognizes the infringement, is in breach of its obligations.

9 The defendant contends first of all that the obligation arising from Articles 392 and 395 of the Act concerning the Conditions of Accession of the Kingdom of Spain and the Portuguese Republic and the Amendments to the Treaties (Official Journal 1985 L 302, p. 23) to transpose the Directive by the date of Spain's accession to the European Communities on 1 January 1986 was neither fair nor appropriate. According to the defendant, the obligation did not take account of the complexity of the regulations to be adopted and the difficulty of enacting the measures to transpose the Directive within a short space of time. Furthermore, there was no transitional provision affording protection of the rights of persons who had begun their training at a midwifery school before accession and who had yet to complete their course.

10 This argument of the Kingdom of Spain, challenging the qualification for an obligation which it had itself assumed by joining the European Communities, cannot be accepted in any circumstances. Acts of Accession are not acts of the institutions, the validity of whose provisions can be challenged before the Court (see in this respect the judgment in Joined Cases 31/86 and 35/86 *LAISA* v *Council* [1988] ECR 2285, at paragraph 17).

11 The Kingdom of Spain contends, secondly, that although the training of midwives in Spain at the date of accession was different, it was not of an inferior quality to that laid down by the Directive. It points out that in order to be admitted to specific midwifery training the persons concerned had to pass an entrance examination for the speciality or, failing that, follow a six-month preparatory course after having completed university studies lasting three years.

12 Those considerations concerning the way in which access was obtained to midwifery training prevailing at the date of accession do not affect the existence of the alleged infringement of the Treaty. It is sufficient to note that the duration of the specific training for midwives, as then laid down by the Decree of 18 January 1957, was only one year, whereas Article 1(2) of the Directive requires a minimum period of training of 18 months.

13 The Kingdom of Spain contends finally that Royal Decree 992/1987 repealed the provisions of the Decree of 18 January 1957 and prohibited new enrolments in any of the nursing specialities covered by the regulations previously in force. However, as the defendant acknowledges, those measures are insufficient to ensure complete transposition of the Directive in the absence of regulations implementing the Royal Decree establishing new midwifery courses in accordance with the Community requirements.

14 It follows from the foregoing that there is nothing to prevent the Court from finding that the Kingdom of Spain has failed to fulfil its obligations by not incorporating the Directive into national law within the prescribed period.

15 That finding by the Court fully satisfies the Commission's formal claims. Consequently, the ancillary and alternative arguments put forward by the Commission in support of those same claims, by which it is contended that certain provisions of Royal Decree 922/1987 still do not implement the Directive, do not affect the outcome.

16 In accordance with the form of order sought, it must therefore be declared that, by not adopting within the prescribed period the measures necessary to comply with Council Directive 80/155, the Kingdom of Spain has failed to fulfil its obligations under the EEC Treaty.

Costs

17 Under Article 69(2) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs. Since the Kingdom of Spain has failed in its submissions, it must be ordered to pay the costs.

On those grounds,

THE COURT

hereby:

1. **Declares that, by not adopting within the prescribed period the measures necessary to comply with Council Directive 80/155/EEC of 21 January 1980 concerning the coordination of provisions laid down by law, regulation or administrative action relating to the taking up and pursuit of the activities of midwives, the Kingdom of Spain has failed to fulfil its obligations under the EEC Treaty;**

2. **Orders the Kingdom of Spain to pay the costs.**

Due Slynn Joliet

Schockweiler Grévisse Moitinho de Almeida Rodríguez Iglesias

Delivered in open court in Luxembourg on 7 November 1991.

J.-G. Giraud
Registrar

O. Due
President