OPINION OF ADVOCATE GENERAL RUIZ-JARABO COLOMER

delivered on 22 February 2001 [1]

1. The Commission has applied to the Court of Justice under Article 226 EC for a declaration that the French Republic has failed to fulfil its obligations under Directive 89/48/EEC. [2] Specifically, it alleges that France has neither enacted nor implemented, within the prescribed period, legislation specifically concerning the recognition of diplomas giving access to the profession of psychologist.

2. Article 12 of the directive provides that Member States are to adopt the measures necessary to comply with the provisions of the directive and are to inform the Commission thereof. The French authorities gave notice of a certain number of regulations but did not notify the Commission of any that related to access to the profession of psychologist.

3. By letter of 17 September 1997, the Commission informed the French Government that the directive had not been implemented so far as the profession of psychologist was concerned and asked it to submit observations within a period of two months.

4. The French authorities, by letter dated 26 June 1998, acknowledged that transposition had not taken place but added that they had begun the procedure of adapting French law to meet the requirements of the directive.

5. The Commission, having found that the French Republic was still not complying with its obligations, sent it a reasoned opinion on 15 October 1998, calling on it to adopt the measures necessary to comply with the directive within a period of two months.

6. On 6 January 1999, the French authorities sent the Commission draft legislation regarding authorisation of the use of pro-

1 — Original language: Spanish.

2 — 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).

fessional diplomas of psychology. In response to observations made by Commission staff, they submitted a further draft bill on 21 September 1999.

7. On 9 November 1999, the Commission asked the French authorities for information both about the projected timetable for adoption of the draft legislation and about the implementing regulations.

8. Since the French Government failed to respond, the Commission brought the present action on 20 July 2000.

9. In its defence, the French Government admits that the directive has not been implemented as regards the profession of psychologist. However, it maintains that consideration of applications for recognition of diplomas held by Community citizens wishing to exercise that profession in France is, in practice, carried out in accordance with the provisions of Community legislation. It adds that the procedure for adoption of the regulations implementing the directive is under way.

10. It follows from the foregoing that the French Republic has, as alleged, failed to fulfil its obligations. As regards its contention that administrative practice is consistent with the directive, it must be borne in mind that the Court of Justice has consistently held that mere administrative practices, which by their nature are alterable at will by the authorities and are not given appropriate publicity, cannot be regarded as constituting the proper fulfilment of obligations under the Treaty. The incompatibility of national legislation with the provisions of the Treaty may be conclusively remedied only by national provisions of a binding nature having the same legal force as those which must be amended. [3]

11. The application must, therefore, be allowed and, pursuant to Article 69(2) of the Rules of Procedure, the defendant Member State must be ordered to pay the costs.

3 — See, for example, Case C-358/98 *Commission* v *Italy* [2000] ECR I-1255.

Conclusion

12. I propose that the Court of Justice should allow the application and:

(1) Declare that the French Republic has failed to fulfil its obligations under 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, since it has neither enacted nor implemented, within the prescribed period, legislation specifically concerning the recognition of diplomas giving access to the profession of psychologist.

(2) Order the French Republic to pay the costs.