JUDGMENT OF THE COURT
12 December 1990 *

In Case C-263/88,

Commission of the European Communities, represented by Étienne Lasnet, Legal Adviser, acting as Agent, with an address for service in Luxembourg at the office of Guido Berardis, Wagner Centre, Kirchberg,

applicant,

v

French Republic, represented by Edwige Belliard, Assistant Director in the Legal Department of the Ministry of Foreign Affairs, acting as Agent, and by Marc Giacomini, Secretary for Foreign Affairs at the same ministry, acting as Deputy Agent, with an address for service in Luxembourg at the French Embassy, 9, boulevard Prince-Henri,

defendant,

APPLICATION for a declaration that, by failing to adopt the measures needed to allow nationals of other Member States in possession of the requisite French qualifications to establish themselves or provide services as doctors, general nurses, midwives, dentists or veterinary surgeons in the overseas territory of French Polynesia or as veterinary surgeons in New Caledonia and its dependencies, the French Republic has failed to fulfil its obligations under Article 137 of Council Decision 80/1186/EEC of 16 December 1980 and Article 176 of Council Decision 86/283/EEC of 30 June 1986 on the association of the overseas countries and territories with the European Economic Community (Official Journal 1980 L 361, p. 1, and Official Journal 1986 L 175, p. 1 respectively),

* Language of the case: French.

THE COURT,

composed of: G. F. Mancini, President of Chamber, acting as President, T. F. O'Higgins, J. C. Moitinho de Almeida and G. C. Rodríguez Iglesias, Presidents of Chambers, Sir Gordon Slynn, R. Joliet and F. Grévisse, Judges,

Advocate General: J. Mischo
Registrar: D. Louterman, Principal Administrator

having regard to the Report for the Hearing,

after hearing the oral submissions of the parties at the hearing on 3 April 1990,

after hearing the Opinion of the Advocate General delivered at the sitting on 17 May 1990,

gives the following

Judgment

1 By application lodged at the Court Registry on 23 September 1988, the Commission of the European Communities brought an action before the Court under Article 169 of the EEC Treaty for a declaration that by failing to adopt the measures needed to allow nationals of other Member States in possession of the requisite French qualifications to establish themselves or provide services as doctors, general nurses, midwives, dentists or veterinary surgeons in the overseas territory of French Polynesia or as veterinary surgeons in New Caledonia and its dependencies, the French Republic had failed to fulfil its obligations under Article 137 of Council Decision 80/1186/EEC of 16 December 1980 and Article 176 of Council Decision 86/283/EEC of 30 June 1986, on the association of the overseas countries and territories with the European Economic Community (Official Journal 1980 L 361, p. 1, and Official Journal 1986 L 175, p. 1 respectively).

2 The provisions mentioned above provide in identical terms that:

'As regards the arrangements that may be applied in matters of establishment and provision of services, the relevant authorities of the countries and territories shall treat nationals and companies or firms of Member States on a non-discriminatory basis. However, if, for a given activity, a Member State is unable to provide similar treatment to nationals or companies or firms of the Kingdom of Denmark, the French Republic, the Kingdom of the Netherlands or the United Kingdom of Great Britain and Northern Ireland, established in a country or territory, or for companies or firms subject to the laws of the country or territory concerned and established therein, the relevant authorities of that country or territory shall not be bound to accord such treatment.'

3 The Commission took the view that the rules governing those professions within the French overseas territories were incompatible with the abovementioned Council decisions and, following an exchange of letters during which the French Government did not deny the alleged breach of obligations, it issued a reasoned opinion on 27 May 1987.

4 By letters of 3 August 1987 and 22 January 1988, the French authorities informed the Commission of the changes in the rules applying in the overseas territories. It appears from those letters that at that time the rules had not been modified as regards veterinary practitioners in New Caledonia and the five professions in question in French Polynesia. As it had not subsequently received any information on the state of the law in question, the Commission brought the present action, which is only concerned with the two territories mentioned above.

5 Reference is made to the Report for the Hearing for a fuller account of the facts of the case, the course of the procedure and the pleas and arguments of the parties, which are mentioned or discussed hereinafter only in so far as is necessary for the reasoning of the Court.

6 The French Government does not deny the breach of obligations but explains that the delay in bringing national law into conformity with Community law is due to the particular nature of the territorial organization in the overseas territories and

to the fact that the matter involves the respective powers of the central and local authorities.

7 The Court has consistently held in this regard that a Member State may not plead provisions, practices or circumstances existing in its internal legal system in order to justify a failure to comply with obligations and time-limits resulting from Community law (judgment in Case 254/83 *Commission* v *Italian Republic* [1984] ECR 3395).

8 The French Government also mentions the adoption in New Caledonia of a Deliberation of the Congress of the Territory of New Caledonia and dependencies, which extended to all nationals of Member States of the European Community, in possession of the requisite French qualifications, the right to establish themselves or to provide services in medicine and veterinary surgery.

9 It none the less remains the case that that measure was adopted after the action was brought. In this connection, it must be observed that the subject-matter of an action brought under Article 169 is determined by the Commission's reasoned opinion, and even when the default has been remedied after the time-limit prescribed by the second paragraph of that article has expired, there is still an interest in pursuing the action in order to establish the basis of liability which a Member State may incur as a result of its default towards other Member States, the Community or private parties.

10 It follows that by failing to adopt the measures needed to allow nationals of other Member States in possession of the requisite French qualifications to establish themselves or provide services as doctors, general nurses, midwives, dentists or veterinary surgeons in the overseas territory of French Polynesia, and by failing to adopt within the required time-limit the necessary provisions concerning the profession of veterinary surgeon in New Caledonia and its dependencies, the French Republic has failed to fulfil its obligations under Article 137 of Council Decision 80/1186 of 16 December 1980 and Article 176 of Council Decision 86/283 of 30 June 1986 on the association of the overseas countries and territories with the European Economic Community.

Costs

11 Under Article 69(2) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs. Since the French Republic has been unsuccessful in its principal submissions, it must be ordered to pay the costs.

On those grounds,

THE COURT

hereby:

(1) Declares that by failing to adopt the measures needed to allow nationals of other Member States in possession of the requisite French qualifications to establish themselves or provide services as doctors, general nurses, midwives, dentists or veterinary surgeons in the overseas territory of French Polynesia, and by failing to adopt within the required time-limit the necessary provisions concerning the profession of veterinary surgeon in New Caledonia and its dependencies, the French Republic has failed to fulfil its obligations under Article 137 of Council Decision 80/1186/EEC of 16 December 1980 and Article 176 of Council Decision 86/283/EEC of 30 June 1986 on the association of the overseas countries and territories with the European Economic Community.

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

Mancini O'Higgins Moitinho de Almeida

Rodríguez Iglesias Slynn Joliet Grévisse

Delivered in open court in Luxembourg on 12 December 1990.

J.-G. Giraud
Registrar

G. F. Mancini
President of Chamber
acting as President