REPORT FOR THE HEARING
in Case C-263/88 *

I — The facts

1. *Legal background*

The period of validity of Council Decision 80/1186/EEC of 16 December 1980 on the association of the overseas countries and territories with the European Economic Community (Official Journal 1980 L 361, p. 1) was extended initially to 28 February 1986 (Council Decision 85/159/EEC of 26 February 1985, Official Journal 1985 L 61, p. 25) and subsequently to 30 June 1986 (Council Decision 86/46/EEC of 3 March 1986, Official Journal 1986 L 63, p. 94). Article 137 thereof provides as follows:

'As regards the arrangements that may be applied in matters of establishment and provision of services, the competent 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 French Republic, the Kingdom of the Netherlands or the United Kingdom of Great Britain and Northern Ireland, established in a country or territory, or to 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.'

A new decision came into effect on 1 July 1986, Council Decision 86/283/EEC of 30 June 1986 on the association of the overseas countries and territories with the European Economic Community, applicable until 28 February 1990 (Official Journal 1986 L 175, p. 1).

The decision applies only to the territories for which the French Republic has responsibility, the countries and territories for which the United Kingdom has responsibility, the countries for which the Kingdom of the Netherlands has responsibility and, in part, to Greenland (first recital in the preamble to Decision 86/283).

Article 176 of the decision contains the same provision as Article 137 of Decision 80/1186/EEC, including the provision concerning reciprocity.

2. *Action taken by the Commission*

The *Commission* was informed that the French authorities had not adopted measures enabling nationals of other Member States in possession of the requisite French qualifications to establish themselves or to provide services as doctors, general nurses, midwives, dentists and veterinary surgeons (hereinafter referred to as 'the five occupations') in French overseas countries and territories.

The Commission considers that the condition of reciprocity set out in Articles 137 and 176 of the Council decisions referred to above is fulfilled as from the time of implementation of Directives 75/362/EEC, 77/452/EEC, 80/154/EEC,

* Language of the case: French.

78/686/EEC and 78/1026/EEC on the mutual recognition of diplomas, certificates and other qualifications for the five occupations. The Commission points out that those directives require other Member States to recognize French qualifications, and indeed those issued by another Member State for the exercise of those occupations and held by a national of the French Republic without being able to attach any condition thereto regarding the place of establishment.

Consequently, the Commission considered that the rules governing those occupations in the French overseas territories were incompatible with the abovementioned Council decisions, and by letter of 19 December 1985 it requested the French Government to submit observations on the matter within two months. In a note received by the Commission on 15 April 1986, the French authorities did not deny the alleged breach of obligations and stated that the measures necessary in order to bring local legislation into conformity with the decisions were in the process of being drawn up. However, they pointed out that the fact that procedure and local circumstances differed from one territory to another made it difficult to draw up a precise timetable, at least before June 1986.

In the absence of any other communication, the Commission issued a reasoned opinion on 27 May 1987 to the effect that the French Republic had failed to fulfil its obligations under Article 137 of Council Decision 80/1186 of 16 December 1980 on the association of the overseas countries and territories with the European Economic Community, the validity of which was extended to 30 June 1986, 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. The French Republic was requested to comply with the reasoned opinion within two months.

The *French Permanent Representation to the European Communities* communicated to the Commission the information it had requested by letter of 3 August 1987. From that information it appears that there is no national legislation preventing freedom of establishment and freedom to provide services for nationals of other Member States of the European Economic Community in possession of the requisite French qualifications for access to the five occupations in question in four of the six territories referred to in the reasoned opinion: they are the French Southern and Antarctic Territories and the islands of Wallis and Futuna, Mayotte and Saint-Pierre and Miquelon.

In the case of the two other territories, the French authorities state that in New Caledonia and its dependencies nationals of other Member States who are in possession of French qualifications entitling them to practise as nurses may establish themselves or provide services; in the case of the other occupations, procedures have been initiated for the adoption of legislation and other provisions. There has been no change in the case of French Polynesia, but the Territorial Assembly is to rule on the five occupations in question.

On that basis the French authorities estimated that six months was the period necessary for the adoption at the local level of the various provisions necessary to bring the provisions in force in those two territories into conformity with Community law.

On 22 January 1988 a letter from the French representative informed the Commission of the progress made with regard to the legislation in New Caledonia: the law applicable to doctors, midwives and dental surgeons was amended in August 1987 and the procedure concerning veterinary surgeons was under way.

The delay in amending the rules in force in Polynesia was due to the events of December 1987 which led to the formation of a new political majority and the resignation and replacement of the territorial government.

The Commission concluded that the French Republic had not complied with the reasoned opinion inasmuch as it had failed to amend the rules relating to veterinary surgeons in New Caledonia and those relating to all five occupations in French Polynesia, and therefore brought this action.

II — Written procedure and conclusions of the parties

The Commission's application was lodged at the Court Registry on 23 September 1988. The written procedure followed the normal course.

On hearing the Report of the Judge-Rapporteur and the views of the Advocate General the Court decided to open the oral procedure without any preparatory inquiry. However, it requested the Commission to provide it with a copy of letter No 406 of 26 March 1986 from the French Permanent Representation to the European Communities.

The Commission of the European Communities, the applicant, claims that the Court should:

(i) declare 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 or its dependencies, the French Republic has failed to fulfil its obligations under Article 137 of Council Decision 80/1186 of 16 December 1980 on the association of the overseas countries and territories with the European Economic Community, whose period of validity was extended to 30 June 1986, 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;

(ii) order the French Republic to pay the costs.

The French Republic merely states that it has made, and will continue to make, every effort to resolve the dispute as soon as possible.

III — Submissions and arguments of the parties

The *French Government* does not deny the existence of a breach of its obligations. It

refers to the special structure of the territorial administration in French Polynesia and New Caledonia and the fact that the case raises issues concerning the relevant powers of the central and local authorities. In addition, it describes the efforts it has made to achieve a solution: in particular, it refers to Deliberation 79 of 26 January 1989 of the New Caledonian Congress enabling all holders of the requisite French qualifications to establish themselves and provide services connected with medicine and veterinary surgery (*Journal officiel de la Nouvelle-Calédonie* of 14.2.1989, p. 295).

As regards the restrictions on the exercise of those occupations in French Polynesia, the French Government states that it has drawn up a draft law which was submitted, pursuant to Article 74 of the Constitution, to the Territorial Assembly, which has given its opinion.

The *Commission* has taken note of the information to the effect that the New Caledonian Territorial Congress has amended the local legislation to comply with Community law. However, it maintains the conclusions it set out in the application, in particular as regards the five occupations in French Polynesia.

Gordon Slynn
Judge-Rapporteur