JUDGMENT OF THE COURT (Fifth Chamber)
1 June 1995 *

In Case C-123/94,

Commission of the European Communities, represented by Maria Patakia, of the Legal Service, acting as Agent, with an address for service in Luxembourg at the office of Georgios Kremlis, also of the Legal Service, Wagner Centre, Kirchberg,

applicant,

v

Hellenic Republic, represented by Aikaterini Samoni-Rantou, Special Deputy Legal Adviser to the Special Department for Community Legal Affairs in the Ministry for Foreign Affairs, and Evi Skandalou, Legal Assistant in the same Department, 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 maintaining in force the provisions of Article 70 of Decree-Law No 2545/1940 and Decision No 46508 of 10/17 May 1976 of the Minister for National Education and Religious Affairs (as subsequently amended), the Hellenic Republic has failed to fulfil its obligations under the EC

* Language of the case: Greek.

Treaty and Article 3(1) of Regulation (EEC) No 1612/68 of the Council of 15 October 1968 on freedom of movement for workers within the Community (OJ, English Special Edition 1968 (II), p. 475),

THE COURT (Fifth Chamber),

composed of: C. Gulmann, President of the Chamber, J. C. Moitinho de Almeida (Rapporteur), D. A. O. Edward, J.-P. Puissochet and L. Sevón, Judges,

Advocate General: M. B. Elmer,
Registrar: R. Grass,

having regard to the report of the Judge-Rapporteur,

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

gives the following

Judgment

1 By application lodged at the Court Registry on 26 April 1994, the Commission of the European Communities brought an action under Article 169 of the EC Treaty for a declaration that, by maintaining in force the provisions of Article 70 of Decree-Law No 2545/1940 and Decision No 46508 of 10/17 May 1976 of the Minister for National Education and Religious Affairs (as subsequently amended), the Hellenic Republic has failed to fulfil its obligations under Community law, more specifically Article 48(2) of the EC Treaty and Article 3(1) of Regulation (EEC)

No 1612/68 of the Council of 15 October 1968 on freedom of movement for workers within the Community (OJ, English Special Edition 1968 (II), p. 475) ('Regulation No 1612/68').

2 The abovementioned Greek provisions impose, in respect of recruitment of teachers in private foreign-language schools, more stringent conditions on foreigners, including nationals of other Member States, than they do on Greek nationals.

3 Decision No 46508 thus provides that the recruitment of foreign teachers requires authorization by the Director of Private Education within the Ministry for National Education and Religious Affairs following submission of certain documents specified in the decision. Renewal of authorization is also subject to the submission of several documents, including a medical certificate.

4 Furthermore, paragraphs (1), (2) and (4) of Article 70 of Decree-Law No 2545/1940 provide that only persons possessing the qualifications required of teachers within public education may teach in a private school. The competent Minister may, however, decide that the qualifications of Greek nationals who do not satisfy that condition are adequate.

5 Since it took the view that the legislation in question constituted discrimination against nationals of other Member States and was for that reason contrary to Article 48(2) of the Treaty and Article 3(1) of Regulation No 1612/68, the Commission sent a letter of formal notice to the Hellenic Republic on 1 July 1992 in which it requested that Member State to submit its observations within two months. As no

reply to that letter was received from the Hellenic Republic, the Commission, on 26 August 1993, sent to it a reasoned opinion requesting it to comply therewith within two months of notification. In the absence of any reply to the reasoned opinion, the Commission brought the present proceedings before the Court.

6 The Hellenic Republic does not deny that the disputed rules are incompatible with Community law. It does, however, point out that a Presidential Decree making the recruitment of nationals of other Member States subject to the same conditions as those required for employment of Greek nationals will be published shortly and that consequently the proceedings will serve no purpose.

7 That argument cannot be accepted. It is settled case-law (judgment in Case C-80/92 *Commission* v *Belgium* [1994] ECR I-1019) that amendments of national legislation are irrelevant for the purposes of giving judgment on the subject-matter of an action for failure to fulfil obligations if they have not been implemented before the expiry of the period set by the reasoned opinion.

8 A declaration of failure to fulfil obligations must therefore be made in the terms sought by the Commission.

Costs

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

On those grounds,

THE COURT (Fifth Chamber)

hereby:

1. **Declares that, by maintaining in force the provisions of Article 70 of Decree-Law No 2545/1940 and Decision No 46508 of 10/17 May 1976 of the Minister for National Education and Religious Affairs (as subsequently amended), the Hellenic Republic has failed to fulfil its obligations under Community law, more specifically Article 48(2) of the EC Treaty and Article 3(1) of Regulation (EEC) No 1612/68 of the Council of 15 October 1968 on freedom of movement for workers within the Community;**

2. **Orders the Hellenic Republic to pay the costs.**

Gulmann Moitinho de Almeida Edward

Puissochet Sevón

Delivered in open court in Luxembourg on 1 June 1995.

R. Grass C. Gulmann

Registrar President of the Fifth Chamber