OPINION OF ADVOCATE GENERAL ALBER

delivered on 22 February 2000 *

1. By this action for a declaration of failure to fulfil obligations, the Commission of the European Communities requests that the Court should:

(1) declare that, by maintaining rules requiring that Community nationals who carry on haulage activities as service providers be entered on a special register kept by the Chamber of Commerce following authorisation by the Ministry of the Interior, the Italian Republic has failed to fulfil its obligations under Articles 12, 43 and 49 EC (ex Articles 6, 52 and 59 of the EC Treaty);

(2) order the Italian Republic to pay the costs.

2. The Commission relies on two provisions of Law No 1442 of 14 November 1941 [1] as they applied at the time of the pre-litigation procedure. Article 4(1) of that Law requires any haulier established in another Member State who wishes to carry on business in Italy to register on a special register kept by the Chamber of Industry and Commerce. That requirement to register is incompatible with the principle of the free movement of services. It impedes an economic operator established in a Member State other than Italy from carrying on his activities in Italy.

3. The last paragraph of Article 6 of the Law requires that companies represented by foreign nationals produce an authorisation from the Ministry of the Interior. That requirement is incompatible with the principle of freedom of establishment and infringes the principle of non-discrimination.

4. The Italian Government did not actually dispute the cause of action in its defence. It announced a statutory amendment to Article 4 of the Law. As regards Article 6, it stated that the contested provision would be repealed and not replaced.

5. It is common ground that at the point in time which is decisive in the context of actions for failure to fulfil obligations, namely the end of the period laid down in the reasoned opinion, [2] the cause of action still pertained. It is therefore appropriate to

* Original language: German.

1 — *Gazzetta Ufficiale della Repubblica Italiana* No 6 of 9 January 1942.

2 — The reasoned opinion of 18 May 1998 lays down a period of two months.

find against the Italian Republic and grant the application. The cost consequences are laid down in Article 69(2) of the Rules of Procedure.

Conclusion

6. I propose that the Court:

(1) declare that, by maintaining rules requiring that Community nationals who carry on haulage activities as service providers be entered on a special register kept by the Chamber of Commerce following authorisation by the Ministry of the Interior, the Italian Republic has failed to fulfil its obligations under Articles 12, 43 and 49 EC (ex Articles 6, 52 and 59 of the EC Treaty);

(2) order the Italian Republic to pay the costs.