JUDGMENT OF THE COURT
15 October 1986 *

In Case 168/85

Commission of the European Communities, represented by Guido Berardis, a member of its Legal Department, acting as Agent, assisted by Silvio Pieri, an Italian civil servant placed at the disposal of the Commission under the exchange scheme, with an address for service in Luxembourg at the office of Georgios Kremlis, Jean Monnet Building, Kirchberg,

applicant,

v

Italian Republic, represented by Luigi Ferrari Bravo, Head of the Department for Contentious Diplomatic Affairs, acting as Agent, assisted by Ivo Braguglia, avvocato dello Stato, with an address for service in Luxembourg at the Italian Embassy,

defendant,

APPLICATION for a declaration that by making reciprocity a condition for the treatment of foreign nationals in the same manner as Italian nationals as regards access to various occupations in the field of tourism, by restricting to Italian nationals the right to registration as trainee journalists and regular contributors to publications and by making reciprocity a condition for the inclusion of foreign journalists on the list of professional journalists, and by permitting only Italian nationals to take part in competitions for the award of licences to operate pharmacies, the Italian Republic has failed to fulfil its obligations under Articles 48, 52 and 59 of the EEC Treaty,

* Language of the Case: Italian.

THE COURT

composed of: C. Kakouris, President of Chamber, acting as President, T. F. O'Higgins and F. Schockweiler, Presidents of Chambers, G. Bosco, T. Koopmans, K. Bahlmann and G. C. Rodríguez Iglesias, Judges,

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

having regard to the Report for the Hearing and further to the hearing on 29 April 1986,

after hearing the Opinion of the Advocate General, delivered at the sitting on 17 June 1986,

gives the following

JUDGMENT

1 By an application lodged at the Court Registry on 3 June 1985, the Commission of the European Communities brought proceedings pursuant to Article 169 of the EEC Treaty for a declaration that by maintaining in force provisions which

(i) make reciprocity a condition for the treatment of nationals of other Member States in the same manner as Italian nationals as regards access to various occupations in the field of tourism;

(ii) make the possession of Italian nationality a condition for registration as a trainee journalist or as a regular contributor to publications and make reciprocity a condition for the inclusion of professional journalists who are nationals of other Member States on the special register of foreign journalists;

(iii) permit only Italian nationals to take part in competitions for the award of licences to operate pharmacies,

the Italian Government has failed to fulfil its obligations under Articles 48, 52 and 59 of the EEC Treaty.

2 For the provisions of Italian legislation in question, reference is made to the Report for the Hearing. It is sufficient to note here that the provisions in the field of tourism date from 1983, those concerning the profession of journalist from 1963 and those concerning the operation of pharmacies from 1968.

3 In reply to a Commission request for an explanation, made in March 1983, the Italian Government, in a letter of 15 September 1983, sent to the Commission a copy of a circular dated 21 July 1983 addressed by the Ministry of Justice to the National Council of Journalists. That circular reminds the Council of its duty to comply with Articles 52 *et seq.* of the Treaty and requests it to apply to nationals of Member States of the Community the same conditions as are laid down for Italian nationals. The Italian Government also sent to the Commission a copy of a memorandum dated 26 October 1983 with which the National Council of Journalists sent the circular in question to its various regional and inter-regional councils, together with a copy of a decision of the National Council of 16 December 1983 annulling, in accordance with the circular, a decision of 22 November 1982 of the inter-regional council for Latium and Molise refusing to register a Dutch national as a regular contributor to publications, on the ground that he did not possess Italian nationality.

4 In a telex of 18 July 1983 the Italian Government also sent to the Commission circulars dated 2 December and 10 December 1982 sent by the Presidenza del Consiglio dei Ministri to the Commissario del Governo in the region of Lombardy and to all the Commissari del Governo in the regions respectively. Those circulars state that in accordance with Article 52 *et seq.* of the Treaty nationals of Member States of the Community may take part in competitions for the award of licences to operate pharmacies and the condition of nationality may no longer be applied to them.

5 The Commission considered that the provisions in question were contrary to Articles 48, 52 and 59 of the Treaty and that administrative circulars were not an adequate means of redressing the situation; by a letter of 26 January 1984 it

therefore asked the Italian Government to submit its observations on the matter within a period of one month. No reply was received to that letter, and on 20 November 1984 the Commission addressed a reasoned opinion to the Italian Republic. Since the Italian Government has not responded to the reasoned opinion, the Commission has brought these proceedings.

6 In support of its application the Commission raises two main arguments. First of all, it points out that the Court has repeatedly stated that reciprocity clauses are incompatible with Community law; in that regard it refers in particular to the judgment of 25 October 1979 in Case 159/78 (*Commission* v *Italy* [1979] ECR 3247). Secondly, it refers to the Court's well-established case-law to the effect that administrative circulars cannot remedy the incompatibility of national legislative provisions with Community law; it is immaterial in that regard that the relevant Community rules are directly applicable and that the legal situation is therefore clear.

7 In its defence the Italian Government admits that the provisions in question are formally incompatible with Community law. It argues, however, that they present no real obstacle to the free movement of persons and services since Articles 48, 52 and 59 of the Treaty are directly applicable in Italian law. That direct effect means that legislative provisions which require the possession of Italian nationality or the existence of reciprocity must be considered to have been amended in favour of the nationals of other Member States.

8 The Italian Government concludes that circulars or administrative directions therefore serve not to amend laws but to define their scope, by making clear the effect of Community law and the fact that it takes precedence over national law. If the competent national bodies are made sufficiently aware of such administrative measures, they are sufficient to ensure that Community nationals enjoy their rights under the Treaty, even where the national legislation in question is not formally repealed.

9 The Italian Government adds that since the directly applicable provisions of the Treaty take the place of national legal rules which are incompatible with them, it would be pointless and burdensome to undertake a formal repeal or amendment of all such national provisions; in time, every citizen of the Community will know for

certain what rights he may assert in Member States other than that of which he is a national. Consequently, the fact that such national legislation is not expressly repealed can no longer have the effect of maintaining a situation of legal uncertainty.

10 It appears from those arguments that it is not disputed that the national provisions attacked by the Commission are incompatible with Articles 48, 52 and 59 of the Treaty.

11 It must be observed in that regard that directly applicable provisions of the Treaty are binding on all the authorities of the Member States and they must therefore comply with them without its being necessary to adopt national implementing provisions. However, as the Court held in its judgment of 20 March 1986 in Case 72/85 (*Commission* v *Netherlands* [1986] ECR 1219), the right of individuals to rely on directly applicable provisions of the Treaty before national courts is only a minimum guarantee and is not sufficient in itself to ensure the full and complete implementation of the Treaty. It is clear from previous judgments of the Court, in particular its judgment of 25 October 1979, cited above, that if a provision of national law that is incompatible with a provision of the Treaty, even one directly applicable in the legal order of the Member States, is retained unchanged, this creates an ambiguous state of affairs by keeping the persons concerned in a state of uncertainty as to the possibility of relying on Community law and that maintaining such a provision in force therefore amounts to a failure by the State in question to comply with its obligations under the Treaty.

12 As for the Italian Government's argument that, in view of the direct applicability of the aforementioned provisions of the Treaty, the rights of nationals of other Member States are adequately guaranteed by circulars or administrative directions, it must be pointed out first of all that that argument cannot be relied on with regard to the Commission's charges concerning access to occupations in the field of tourism. The Italian Government has not shown that it issued any circular or administrative direction regarding access for nationals of other Member States to those occupations.

13 Furthermore, that argument is ill-founded. The incompatibility of national legislation with provisions of the Treaty, even provisions which are directly applicable, can be finally remedied only by means of national provisions of a binding nature which have the same legal force as those which must be amended. As the Court has consistently held with regard to the implementation of directives by the Member States, mere administrative practices, which by their nature are alterable at will by the authorities and are not given the appropriate publicity, cannot be regarded as constituting the proper fulfilment of obligations under the Treaty.

14 Consequently, the Italian Republic cannot escape from its obligation to amend its national law in accordance with the requirements of the Treaty by relying on the direct applicability of the provisions of the Treaty, on the introduction of certain administrative practices or on the fact that Community citizens have, in its view, an increased awareness of their rights. Indeed, in this case, Community citizens remain in a state of uncertainty not only because national provisions contrary to the Treaty have been maintained in force but also because new provisions, also contrary to the Treaty, were introduced in the field of tourism in 1983.

15 It follows from the foregoing that the arguments of the Italian Government cannot be accepted.

16 It must therefore be held that by maintaining in force provisions which

(i) make reciprocity a condition for the treatment of foreign nationals in the same manner as Italian nationals as regards various occupations in the field of tourism,

(ii) make the possession of Italian nationality a condition for registration as a trainee journalist or as a regular contributor to publications and make reciprocity a condition for the inclusion of professional journalists who are nationals of other Member States on the special register of foreign journalists, and

(iii) permit only Italian nationals to take part in competitions for the award of licences to operate pharmacies,

the Italian Republic has failed to fulfil its obligations under Articles 48, 52 and 59 of the EEC Treaty.

Costs

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

On those grounds,

THE COURT

hereby:

(1) Declares that by maintaining in force provisions which

(i) make reciprocity a condition for the treatment of foreign nationals in the same manner as Italian nationals as regards various occupations in the field of tourism,

(ii) make the possession of Italian nationality a condition for registration as a trainee journalist or as a regular contributor to publications and make reciprocity a condition for the inclusion of professional journalists who are nationals of other Member States on the special register of foreign journalists, and

(iii) permit only Italian nationals to take part in competitions for the award of licences to operate pharmacies,

the Italian Republic has failed to fulfil its obligations under Articles 48, 52 and 59 of the EEC Treaty;

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

Kakouris O'Higgins Schockweiler

Bosco Koopmans Bahlmann Rodríguez Iglesias

Delivered in open court in Luxembourg on 15 October 1986.

P. Heim
Registrar

C. Kakouris
President of Chamber,
acting as President