tainty as to the possibility of relying on Community law and amounts to a failure by the State in question to comply with its obligations under the Treaty.

Since the incompatibility of national legislation with provisions of the Treaty 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, 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 capable of remedying the infringement.

2. A Member State which permits only its own nationals to have access to certain occupations or applies a condition of reciprocity to nationals of other Member States fails to fulfil its obligations under Articles 48, 52 and 59 of the Treaty.

REPORT FOR THE HEARING
delivered in Case 168/85 *

I — Facts and procedure

1. *National legislation at issue*

The first Law at issue is Law No 217 of 17 May 1983, an outline Law on tourism and measures to extend and improve tourist services (Gazzetta Ufficiale della Repubblica Italiana No 141 of 25 May 1983, p. 4091). It entrusts to the regions the task of verifying whether the conditions required for the pursuit of occupations in the field of tourism are fulfilled. The occupations in question are set out in Article 11 of the Law (tourist guide, tourist interpreter, courrier, congress organizer, water-sport instructor, ski-instructor, qualified or trainee mountain guide, mountain porter, cave guide and tourist group leader). However, that list finishes with a general reference to 'any other occupation in the field of tourism'. The 13th paragraph of Article 11 provides that:

'In regard to the pursuit of the occupations referred to above, nationals of Member States of the Community are, subject to reciprocity, to be treated as Italian nationals.'

The second Law at issue is Law No 69 of 3 February 1963 on the profession of jour-

* Language of the Case: Italian.

nalist (Gazzetta Ufficiale della Repubblica Italiana No 49 of 20 February 1963, p. 918). It lays down the conditions and arrangements for inclusion in the Register of Professional Journalists, without which the exercise of that profession is prohibited and subject to penalties under the criminal law. According to the second paragraph of Article 26 of the Law, the Register contains two lists, one of professional journalists and the other of regular contributors to publications. Article 1 of the Law provides that professional journalists and regular contributors whose names appear on the respective lists in the Register are members of the Journalists' Association. A 'professional journalist' is someone who exercises the profession of journalist in an exclusive and continuous manner and a 'regular contributor' is someone who pursues journalistic activities for payment other than on an occasional basis, even though he may exercise another profession or have other employment (Article 1). Article 33 of the Law provides for the maintenance of a Register of Trainee Journalists in which persons of no less than 18 years of age who intend to exercise the profession of journalist may be enrolled.

The first paragraph of Article 29 provides in particular that enrolment on the list of professional journalists is permitted only if the conditions laid down in Article 31 are fulfilled. The second paragraph of Article 31 provides as follows:

'The Council shall verify of its own motion that the conditions regarding nationality, good conduct and absence of convictions for criminal offences have been fulfilled.'

The first paragraph of Article 38 provides that:

'The Council shall, of its own motion, remove from the Register the name of any person who has ceased . . . to be an Italian national.'

Article 35 expressly refers to the second paragraph of Article 31 in regard to registration as a regular contributor and Article 33 does the same in regard to registration as a trainee journalist.

However, Article 28 of the Law provides for special lists to be annexed to the Register of Journalists, one of which contains information regarding journalists of foreign nationality. Such journalists may be registered for the purpose of pursuing their professional activities in Italy if they fulfil certain conditions. Article 36 provides in that regard that:

'Foreign journalists resident in Italy may be registered in the special list referred to in Article 28 if they are aged 21 years or more and, in any event, if the State of which they are a national offers reciprocal treatment to Italian nationals. Applications for registration must be accompanied by the documents referred to in points 1, 2 and 4 of Article 31 and by a certificate from the Minister of Foreign Affairs to the effect that the applicant is a national of a State which offers reciprocal treatment to Italian nationals. The second paragraph of Article 31 is applicable.'

The special rules in question were confirmed in Decree No 115 of the President of the Republic of 4 February 1965 (Gazetta Ufficiale della Repubblica Italiana No 63 of 12 March 1965, Ordinary Supplement), containing measures for the implementation of the law. Article 33 of that decree reads as follows:

'To be registered on the special list referred to in Article 28 of the Law, a foreign journalist must submit the documents required by the second paragraph of Article 36 of the Law and must also provide evidence of his professional qualifications by submitting to the regional or inter-regional council of his place of residence documents which show that the applicant has exercised the

profession of journalist in accordance with the law of the State of which he is a national.'

It does not appear that comparable special rules exist for regular contributors and trainee journalists.

The third Law at issue is Law No 475 of 2 April 1968 laying down provisions concerning pharmaceutical services (Gazetta Ufficiale della Repubblica Italiana No 107 of 27 April 1968, p. 2638). Article 3 of that Law reads as follows:

'Licences to operate pharmacies which are available for the private practice of that profession and which have become vacant or have just been set up shall be awarded in accordance with the results of a competition based on qualifications and tests held in each province before the month of March in each odd-numbered year.

To be admitted to the competition referred to in the preceding paragraph, candidates must be Italian nationals of full age, have full possession of their civil and political rights, be in good health and be enrolled in the Register of Pharmacists.'

2. *Background to the dispute*

Following a request for an explanation made by the Commission, the Italian Government sent it, by letter of 15 September 1983:

(a) a copy of Circular No 7.31 of 21 July 1983 addressed to the National Council of Journalists by the Minister of Justice, in which that professional body is reminded that it is required to comply with Article 52 *et seq.* of the EEC Treaty and is asked to apply the conditions laid down for Italian nationals to nationals of Member States of the Community;

(b) a copy of a letter dated 26 October 1983 with which the National Council of Journalists sent the above-mentioned circular to the various regional and inter-regional councils;

(c) a copy of a decision of the National Council, annulling, in accordance with the abovementioned circular, a decision of the Interregional Council for Lazio and Molise of 22 November 1982 refusing registration on the list of regular contributors to a Netherlands national on the ground that he did not have Italian nationality.

By a telex of 18 July 1983, the Italian Government also forwarded to the Commission Circular No 200/12188 of 2 December 1982 and No 200/12444 of 10 December 1982, both issued by the Presidenza del Consilio del Ministri, addressed respectively to the Government Commissioner in the Lombardy Region and the Government Commissioner in each Region. Those circulars state that nationals of Member States of the Community may participate in the competitions on the basis of which licences to operate pharmacies are awarded since they are no longer debarred by the nationality requirement.

Since the Commission considered that the abovementioned administrative circulars did not constitute an adequate implementation of Italy's obligations under Articles 48, 52 and 59 of the Treaty, it wrote to the Italian Government on 26 January 1984 calling upon it to submit its observations within one month. Since the Italian authorities did not respond to that request, the Commission delivered a reasoned opinion on 20 November 1984 under the first paragraph of

Article 169 of the Treaty and gave the Italian Government one month to comply therewith. Since the Italian Government did not reply to the reasoned opinion, the Commission brought the present action.

3. *Procedure*

The Commission's application was lodged at the Court Registry on 3 June 1985.

The written procedure followed the normal course. Upon 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. It did however invite the Italian Government to state in writing whether the Italian Law laying down a statute for the profession of journalist completely prohibited the inclusion of foreigners in the list of regular contributors and in the Register of Trainee Journalists or whether this was subject to reciprocity.

II — Conclusions of the parties

The Commission, *the applicant*, claims that the Court should:

(1) Declare that the Italian Republic has failed to fulfil its obligations under Articles 48, 52 and 59 of the EEC Treaty by maintaining in force the following provisions:

(i) Article 11 of Law No 217 of 17 May 1983, which makes reciprocity a condition for according to nationals of other Member States the same treatment as is accorded to Italian nationals as regards access to various activities in the field of tourism;

(ii) Articles 31, 33, 35, 36 and 38 of Law No 69 of 6 February 1963 and Articles 33 of Presidential Decree No 115 of 4 February 1965, which makes Italian nationality a condition for registration as a regular contributor to publications or as a trainee journalist and which make reciprocity a condition for allowing professional journalists from the other Member States to be placed on the special register of foreign journalists;

(iii) Article 3 of Law No 475 of 2 April 1968, which restricts the right to participate in competitions for the award of licences to operate pharmacies solely to Italian nationals;

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

The Italian Government, *the defendant*, contends that the Court should:

(1) Dismiss the application;

(2) Order the applicant to pay the costs.

III — Submissions and arguments of the parties

The *Commission* considers that the Italian provisions at issue are contrary to the provisions of the Treaty concerning the free movement of workers, the right of establishment and the freedom to provide services. With regard to reciprocity clauses, the Commission refers to the judgments of the Court of 22 June 1972 in Case 1/72 (*Frilli* v *Belgium* [1972] ECR 457) 28 June 1977 in Case 11/77 (*Patrick* v *Ministre des Affaires Culturelles* [1977] ECR 1199) and 25 October 1979 in Case 159/78 (*Commission* v *Italy* [1979] ECR 3247).

In its defence, the *Italian Government* contends that the Commission's charge concerning the tourism sector is unfounded. Since the provisions of the Treaty are directly applicable, the condition concerning reciprocity is always fulfilled by citizens of other Member States. Maintaining the clause in the legislation at issue cannot therefore create any obstacle.

The Commission's complaint concerning professional journalists, regular contributors and trainee journalists is also without foundation. The Italian Government refers in that regard to the administrative instructions which the Minister of Justice addressed to the National Council of Journalists concerning admission to the profession of nationals of other Member States. The question of the registration of such nationals was therefore resolved in conformity with Community obligations.

The question of the admission of pharmacists to competitions for the award of licences to operate vacant pharmacies has been resolved in the same way by the Circular of the Presidenza del Consiglio dei Ministri of 2 December 1982 addressed to the Government Commissioners in the Regions.

Finally, the Italian Government contends that formal repeal of the contested Laws is not necessary because in time all Community citizens will have become aware of the rights which they may assert in other Member States.

The *Commission* contests the Italian Government's arguments and points out, *inter alia*, that the circulars on which it relies are merely directions for internal use, which have not been published and which are not of such a nature as to amend the legislative provisions. Consequently, legal certainty is not guaranteed at all.

T. Koopmans
Judge-Rapporteur