JUDGMENT OF THE COURT (Fourth Chamber)

8 June 2000 *

In Case C-264/99,

Commission of the European Communities, represented by A. Aresu and M. Patakia, of its Legal Service, acting as agents, with an address for service in Luxembourg at the Chambers of C. Gómez de la Cruz, of the same service, Wagner Centre, Kirchberg,

applicant,

v

Italian Republic, represented by Professor Umberto Leanza, Head of the Legal Department at the Ministry of Foreign Affairs, acting as agent, assisted by I.M. Braguglia, Avvocato dello Stato, with an address for service in Luxembourg at the Italian Embassy, 5 Rue Marie-Adélaïde,

defendant,

APPLICATION for a declaration that, by maintaining rules requiring that Community nationals who carry on business as hauliers in Italy as service

* Language of the case: Italian.

providers be entered on the professional register kept by Chambers of Commerce following authorisation by the Ministry for the Interior, the Italian Republic has failed to fulfil its obligations under Articles 12 EC, 43 EC and 49 EC,

THE COURT (Fourth Chamber),

composed of: D.A.O. Edward (Rapporteur), President of the Chamber, A. La Pergola and H. Ragnemalm, Judges,

Advocate General: S. Alber,
Registrar: R. Grass,

having regard to the report of the Judge-Rapporteur,

after hearing the Opinion of the Advocate General at the sitting on 22 February 2000,

gives the following

Judgment

1 By application lodged at the Registry of the Court on 16 July 1999, the Commission of the European Communities brought an action under Article 226 EC for a declaration that, by maintaining rules requiring that Community nationals who carry on haulage activities as service providers in Italy be entered on the professional register kept by the Chambers of Commerce following authorisation by the Ministry for the Interior, the Italian Republic has failed to fulfil its obligations under Articles 12 EC, 43 EC and 49 EC.

The contested national provisions

2 The version of Italian Law No 1442 of 14 November 1941 (GURI No 6 of 9 January 1942) applicable at the time of the pre-litigation procedure sets out authorisation lists for hauliers.

3 Article 4 of Law No 1442 requires any natural person or company carrying on business as a haulier to register on the professional register kept by the Chamber of Commerce with geographical jurisdiction. Article 6 of Law No 1442 prescribes how registration is to be applied for and provides, *inter alia*, that,

for foreign companies and undertakings or, more generally, for undertakings represented by foreign nationals, the applicant must produce an authorisation from the Ministry for the Interior.

The pre-litigation procedure

4 The Commission took the view that Articles 4 and 6 of Law No 1442 infringe Community law and, by letter of formal notice of 17 June 1997, informed the Italian Government of its complaints, and requested that Government to let it have its comments thereon within two months of receipt of that letter.

5 The Italian Government replied to the Commission by letter of 22 August 1997. Since the Commission was not satisfied with that reply, it issued a reasoned opinion on 18 May 1998 requesting the Italian Republic to adopt the measures necessary to comply with the reasoned opinion within two months of receipt thereof.

6 The Commission considered the Italian Government's reply of 16 March 1999 to the reasoned opinion to be inadequate, and brought this action.

Substance

Arguments of the parties

7 In its application the Commission claims that Law No 1442 infringes the principles laid down in Articles 12 EC, 43 EC and 49 EC.

8 It claims that, even though the requirement to register is not directly discriminatory, for economic operators established in Member States other than the Italian Republic it constitutes a barrier to the pursuit by them of their activities in Italy. Since any person who carries on business as a haulier without first being entered on the professional register is liable to penalties under criminal law (Article 2 of Law No 1442), such entry is clearly an essential precondition for carrying on that business in Italy.

9 According to the Commission, it follows from settled case-law, that Article 49 EC requires not only the elimination of all discrimination on grounds of nationality against providers of services but also the abolition of any restriction, even if it applies without distinction to national providers of services and to those of other Member States, which is liable to impede the activities of a provider of services established in another Member State where he lawfully provides similar services (see Case C-76/90 *Säger* [1991] ECR I-4221). In particular, a Member State cannot make the performance of the services in its territory subject to observance

of all the conditions required for establishment; were it to do so, the provisions securing freedom to provide services would be deprived of all practical effect (Case C-180/89 *Commission* v *Italy* [1991] ECR I-709).

10 The Commission adds that Article 6 of Law No 1442, which specifies how registration is to be applied for, is incompatible with the fundamental principles laid down in Articles 12 EC and 43 EC.

11 In its defence, the Italian Government does not dispute the grounds of complaint raised by the Commission and indicates that new national provisions are in the course of preparation as a result of which those grounds will soon cease to exist.

Findings of the Court

12 It is not disputed by the Italian Government, and is thus common ground, that Articles 4 and 6 of Law No 1442 constitute a barrier to haulage activities by Community nationals in Italy.

13 Whilst it is true that it is not impossible that such barriers might, under certain conditions, be justified by overriding reasons relating to the public interest, neither the Italian Government's defence nor the other documents before the Court reveal any such reasons on which it might be possible to rely in this case.

14 Accordingly, it must be held that, by maintaining rules requiring Community nationals who pursue haulage activities in Italy as service providers to be entered on the professional register of the Chambers of Commerce following authorisation by the Ministry for the Interior, the Italian Republic has failed to fulfil its obligations under Articles 12 EC, 43 EC and 49 EC.

Costs

15 Article 69(2) of the Rules of Procedure provides that the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings. Since the Commission has applied for costs and the Italian Republic has been unsuccessful, the Italian Republic must be ordered to pay the costs.

On those grounds,

THE COURT (Fourth Chamber),

hereby:

1. **Declares that, by maintaining rules requiring Community nationals who pursue haulage activities in Italy as service providers to be entered on the**

professional register of the Chambers of Commerce following authorisation by the Ministry of the Interior, the Italian Republic has failed to fulfil its obligations under Articles 12 EC, 43 EC and 49 EC;

2. Orders the Italian Republic to pay the costs.

Edward La Pergola Ragnemalm

Delivered in open court in Luxembourg on 8 June 2000.

R. Grass

Registrar

D.A.O. Edward

President of the Fourth Chamber