OPINION OF MR ADVOCATE GENERAL DARMON
delivered on 2 July 1991 *

Mr President,
Members of the Court,

1. By the present application, the Commission is asking the Court to declare that the Italian Republic has failed to fulfil its obligations under Articles 48, 52 and 59 of the EEC Treaty by restricting to Italian nationals the possibility of obtaining recognition in Italy of diplomas obtained in other States of the Community entitling the holders to pursue certain occupations as health-care auxiliaries.

2. Italian Law No 752 of 6 November 1984 [1] lays down the conditions for the recognition of qualifications obtained abroad entitling the holders to work in auxiliary health-care occupations for which no degree is required. However, that recognition is confined to Italian nationals. A letter of 12 October 1987 from the Italian Ministry of Health thus refused the benefit of those provisions to a Belgian national who was seeking recognition of his Belgian diploma in physiotherapy.

3. There is no doubt that the legislation at issue is incompatible with the rules of the Treaty on freedom of movement for workers, freedom of establishment and freedom to provide services. While there is nothing to prevent a Member State, in the absence of harmonization, from laying down the qualifications needed in order to pursue a particular occupation, [2] the existence of a condition of nationality for the recognition of a diploma or a professional qualification acquired in another Member State is contrary to Community rules. [3]

4. In its defence, the Italian Government points out that the refusal to recognize the diploma of the Belgian national in question was annulled by a judgment of the Regional Administrative Court, Lazio. The Ministry of Health did not appeal against that decision and is thus required to apply the principles set out in the judgment of that court to any applications for recognition which may be submitted.

5. It is unnecessary to recall that neither a mere administrative practice, which does not receive sufficient publicity and which, by its nature, is capable of being altered at the whim of the authorities, nor the obligation of national courts to set aside domestic

* Original language: Italian.

1 — GURI No 311 of 12 November 1984, p. 9427.

2 — Judgment of 15 October 1987 in Case 222/86 *Unecter* [1987] ECR 4097, p. 10.

3 — For the conditions governing the recognition of foreign diplomas in the absence of any requirement of nationality, see the judgment of 7 May 1991 in Case C-340/89 *Vlassopoulou* [1991] ECR I-2357.

provisions which are contrary to Community law, releases the Member States from their duty to remove from their legislation provisions which are contrary to Community law, so as not to create 'an ambiguous state of affairs by maintaining, as regards those subject to the law who are concerned, a state of uncertainty as to the possibilities available to them of relying on Community law'.[4]

6. I conclude therefore that

— the Court should declare that by restricting to Italian nationals the possibility of obtaining recognition in Italy of formal qualifications obtained in other States of the Community entitling holders to pursue certain occupations as health-care auxiliaries, the Italian Republic has failed to fulfil its obligations under Articles 48, 52 and 59 of the EEC Treaty;

— the Court should order the defendant State to pay the costs.

4 — Judgment of 4 April 1974 in Case 167/73 *Commission* v *France* [1974] ECR 359, p. 41; see, more recently, the judgment of 14 July 1988 in Case 38/87 *Commission* v *Greece* [1988] ECR 4415, p. 9.