OPINION OF ADVOCATE GENERAL ALBER

delivered on 6 June 2002 [1]

1. In the present proceedings brought against the French Republic for failure to fulfil its obligations under the Treaty, the Commission claims that the Court should:

(1) declare that, by failing to adopt the laws, regulations and administrative provisions necessary to comply with Directive 98/5/EC of the European Parliament and of the Council of 16 February 1998 to facilitate practice of the profession of lawyer on a permanent basis in a Member State other than that in which the qualification was obtained, [2] the French Republic has failed to fulfil its obligations under that directive;

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

2. Pursuant to Article 16 of the directive, the period prescribed for transposition expired on 14 March 2000.

3. Paragraph 1 of that provision states: 'Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this directive by 14 March 2000. They shall forthwith inform the Commission thereof.' Since, by that date, the Commission had not received any information regarding transposition of the directive, on 8 August 2000 it sent the French Republic a letter of formal notice. The French Government replied by way of a letter from the French Permanent Representation of 16 November 2000, in which it referred to the preliminary draft of a law transposing the directive. On 24 January 2001, the Commission addressed a reasoned opinion to the French Republic and set a time-limit of two months for compliance with the requirement to transpose the directive.

4. It is undisputed that upon the expiry of that period the laws, regulations and administrative provisions necessary to transpose the directive had not been adopted. At that time, as in the proceedings before the Court, the French Government referred to progress made in the legislative procedure. It is, however, settled case-law that the question whether a Member State has failed to fulfil its obligations must be determined by reference to the situation at the end of the period laid down in the reasoned opinion. [3] Since it is undisputed that, at that time, the directive had not yet been transposed into the French legal system, the French Republic has failed to fulfil its Treaty obligations.

1 — Original language: German.
2 — OJ 1998 L 77, p. 36.
3 — See, to that effect, Case C-364/00 *Commission* v *Netherlands* [2002] ECR I-4177.

Costs

5. Under Article 69(2) of the Rules of Procedure, 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 French Republic has been unsuccessful, the latter must be ordered to pay the costs.

Conclusion

6. I therefore propose that the Court should:

(1) declare that, by failing to adopt the laws, regulations and administrative provisions necessary to comply with Directive 98/5/EC of the European Parliament and of the Council of 16 February 1998 to facilitate practice of the profession of lawyer on a permanent basis in a Member State other than that in which the qualification was obtained, the French Republic has failed to fulfil its obligations under that directive;

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