ORDER OF THE COURT
7 November 1990 *

In Case C-247/90,

Maria-Theresia Emrich, a Rechtsanwältin in Wiesbaden (Federal Republic of Germany),

applicant,

v

Commission of the European Communities,

defendant,

APPLICATION under Article 175 of the EEC Treaty for a declaration that the Commission, contrary to Article 155 of the EEC Treaty, failed to ensure, by means of a binding decision addressed to the applicant, that she could effectively practise as a Rechtsanwalt (lawyer) before all the German courts,

THE COURT,

composed of: O. Due, President, G. F. Mancini, J. C. Moitinho de Almeida, G. C. Rodríguez Iglesias and M. Díez de Velasco (Presidents of Chambers), Sir Gordon Slynn, C. N. Kakouris, R. Joliet, F. A. Schockweiler, F. Grévisse and M. Zuleeg, Judges,

Advocate General: W. Van Gerven
Registrar: J.-G. Giraud

after hearing the Opinion of the Advocate General,

makes the following

* Language of the case: German.

Order

1 By an application lodged at the Court Registry on 16 August 1990, Maria-Theresia Emrich, a Rechtsanwältin in Wiesbaden, brought an action before the Court under the third paragraph of Article 175 of the EEC Treaty essentially for a declaration that the Commission, contrary to Article 155 of the EEC Treaty, has failed to ensure, by means of a binding decision addressed to the applicant, that she may effectively practise as a Rechtsanwalt (lawyer) before all the German courts, in accordance with Articles 59, 60, 63, 65, 7 and 8 of the EEC Treaty and Council Directive 77/249/EEC of 22 March 1977, adopted to facilitate the effective exercise by lawyers of freedom to provide services (Official Journal 1977 L 78, p. 17), by applying in the applicant's favour the principle of non-discrimination.

2 Article 92(1) of the Rules of Procedure states that 'where it is clear that the Court has no jurisdiction to take cognizance of an application lodged with it in pursuance of Article 38(1), the Court may by reasoned order declare the application inadmissible. Such a decision may be adopted even before the application has been served on the party against whom it is made'.

3 The action brought by the applicant under the third paragraph of Article 175 of the Treaty seeks a declaration that, by failing to address to the applicant a binding decision which would allow her effectively to practise as a Rechtsanwalt before all the German courts, the Commission has failed to act, thereby infringing the Treaty.

4 The right of natural or legal persons to bring an action before the Court, pursuant to the third paragraph of Article 175 of the Treaty, is limited to applications seeking to establish a failure, contrary to the Treaty, to adopt acts which are potentially addressed to them.

5 In this action, the applicant complains that the Commission has failed to adopt an act which would enable her freely to practise her profession of Rechtsanwalt before all the German courts.

6 Without expressing a view as to whether the principle of the freedom to provide services covers situations such as that of the applicant, the Court observes that, within the system of the Treaty, the only measure which the Commission could take would be to initiate proceedings under Article 169 of the EEC Treaty against the Federal Republic of Germany.

7 Consequently, it must be held that the present application has the same objective as the application in Case C-371/89 (order of 30 March 1990 *Emrich* v *Commission* [1990] ECR I-1555) and must also be declared inadmissible, in accordance with Article 92(1) of the Rules of Procedure, even before it is served on the party against whom it is made.

8 Under Article 69(2) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs. Since the applicant has failed in her submissions, she must be ordered to pay the costs.

On those grounds,

THE COURT

hereby orders as follows:

(1) The application is dismissed as inadmissible.

(2) The applicant is ordered to pay the costs.

Luxembourg, 7 November 1990.

J.-G. Giraud
Registrar

O. Due
President