JUDGMENT OF THE COURT (Fourth Chamber)
16 May 2002 *

In Case C-142/01,

Commission of the European Communities, represented by M. Patakia and A. Aresu, acting as Agents, with an address for service in Luxembourg,

applicant,

v

Italian Republic, represented by U. Leanza, acting as Agent, assisted by G. Aiello, avvocato dello Stato, with an address for service in Luxembourg,

defendant,

* Language of the case: Italian.

APPLICATION for a declaration that, by maintaining in force the first paragraph of Article 12 of Law No 81, Legge-quadro per la professione di maestro di sci e ulteriori disposizioni in materia di ordinamento della professione di guida alpina (Framework Law for the profession of ski monitor and supplementary provisions relating to the regulation of the profession of mountain guide) of 8 March 1991 (GURI No 64 of 16 March 1991, p. 3), which makes recognition of a ski-monitor diploma subject to a condition of reciprocity, the Italian Republic has failed to fulfil its obligations under Council Directive 92/51/EEC of 18 June 1992 on a second general system for the recognition of professional education and training to supplement Directive 89/48/EEC (OJ 1992 L 209, p. 25),

THE COURT (Fourth Chamber),

composed of: S. von Bahr, President of the Chamber, D.A.O. Edward (Rapporteur) and C.W.A. Timmermans, Judges,

Advocate General: D. Ruiz-Jarabo Colomer,
Registrar: R. Grass,

having regard to the Report of the Judge-Rapporteur,

after hearing the Opinion of the Advocate General at the sitting on 19 March 2002,

gives the following

Judgment

1 By application lodged at the Registry of the Court on 28 March 2001, the Commission of the European Communities brought an action under Article 226 EC for a declaration that, by maintaining in force the first paragraph of Article 12 of Law No 81, Legge-quadro per la professione di maestro di sci e ulteriori disposizioni in materia di ordinamento della professione di guida alpina (Framework Law for the profession of ski monitor and supplementary provisions relating to the regulation of the profession of mountain guide) of 8 March 1991 (GURI No 64 of 16 March 1991, p. 3, hereinafter 'Law No 81'), which makes recognition of a ski-monitor diploma subject to a condition of reciprocity, the Italian Republic has failed to fulfil its obligations under Council Directive 92/51/EEC of 18 June 1992 on a second general system for the recognition of professional education and training to supplement Directive 89/48/EEC (OJ 1992 L 209, p. 25).

2 The first paragraph of Article 3 of Directive 92/51 states:

'Without prejudice to Directive 89/48/EEC, where, in a host Member State, the taking up or pursuit of a regulated profession is subject to possession of a

diploma, as defined in this Directive or in Directive 89/48/EEC, the competent authority may not, on the grounds of inadequate qualifications, refuse to authorise a national of a Member State to take up or pursue that profession on the same conditions as those which apply to its own nationals:

(a) if the applicant holds the diploma, as defined in this Directive or in Directive 89/48/EEC, required in another Member State for the taking up or pursuit of the profession in question in its territory, such diploma having been awarded in a Member State;

...'.

3 The first paragraph of Article 12 of Law No 81 provides that:

'The regions shall regulate the exercise in their territory of the activity of foreign ski monitors not registered in regional professional registers. Authorisation for pursuit of this profession is subject to recognition, by the Italian Winter Sports Federation with the agreement of the national board referred to in Article 15, of the equivalence of diplomas and of reciprocity.'

4 Taking the view that Law No 81 contained a requirement of reciprocity that did not appear in Directive 92/51, the Commission initiated the infringement procedure. Having twice given the Italian Republic formal notice to submit its observations, the Commission issued a reasoned opinion on 21 June 2000 requesting that Member State to bring into force the measures necessary to comply with it within two months of the date of its notification.

5 The Italian authorities replied to those letters of formal notice by letters of 24 May 2000 and 26 June 2000. Since it was not satisfied by those replies, the Commission decided to bring the present infringement proceedings. None the less, in its application it has taken into consideration the second reply of the Italian authorities and limited its claim to the single complaint concerning the condition of reciprocity for the recognition of a ski-monitor diploma.

6 In its defence, the Italian Government states that it has never applied the condition of reciprocity that was the subject of the action.

7 It is evident from settled case-law, first, that implementation of the obligations imposed on Member States by the EC Treaty or secondary legislation cannot be made subject to a condition of reciprocity (see Case C-163/99 *Portugal* v *Commission* [2001] ECR I-2613, paragraph 22) and, second, that mere administrative practices, which by their nature are alterable at will by the authorities and are not given sufficient publicity, cannot be regarded as constituting the proper fulfilment of obligations under the Treaty (Case C-334/94 *Commission* v *France* [1996] ECR I-1307, paragraph 30).

8 Moreover, it is settled case-law that a failure to fulfil obligations must be determined by reference to the situation prevailing at the end of the period laid down in the reasoned opinion (Case C-435/99 *Commission* v *Portugal* [2000] ECR I-11179, paragraph 16).

9 The Italian Republic admitted that, with the exception of the Veneto region, its domestic law was not altered by the end of the period laid down in the reasoned opinion, nor by the date on which its defence was drafted. In that respect, it merely pointed out that a draft law removing the condition of reciprocity for the recognition of a ski-monitor diploma was being prepared.

10 In those circumstances, the action brought by the Commission must be considered to be well founded.

11 It must therefore be held that, by maintaining in force the first paragraph of Article 12 of Law No 81, which makes recognition of a ski-monitor diploma subject to a condition of reciprocity, the Italian Republic has failed to fulfil its obligations under Directive 92/51.

Costs

12 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 Italian Republic has been unsuccessful, the latter must be ordered to pay the costs.

On those grounds,

THE COURT (Fourth Chamber)

hereby:

1. **Declares that, by maintaining in force the first paragraph of Article 12 of Law No 81, Legge-quadro per la professione di maestro di sci e ulteriori disposizioni in materia di ordinamento della professione di guida alpina (Framework Law for the profession of ski monitor and supplementary provisions relating to the regulation of the profession of mountain guide) of 8 March 1991, which makes recognition of a ski-monitor diploma subject to a condition of reciprocity, the Italian Republic has failed to fulfil its obligations under Council Directive 92/51/EEC of 18 June 1992 on a second general system for the recognition of professional education and training to supplement Directive 89/48/EEC;**

2. **Orders the Italian Republic to pay the costs.**

von Bahr Edward Timmermans

Delivered in open court in Luxembourg on 16 May 2002.

R. Grass

Registrar

S. von Bahr

President of the Fourth Chamber