JUDGMENT OF THE COURT

10 December 2002 *

In Case C-362/01,

Commission of the European Communities, represented by K. Banks, acting as Agent, with an address for service in Luxembourg

applicant,

v

Ireland, represented by D.J. O'Hagan, acting as Agent, and by D. McGuinness SC and D.R. Phelan BL, with an address for service in Luxembourg,

defendant,

APPLICATION for a declaration that, by failing to adopt the laws, regulations and administrative provisions necessary to comply with Directive 98/5/EC of the European Parliament and 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 (OJ 1998 L 77, p. 36), or by failing to inform the Commission thereof, Ireland has failed to fulfil its obligations under that directive,

* Language of the case: English.

THE COURT,

composed of: G.C. Rodríguez Iglesias, President, J.-P. Puissochet (Rapporteur), M. Wathelet and C.W.A. Timmermans (Presidents of Chambers), D.A.O. Edward, A. La Pergola, P. Jann, F. Macken, N. Colneric, S. von Bahr and J.N. Cunha Rodrigues, 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 17 September 2002,

gives the following

Judgment

1 By application lodged at the Court Registry on 24 September 2001, the Commission of the European Communities brought an action pursuant to Article 226 EC for a declaration that, by failing to adopt the laws, regulations and administrative provisions necessary to comply with Directive 98/5/EC of the

European Parliament and 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 (OJ 1998 L 77, p. 36), or by failing to inform the Commission thereof, Ireland failed to fulfil its obligations under that directive.

2 The first paragraph of Article 16(1) of Directive 98/5 provides:

'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.'

The pre-litigation procedure

3 Since it had received no notification from Ireland of measures transposing Directive 98/5 into its domestic legal system, by letter of 8 August 2000 the Commission put the Irish Government on notice to submit its observations within two months.

4 The Irish Government answered the letter of formal notice by letter of 16 January 2001, received by the Commission on 17 January 2001, that is to say, more than three months after the period prescribed had expired. It stated, in essence, that the draft laws and regulations necessary for implementing Directive 98/5 were still under consideration and that those measures were, in principle, to enter into force at the beginning of 2001.

5 On 24 January 2001 the Commission sent Ireland a reasoned opinion requesting it to take all the measures necessary to comply with the provisions of Directive 98/5 within a period of two months. In paragraph 3 of that opinion, the Commission stated *inter alia* that '[n]o official response... has yet been received' from the Irish Government. The Commission therefore considered that no implementing measures had been adopted or communicated by Ireland and that that finding warranted the sending of a reasoned opinion.

6 The Irish Government answered the reasoned opinion by letter of 29 January 2001, pointing out that it had communicated its observations to the Commission and enclosing a copy of its statement of 16 January. That second letter did not bring any new facts to the Commission's attention.

7 The Commission has not received any further information.

Admissibility

8 In its application, the Commission claims, principally, that Ireland has failed to fulfil its obligations by failing to adopt the measures necessary to implement Directive 98/5 within the period prescribed for that purpose. It observes that Ireland does not dispute the allegation levelled at it.

9 In its defence, the Irish Government maintains that the action brought against it is inadmissible because the Commission did not respect the conditions for the issuing of a reasoned opinion. In its view, the Commission wrongly claimed in its

reasoned opinion that its letter of formal notice had gone unanswered. It states that it drew that irregularity to the Commission's attention and considers that, instead of bringing an action before the Court, the Commission ought first to have taken account of its observations and explained in a fresh reasoned opinion why it considered the Irish authorities' reply to be insufficient. In support of that approach, the Irish Government cites, in particular, the order of the Court of 11 July 1995 in Case C-266/94 *Commission* v *Spain* [1995] ECR I-1975, paragraphs 24 to 26, concerning infringement proceedings brought in identical circumstances, in which order the Court held that the conduct of the pre-litigation procedure had been improper and that that fact rendered the Commission's action manifestly inadmissible.

10 The Government adds that the Commission in its application acknowledges the irregular nature of the pre-litigation procedure.

11 In its reply, the Commission first states that the observations of the Irish Government did not reach it in good time, since they were not sent until well after the period of two months prescribed in the letter of formal notice had expired. The Commission submits that it was justified in not taking account of the Irish Government's reply, quite simply because it arrived just before the reasoned opinion was sent.

12 Second, the Commission considers that, even if the observations made by the Irish Government had been made in good time, they were not such as to convince it as to the absence of any infringement. In consequence, the Commission maintains that the sending of a reasoned opinion was in any event warranted and that its failure to take account of those observations, which it does not deny, could not justify finding the action brought against Ireland to be inadmissible.

13 Third, the Commission contends that the circumstances in the light of which the Court held the action to be inadmissible in the order *Commission* v *Spain*, cited above, do not exist in the present case. In its submission, the Court did not hold that an action brought against a Member State must be held to be inadmissible where the observations made by that Member State have not been taken into account, but held the action before it to be inadmissible solely because there were national measures effecting partial implementation of the directive in question, and because the Kingdom of Spain's reply had arrived within the period set by the Commission in its letter of formal notice. In the present case those two elements are lacking.

14 It must at the outset be observed that, contrary to what the Commission appears to contend, the validity of its reasoned opinion, assuming it to be established, could never have the effect of rectifying a defect vitiating the pre-litigation stage of the infringement proceedings.

15 The procedure laid down in Article 226 EC comprises two consecutive stages, the pre-litigation stage of an administrative nature and the contentious stage before the Court.

16 The purpose of the pre-litigation procedure laid down in Article 226 EC is to give the Member State concerned an opportunity to comply with its obligations under Community law or to avail itself of its right to defend itself against the complaints made by the Commission (judgment in Case 293/85 *Commission* v *Belgium* [1988] ECR 305, paragraph 13; order in *Commission* v *Spain*, cited above, paragraph 16, and judgment in Case C-1/00 *Commission* v *France* [2001] ECR I-9989, paragraph 53).

17 The proper conduct of the pre-litigation procedure constitutes an essential guarantee required by the EC Treaty not only in order to protect the rights of the Member State concerned, but also so as to ensure that the contentious procedure will have as its subject-matter a clearly defined dispute (*Commission* v *France*, cited above, paragraph 53).

18 Thus, the pre-litigation procedure pursues the following three objectives: to allow the Member State to put an end to any infringement, to enable it to exercise its rights of defence and to define the subject-matter of the dispute with a view to bringing an action before the Court.

19 It has been established that the Commission received the observations of the Irish Government seven days before sending it a reasoned opinion. No provision of Community law penalises failure to respond to the letter of formal notice within the period fixed by the Commission by rendering the Member State's observations inadmissible. In principle, therefore, the Commission was required to set out, in its reasoned opinion, its assessment of those observations before specifying which complaints it intended to pursue, instead of wrongly claiming not to have received any official response from Ireland.

20 The Commission did not, however, make it impossible for the Member State to put an end to its infringement and did not compromise its rights of defence. Furthermore, the fact that the Commission failed to take account of Ireland's observations had no effect on the definition of the subject-matter of the dispute. Paragraph 4 above makes it clear that, in its reply to the Commission's letter of formal notice, Ireland did no more than announce that it would in the future be adopting implementing measures which were then under consideration.

21 In those circumstances, while the manner in which the pre-litigation procedure may appear to have been conducted is to be regretted, the reasoned opinion cannot be regarded as vitiated by a substantive defect capable of rendering the Commission's action under Article 226 EC inadmissible.

22 It follows that the Commission's application is admissible.

The failure to fulfil obligations

23 Since implementation of Directive 98/5 on the practice of the profession of lawyer did not take place within the period prescribed, as the Irish Government has indeed acknowledged, the action brought by the Commission must be considered to be well founded.

24 It must therefore be declared that, by failing to adopt within the period prescribed the laws, regulations and administrative provisions necessary to comply with Directive 98/5, Ireland has failed to fulfil its obligations under the directive.

Costs

25 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 applied for costs and Ireland has been unsuccessful, the latter must be ordered to pay the costs.

On those grounds,

THE COURT

hereby:

1. **Declares that, by failing to adopt within the period prescribed the laws, regulations and administrative provisions necessary to comply with Directive 98/5/EC of the European Parliament and 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, Ireland has failed to fulfil its obligations under that directive;**

2. **Orders Ireland to pay the costs.**

Rodríguez Iglesias Puissochet Wathelet

Timmermans Edward La Pergola

Jann Macken Colneric

von Bahr Cunha Rodrigues

Delivered in open court in Luxembourg on 10 December 2002.

R. Grass G.C. Rodríguez Iglesias

Registrar President