ORDER OF THE COURT OF FIRST INSTANCE (Fourth Chamber)
29 November 1994 *

In Cases T-479/93 and T-559/93,

Giorgio Bernardi, residing in Luxembourg, represented by Stefano Giorgi, of the Rome Bar, with an address for service in Luxembourg at 5 Rue des Bains,

applicant,

v

Commission of the European Communities, represented by Marie-Josée Jonczy, Legal Adviser, and Nicola Annecchino, of the Legal Service, acting as Agents, with an address for service in Luxembourg at the office of Georgios Kremlis, of the Legal Service,

defendant,

APPLICATION for the annulment of Commission Decisions SG(92) D/92722 and SG(93) D/14567 of 2 March 1993 and 2 September 1993 rejecting the applications by the applicant for the initiation against the Grand Duchy of Luxembourg of the procedure laid down in Article 169 of the EEC Treaty; for a

* Language of the case: Italian.

declaration that the Commission has failed to initiate the said procedure against the Grand Duchy of Luxembourg, thereby infringing Article 175 of the EEC Treaty; for an order requiring the Commission to initiate that procedure; for a declaration that the Luxembourg authorities have infringed Community law; and for recognition of the applicant's entitlement to compensation for the damage which he claims to have suffered,

THE COURT OF FIRST INSTANCE
OF THE EUROPEAN COMMUNITIES (Fourth Chamber),

composed of: K. Lenaerts, President, R. Schintgen and R. García-Valdecasas, Judges,

Registrar: H. Jung,

makes the following

Order

Facts and procedure

1 On 30 June 1989 the applicant, an Italian national wishing to practise as a lawyer in Luxembourg, submitted to the Luxembourg authorities an application for the approval of his Italian diploma ('laurea in giurisprudenza' from the Universitá degli

Studi 'G. d'Annunzio' in Teramo/Chieti, dated 28 March 1989), in order to be able to practise as a lawyer in that Member State.

2 Under the national rules, namely the Grand Ducal Regulation of 21 January 1978 on the organization of legal traineeships and access to the profession of notary (*Mémorial* 1978, No 3, p. 40), access to the Bar is subject to a number of conditions, including, in particular, approval of a diploma in law obtained on completion of a course of studies of at least four years' duration, completion of a legal traineeship involving additional courses in Luxembourg law, registration on the list of trainee lawyers, completion of detailed studies of approximately three years' duration, passing an examination at the end of the traineeship and registration on the list of '*avocats-avoués*'.

3 Between October 1988 and February 1989, the applicant attended courses in Luxembourg law organized in the context of his legal traineeship. On 27 January 1990, he was admitted to the next stage of that traineeship.

4 On 27 February 1990, the Luxembourg Minister of National Education rejected Mr Bernardi's application, dated 30 June 1989, for approval of his diploma.

5 By decision of 5 March 1990, the Luxembourg Bar Council refused to admit the applicant to the Luxembourg Bar's list of trainee lawyers. On 5 April 1990, the applicant brought an action against that decision, in which he asked the national court to seek a preliminary ruling from the Court of Justice pursuant to Article 177 of the EEC Treaty. The action and the application seeking a reference for a preliminary ruling were dismissed.

6 On 10 September 1990, the applicant brought an action before the Luxembourg Council of State for the annulment of the Ministerial Decision of 27 February 1990, in which he also asked the national court to seek a preliminary ruling from the Court of Justice pursuant to Article 177 of the EEC Treaty. The action and the application seeking a reference for a preliminary ruling were dismissed by the Council of State on 18 April 1991.

7 The applicant then submitted various complaints to the Commission, the first of which were dated 21 June and 19 September 1990, in which he asserted that the decisions taken regarding him were contrary to Community law.

8 By letter of 10 August 1990, the Commission informed the applicant that it had not established any infringement of Community law on the part of the Luxembourg authorities. By a further complaint, dated 25 October 1992, the applicant again requested the Commission to intervene under Article 169 of the EEC Treaty against the Grand Duchy of Luxembourg. By letter of 12 December 1992, the applicant wrote directly to the President of the Commission. The Commission replied, by letter of 2 March 1993, stating that the conduct of the Luxembourg authorities did not involve any infringement of Community law.

9 The applicant then brought an initial action before the Court of Justice. The application was lodged at the Registry of the Court on 5 May 1993 as Case C-270/93. The case was transferred to the Court of First Instance by order of the Court of Justice of 27 September 1993, pursuant to Council Decision 93/350/Euratom/ECSC/EEC of 8 June 1993, amending Decision 88/591/ECSC/EEC/Euratom establishing the Court of First Instance of the European Communities (OJ 1993 L 144, p. 21), and lodged at the Registry of the Court of First Instance as Case T-479/93.

10 By letters of 1 and 7 July 1993, the applicant submitted fresh complaints to the Commission, in which he sought the initiation of a procedure against the Grand Duchy of Luxembourg for failure to fulfil its obligations under the Treaty.

11 By letter of 2 September 1993, the Commission again informed the applicant that it had not established any infringement of Community law on the part of the Luxembourg authorities.

12 The applicant thereafter brought a second action, which was lodged at the Registry of the Court of First Instance on 3 November 1993 as Case T-559/93.

13 The President of the Court of First Instance assigned the two cases to the Fourth Chamber. By decision of 7 July 1994, the Court referred the two cases to a Chamber composed of three judges.

Forms of order sought by the parties

14 In his application in Case T-479/93, the applicant claims in essence that the Court of First Instance should:

— annul Commission Decision SG(92) D/92722 of 2 March 1993 rejecting his request for the application of Article 169 of the Treaty against the Grand Duchy of Luxembourg;

— declare that the Commission has failed, contrary to Article 175 of the EEC Treaty, to adopt a position in relation to his request for the application of Article 169 of the Treaty;

— order the Commission to initiate the procedure laid down by Article 169 of the Treaty against the Grand Duchy of Luxembourg;

— declare that the Luxembourg authorities have infringed Community law;

— uphold the applicant's right to compensation.

15 In his application in Case T-559/93, the applicant claims in essence that the Court of First Instance should:

— annul Commission Decision SG(93) D/14567 of 2 September 1993 rejecting his request for the application of Article 169 of the Treaty against the Grand Duchy of Luxembourg;

— declare that the Commission has failed to exercise its supervisory functions in accordance with Article 175 of the EEC Treaty;

— order the Commission to initiate the procedure laid down by Article 169 of the Treaty against the Grand Duchy of Luxembourg;

— declare that the Luxembourg authorities have infringed Community law;

— uphold the applicant's right to compensation.

16 By separate documents, lodged at the Registry of the Court of Justice on 10 June 1993 and at the Registry of the Court of First Instance on 10 December 1993, the defendant, without pleading as to the substance of the dispute, contends that the Court of First Instance should:

— declare the applications inadmissible;

— order the applicant to pay the costs.

17 In Case T-479/93, the applicant submitted on 13 July 1993 observations in which it sought to rebut the objection raised by the Commission.

18 In view of the connection between the subject-matter of the two cases, and since the applicant has requested, by application dated 22 July 1994, that they be joined, it is appropriate to order that they be joined.

19 By a pleading dated 22 July 1994, the applicant also requested that the cases be determined by a Chamber of five judges, of which the Luxembourg judge should not be a member. Suffice it to say that the cases have been referred to a Chamber composed of three judges and that the final paragraph of Article 16 of the Protocol on the Statute of the Court of Justice of the EEC, which is applicable to the Court of First Instance by virtue of Article 44 of the said Protocol, precludes any party from impugning the nationality of a judge. Consequently, the applicant's request must be rejected.

20 In the same pleading, the applicant sought leave to represent himself in the proceedings. It should be noted that Article 17 of the Protocol on the Statute of the Court of Justice of the EEC precludes any such application and requires the parties to be represented by a lawyer entitled to practise before a court of a Member State. Consequently, the applicant's request must be rejected.

Admissibility

21 By Article 114 of the Rules of Procedure of the Court of First Instance, where a party applies to the Court for a decision on admissibility not going to the substance of the case, the remainder of the proceedings concerning the objection of inadmissibility must be oral, unless the Court otherwise decides.

22 By Article 111 of the Rules of Procedure, where an action is manifestly inadmissible, the Court of First Instance may, by reasoned order and without taking further steps in the proceedings, give a decision on the action. In the present case, the Court considers that it has sufficient information from the documents before it, and finds that there is no need to take any further steps in the proceedings.

The claims for annulment of the Commission's Decisions of 2 March 1993 and 2 September 1993

23 The Commission states in its objections of inadmissibility that the letters by which it informed the applicant of the conditions for the initiation of a procedure under Article 169 against the Grand Duchy of Luxembourg do not constitute acts capable of forming the subject-matter of an action for annulment pursuant to Article 173 of the EEC Treaty.

24 According to the Commission, the pre-litigation stage of a procedure based on Article 169 of the Treaty does not entail any legally binding act; consequently, an action for the annulment of the act by which the Commission makes it known that it does not propose to take any steps against a Member State cannot be admissible. Furthermore, the position adopted by the Commission in the present case is of direct and individual concern not to the applicant but to the Luxembourg State. Finally, the Commission states that it was under no obligation to initiate a procedure under Article 169 of the Treaty, since it has a discretion in that regard.

25 In its observations on the objection of inadmissibility, the applicant maintains, in Case T-479/93, that the assertion that Decision SG(92) D/92722 is not an act capable of forming the subject-matter of an action for annulment pursuant to Article 173 of the EEC Treaty is of no practical significance, since it constitutes a genuine administrative act producing legal effects, regardless of its nature and form, and its legality may be reviewed by the Court. He contends that that act, which was directly addressed to him, prevents him from seeking redress for the unjust infringement of the various rights conferred on him by the Community legal order. In any event, the very fact of his having been denied the fundamental right to defend himself provided for by Article 177 of the Treaty constitutes, of itself, a highly prejudicial circumstance.

26 The applicant points out that, whilst the Commission may have a discretion, that does not entitle it to escape judicial review altogether, particularly where there has been a serious infringement of Community law.

27 It is settled case-law (see, *inter alia*, the judgment of the Court of Justice in Case 48/65 *Lütticke* v *Commission* [1966] ECR 19 (at p. 27), the order of the Court of Justice in Case C-29/92 *Asia Motor France and Others* v *Commission* [1992] ECR I-3935 and the order of the Court of First Instance in Case T-29/93 *Calvo Alonso-Cortés* v *Commission* [1993] ECR II-1389) that an individual is not entitled to contest a refusal by the Commission to initiate a procedure against a Member State for failure to fulfil its Treaty obligations. It follows that, in so far as they seek the annulment of Commission Decisions SG(92) D/92722 and SG(93) D/14567 of 2 March 1993 and 2 September 1993, the actions are manifestly inadmissible.

28 Moreover, the Court considers that the principles established by the case-law cited above are not affected by the nature of the infringement of Community law alleged in the present case (see the order of the Court of First Instance of 4 July 1994 in Case T-13/94 *Century Oils Hellas* v *Commission* [1994] ECR II-431, paragraph 15).

The claims for a declaration that the Commission has failed to act

29 According to the Commission, natural or legal persons may only bring proceedings before the Court of Justice under Article 175 of the Treaty with a view to obtaining a declaration that one of the institutions has infringed the Treaty by failing to adopt acts which may be addressed to those persons. In the present case, the complaint filed by the applicant, concerning an alleged infringement of Community law by the Luxembourg authorities, could not under any circumstances impose on the Commission an obligation to adopt an act addressed to the applicant. Even if the Commission had decided to initiate a procedure under Article 169 to establish an infringement of the Treaty, it is apparent from that provision that it would not have been bound to address any of the procedural documents to the complainant. Consequently, that procedure excludes the right for individuals to require the Commission to adopt a specific position by means of an act addressed to them.

30 The applicant emphasizes that his complaints relate in essence to omissions by the Commission which fall in any event within the scope of Article 175 of the Treaty. He states that the point at issue is not so much the application of Article 169 of the Treaty as such but rather the Commission's failure to react to reported infringements of Articles 52 and 177 of the EEC Treaty, in that it disregarded its supervisory obligations, thereby contributing in turn to the prevention of the effective exercise by the applicant of his right to a fair hearing, his right of establishment and his right to the award of adequate compensation for the damage suffered by him.

31 It is settled case-law that where an action is brought by a natural or legal person for a declaration of failure to act, in that by not initiating infringement proceedings against a Member State, the Commission has failed, in breach of the Treaty, to take a decision, that action is inadmissible (see, for example, the judgment of the Court of Justice in Case C-247/87 *Star Fruit* v *Commission* [1989] ECR 291 and the order

of the Court of Justice in Case C-371/89 *Emrich* v *Commission* [1990] ECR I-1555). Natural or legal persons may have recourse to the third paragraph of Article 175 of the Treaty only for a declaration that an institution has failed to adopt acts of which they are the potential addressees, thereby infringing the Treaty. Within the framework of the infringement procedure laid down by Article 169 of the Treaty, the only measures which the Commission may be induced to take are addressed to the Member States (see the order in *Emrich* v *Commission*, cited above, paragraph 6). Moreover, it is clear from the scheme of Article 169 of the Treaty that the Commission is not obliged to commence proceedings under that provision but has a discretion in that regard which excludes the right for individuals to require that institution to adopt a specific position (see the judgment in *Star Fruit* v *Commission*, cited above, paragraph 11). Consequently, the applicant's claims for a declaration that the Commission has failed to act are manifestly inadmissible.

The claims for an order requiring the Commission to initiate the procedure laid down by Article 169 of the Treaty

32 The applicant seeks a Court order that the Commission is obliged, pursuant to Article 169 of the Treaty, to deliver a reasoned opinion in relation to the Grand Duchy of Luxembourg.

33 The Court points out that the Community judicature cannot address orders to a Community institution without encroaching on the prerogatives of the administrative authority concerned (see the judgment of the Court of First Instance in Case T-15/91 *Bollendorff* v *Parliament* [1992] ECR II-1679, paragraph 57). The applicant's claims are thus manifestly inadmissible.

The claims for a declaration that the Luxembourg authorities have infringed Community law

34 The applicant seeks from the Court a declaration that the Luxembourg authorities have infringed the Treaty in several respects.

35 The Court finds that the Treaty makes no provision for any legal remedy enabling natural or legal persons to bring proceedings before the Community judicature on any issue regarding the compatibility of the conduct of the authorities of a Member State with Community law. Consequently, the applicant's claims are manifestly inadmissible.

The claims for compensation

36 The Commission contends that, quite apart from the fact that the application contains no indication of the damage suffered, such a claim is manifestly inadmissible. If and in so far as the Commission is not bound to initiate a procedure under Article 169 of the Treaty, the only conduct which could be found to have given rise to any damage is that of the Luxembourg State. However, the conduct of national authorities cannot form the subject-matter of an action brought pursuant to Articles 178 and 215 of the EEC Treaty.

37 The applicant disputes the Commission's contention that his application contains no indication of the damage suffered. He has complained, in particular, of the obstacles to practising as a lawyer and the non-payment of trainee allowances.

38 It is settled case-law that an application for compensation made pursuant to Article 178 and the second paragraph of Article 215 of the Treaty constitutes an autonomous form of action, save where it in fact seeks to nullify the effects of allegedly unlawful acts an application for the annulment of which has been declared inadmissible (see the judgments of the Court of Justice in Case 4/69 *Lütticke* v *Commission* [1971] ECR 325, paragraph 6, and Case 175/84 *Krohn* v *Commission* [1986] ECR 753, paragraphs 30 and 33).

39 In the present case, the applicant is seeking compensation for the damage which he claims to have suffered as a result of allegedly unlawful acts on the part of the defendant institution, the annulment of which he also seeks. In those circumstances, the Court considers that, in so far as the claims for compensation arise from acts by the defendant which are the same as those contested in the claims for annulment and for a declaration of failure to act, which have been held to be inadmissible, they must also be declared inadmissible.

40 Consequently, the applications must be dismissed as manifestly inadmissible in their entirety.

Costs

41 Under Article 87(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 applicant has been unsuccessful, he must be ordered to pay the costs.

On those grounds,

THE COURT OF FIRST INSTANCE (Fourth Chamber)

hereby orders:

1. Cases T-479/93 and T-559/93 are joined;

2. The application for the cases to be determined by a Chamber of which the Luxembourg judge is not a member is dismissed;

3. The application by the applicant for leave to represent himself is dismissed;

4. The actions are dismissed as inadmissible;

5. The applicant is ordered to bear the whole of the costs.

Luxembourg, 29 November 1994.

H. Jung — Registrar

K. Lenaerts — President