OPINION OF ADVOCATE GENERAL GULMANN
delivered on 2 February 1994 *

Mr President,
Members of the Court,

1. In this case the Commission is claiming, pursuant to Article 169 of the EEC Treaty, that Belgium has failed to comply with its obligations under Articles 5 and 7 of the Treaty, first, by continuing in some instances to levy a special supplementary enrolment fee, the 'minerval', on nationals of other EC countries following university studies for vocational training purposes, second, by restricting the access of such students to such studies in Belgium and, third, by restricting the possibility for students to obtain a refund of minervals that have been unduly paid.

2. Those issues are ones that the Court has had occasion to consider before.

In its judgment in *Gravier* [1] the Court held that the imposition on students who are nationals of other Member States of the minerval as a condition of access to non-university vocational education where the same fee is not imposed on national students constitutes discrimination on grounds of nationality prohibited by Article 7 of the Treaty. In *Blaizot* [2] the Court held that the same applied to vocational education at university.

In 1985 the Commission brought Treaty infringement proceedings against Belgium largely corresponding to the present proceedings. The Court did not consider the merits of the case (see judgment in Case 293/85 [3]). Advocate General Sir Gordon Slynn's Opinion contains a detailed analysis of the relevant Belgian rules and his views of the merits of the case.

3. I would observe at the outset that:

— the first two of the three situations covered by the Commission's claims relate

* Original language: Danish.

1 — Case 293/83 *Gravier* v *City of Liège* [1985] ECR 593.

2 — Case 24/86 *Blaizot* v *University of Liège* [1988] ECR 379.

3 — Case 293/85 *Commission* v *Belgium* [1988] ECR 305.

only to vocational training at universities while the third relates to vocational training both at universities and at other educational establishments;

— in 1989 responsibility for education in Belgium was transferred to the French Community and the Flemish Community;

— the situations covered by the first two claims concern only Treaty infringements within the French Community since the legal situation in the Flemish Community was brought into line with the requirements of Community law in 1991 while the third claim concerns the legal situations in both the French Community and the Flemish Community.

The first complaint

4. The Commission claims that Belgium has failed to comply with its obligations under the Treaty 'by failing, in Article 16(1) of the Law of 21 June 1985 on education, to exempt from payment of the "minerval étudiants étrangers" (supplementary enrolment fee for foreign students) nationals of other Member States who come to Belgium for the sole purpose of studying in a Belgian university institution'.

5. The minerval was introduced by a 1976 amendment to the Law governing universities and their financing of 27 July 1971. Under Article 27 it was basically to be paid by all university students, other than those of Belgian or Luxembourg nationality, unless they had special links to Belgium. [4]

In 1985 those provisions were amended by the Law referred to in the application in that the group of exempt EC students was extended to include EC nationals who are duly established in Belgium and pursue or have pursued an occupation there, together with their spouses. That was intended to comply with the judgment of the Court in *Forcheri* [5] which held that it was unlawful to impose an enrolment fee on the wife of an EC official resident in Belgium when no such fee was levied on Belgian students. By Royal Decree No 435 of 31 March 1987 exemption was also extended to 'students who are nationals of a Member State of the Community and are studying in Belgium for one academic year provided that they establish that they are admitted to an identical course of study in the country of which they are nationals and that they have paid the corresponding enrolment fee there'.

4 — Exemptions also applied to
— 'foreign students [that is, students other than those of Belgian and Luxembourg nationality] whose parents or legal guardians are domiciled or resident in Belgium and carry on or have carried on their main occupation there;
— students residing in Belgian territory whose parents or legal guardians are or have been employed on Belgian territory and are nationals of a Member State of the European Economic Community'.

5 — Case 152/82 *Forcheri* v *Belgium* [1983] ECR 2323.

6. The Commission claims that Belgium is under a general obligation to refrain from levying the special enrolment fee on students from other Member States who are undergoing vocational training at Belgian universities when such charges are not required of Belgian students and that the legal position in Belgium (as far as concerns the French Community), despite the amendments adopted in 1985 and 1987, is still not wholly in accordance with that obligation.

7. The Belgian Government does not dispute that that legal situation still obtains in the French Community and that the situation described by the Commission does not comply with the Treaty requirement of equal treatment of Belgian students and students from other Member States in this field.

The second complaint

8. The Commission claims that Belgium has failed to comply with its Treaty obligations by conferring, in Article 16(2) of the said 1985 Law, 'on the rectors of university institutions the right to refuse to register' students from other Member States who wish to register at Belgian universities for vocational training. [6]

9. The Commission claims that that provision gives rectors a right to refuse students from other Member States which they do not have as regards Belgian students. They are entitled to refuse not only students who will not pay the special enrolment fee but also students who agree to pay that fee in so far as the rectors' refusal may be based on the ground that those students do not fall within the special 2% category of foreign students in respect of whom universities are, under Article 27 of the 1971 Law, entitled to State funding. The Commission points out that in its judgment in Case 42/87 [7] the Court upheld the Commission's claim that a corresponding rule applying in the field of non-university education was incompatible with Belgium's obligations under the Treaty.

10. The Belgian Government does not dispute that that rule still applies in the French Community and that it is incompatible with the Treaty.

The third complaint

11. The Commission claims that Belgium has failed to fulfil its obligations under the Treaty by 'restricting in an *ad hoc* manner the possibilities of obtaining reimbursement

6 — Article 16(2) of the 1985 Law added a new paragraph 7 to Article 27 of the 1971 Law which provides: 'The rector of the university may, from the 1985/86 academic year, refuse to register students who are not eligible for financing'.

7 — Case 42/87 *Commission* v *Belgium* [1988] ECR 5445.

of minervals unduly paid under Community law only to Community nationals who commenced legal proceedings before 13 February 1985 and by bringing into force the exemptions granted to workers and their spouses and to those who are merely students who are nationals of other Member States on 1 October 1983 in respect of university studies and on 1 January 1985 in respect of non-university studies, as provided by Articles 63, 69 and 71 of that Law'.

12. The restriction on the right of reimbursement which still applies both in the Flemish Community and in the French Community and relates both to university studies and other further education is set out in Article 63 of the 1985 Law which provides: 'The enrolment fees or supplementary registration fees charged to pupils and students who are nationals of a Member State of the European Economic Community and have taken vocational training courses will be refunded on the basis of judicial decisions made in proceedings for repayment brought before the courts before 13 February 1985'.

Article 69 of the Law provides that the extension of the exemption from the enrolment fee for certain groups of EC students introduced by the 1985 Law is to take effect from 1 October 1983. Article 71 of the Law provides that the special provisions in Article 59, which, on my understanding, were intended to ensure equal treatment as regards non-university vocational education, were not to take effect until 1 January 1985.

13. The following factors are relevant to an understanding of this part of the application:

— in its judgment in *Barra* [8] the Court held with regard to non-university vocational training that the Court's interpretation of Article 7 of the Treaty in *Gravier* was not limited in scope to applications for admission to vocational training courses made after the date of that judgment but also applied to the period prior to that date and, further, that Community law precluded the application to students from other Member States who had unduly paid a supplementary enrolment fee of a national law which deprived them of the right to repayment if they had not brought proceedings for repayment before the delivery of the judgment in *Gravier*; and

— in its judgment in *Blaizot*, in so far as vocational studies at university are concerned, the Court limited the effects of the judgment to enrolment fees paid after the date of that judgment, 2 February 1988, except in respect of students who had brought legal proceedings or

8 — Case 309/85 *Barra* v *Belgium* [1988] ECR 355.

submitted an equivalent claim before that date.

14. The Commission has pointed out that:

— Article 63 of the 1985 Law provides that only those foreign students who are pursuing vocational training and have brought proceedings before 13 February 1985 — the date of the *Gravier* judgment — can obtain reimbursement of enrolment fees they have paid;

— Article 69 of the Law provides that exemption from the special enrolment fee for university studies for nationals of other Member States who are duly established in Belgium and pursue or have pursued an occupation there is confined to the period after 1 October 1983; and

— Article 71 of the Law prescribes an obligation to pay the enrolment fee for non-university studies with effect from 1 September 1976 and sets the date for the entry into force of the exemption under Article 59(2) at 1 January 1985.

The Commission claims that those provisions confirm the principle that the special enrolment fee was imposed on students from other EC countries who followed vocational training between 1 September 1976 and 31 December 1984 even though the levy of such a fee was declared incompatible with Article 7 of the Treaty by the judgment in *Gravier*. In so far as workers from EC Member States and their spouses are concerned, those provisions also confirm that the enrolment fee was imposed from 1 September 1976 until 30 September 1983 even though it was held in the judgment in *Forcheri* [9] that the imposition of such a fee was incompatible with Article 7 of the Treaty.

The Commission has stated that Article 63 precludes the reimbursement of enrolment fees claimed in the circumstances described in *Forcheri* and *Gravier* unless proceedings were brought before 13 February 1985 whereas the time-limit otherwise applying in Belgian law for obtaining reimbursement of sums unduly levied is much longer.

It has pointed out that with regard to university education the Court in *Blaizot* limited students' rights to reimbursement to after the date of that judgment, 2 February 1988, with the exception of proceedings already brought before that date. In so far as non-university vocational training is concerned, on the other hand, the Court held in *Barra* that it could not limit the temporal effects of its judgment.

9 — Case 152/82 *Forcheri* v *Belgium* [1983] ECR 2323.

The Commission submits that it follows from those judgments that Article 63 is incompatible with Community law. In so far as non-university vocational training is concerned, it denies students the right to reimbursement of enrolment fees unduly paid from 1 September 1976 until 31 December 1984 even though the Court stated that those enrolment fees should be repaid even if they had been paid before 13 February 1985. As regards university education, Article 63 denies students the right to reimbursement of enrolment fees unduly paid before 2 February 1988 even if proceedings had been brought to recover them between 13 February 1985, the date specified in Article 63, and 2 February 1988 even though the Court held that students were entitled to reimbursement of the special enrolment fee if they had brought proceedings before 2 February 1988.

15. At the hearing the Commission narrowed its claim on this point in the context of the following circumstances. The Commission's application included a separate complaint of alleged unequal treatment of nationals of other EC Member States who were to pursue vocational training at non-university institutions. That alleged infringement of the Treaty stemmed from the particular wording of Article 59(2) of the 1985 Law which made exemption from the enrolment fee conditional on grant of a residence permit. That head of complaint related only to the Flemish Community and even as regards that community was withdrawn in the course of the proceedings because new rules were adopted.

Accordingly, the Commission states, the scope of the third complaint is to be limited as regards Article 71 of the 1985 Law since that article solely concerned the temporal effects of Article 59 and that provision is no longer open to criticism following the withdrawal of the complaint regarding Article 59.

16. The Belgian Government does not dispute that Belgium has failed to fulfil its obligations under the Treaty in the manner described by the Commission.

Conclusion

17. I therefore propose that the Court uphold the Commission's claim that the Kingdom of Belgium has, as described in the form of order sought by the Commission, as amended, failed to fulfil its obligations under Articles 5 and 7 of the EEC Treaty and that the Kingdom of Belgium should be ordered to pay the costs.