JUDGMENT OF THE COURT (Fifth Chamber)
29 February 1996 *

In Case C-307/94,

Commission of the European Communities, represented by Enrico Traversa and Enrico Vesco, of its Legal Service, acting as Agents, with an address for service in Luxembourg at the office of Carlos Gómez de la Cruz, of its Legal Service, Wagner Centre, Kirchberg,

applicant,

v

Italian Republic, represented by Professor Umberto Leanza, Head of the Department for Contentious Diplomatic Affairs at the Italian Ministry of Foreign Affairs, acting as Agent, assisted by Pier Giorgio Ferri, Avvocato dello Stato, with an address for service in Luxembourg at the Italian Embassy, 5 Rue Marie-Adélaïde,

defendant,

APPLICATION for a declaration that, by postponing from 1 October 1987 to 1 November 1990 the time-limit laid down in Article 5 of Council Directive 85/432/EEC of 16 September 1985 concerning the coordination of provisions laid down by law, regulation or administrative action in respect of certain activities in the field of pharmacy (OJ 1985 L 253, p. 34) and by retaining until the latter date curricula for training in pharmacy which are incompatible with that directive, the Italian Republic has failed to fulfil its obligations under Directive 85/432 and particularly under Articles 1, 2 and 5 thereof,

* Language of the case: Italian.

THE COURT (Fifth Chamber),

composed of: D. A. O. Edward, President of the Chamber, J. C. Moitinho de Almeida, C. Gulmann, L. Sevón (Rapporteur) and M. Wathelet, Judges,

Advocate General: D. Ruiz-Jarabo Colomer,
Registrar: D. Louterman-Hubeau, Principal Administrator,

having regard to the Report for the Hearing,

after hearing oral argument from the parties at the hearing on 14 December 1995, in the course of which the Commission was represented by Enrico Vesco and the Italian Republic by Pier Giorgio Ferri,

after hearing the Opinion of the Advocate General at the same hearing,

gives the following

Judgment

1 By application lodged at the Court Registry on 21 November 1994, the Commission of the European Communities brought an action under Article 169 of the EC Treaty for a declaration that, by postponing from 1 October 1987 to 1 November 1990 the time-limit laid down in Article 5 of Council Directive 85/432/EEC of 16 September 1985 concerning the coordination of provisions laid down by law, regulation or administrative action in respect of certain activities in the field of pharmacy (OJ 1985 L 253, p. 34) and by retaining until the latter date curricula for

training in pharmacy which are incompatible with that directive, the Italian Republic has failed to fulfil its obligations under Directive 85/432 and particularly under Articles 1, 2 and 5 thereof.

2 Article 1 of Directive 85/432 requires the Member States to ensure that holders of qualifications which meet the conditions laid down in Article 2 are entitled to access to and exercise of the activities mentioned in paragraph 2 and to pursue such activities subject to the possible requirement of additional professional experience. Article 2 of the directive requires them to subordinate the award of qualifications in pharmacy to a certain number of minimum training conditions, that is, to a period of training covering at least five years, of which at least six months should consist of in-service training. Article 5 provides that the Member States are to take the measures necessary to comply with the Directive before 1 October 1987.

3 That directive was transposed into Italian law by the Presidential Decree of 31 October 1988 amending university training programmes leading to degrees in pharmacy and in pharmaceutical chemistry and technology (*Gazzetta Ufficiale della Repubblica Italiana* No 109 of 12 May 1989). It appears from Article 2 of that decree that pharmacy faculties had until 1 November 1990 to amend their curricula. Article 3 states that, where faculties adopt the new curriculum, students who are already enrolled may complete the studies provided by the previous training programme.

4 By letter of 28 November 1991, the Commission informed the Italian Republic that it considered both Article 3 of the Presidential Decree and the time-limit laid down in Article 2 thereof to be incompatible with Directive 85/432 inasmuch as it allowed students who had commenced their pharmaceutical studies between 1 October 1987 and 1 November 1990 to complete them according to the previous training programme, which is incompatible with the requirements of the directive. The Commission sent the Italian Republic a letter of formal notice to submit its observations within two months, pursuant to Article 169 of the EEC Treaty.

5 Since there was no reply to that letter, the Commission issued a reasoned opinion on 23 December 1992 in which it called on the Italian Republic to adopt the measures necessary in order to comply with Directive 85/432 within two months of the date of the notification.

6 By letter of 27 April 1993, the Italian Republic informed the Commission that it considered the delay in transposing the directive to be justified in the light of the structure of Italian university education and proposed that a transitional arrangement be found, with the Commission's assistance, for students who had commenced their pharmaceutical studies between 1 October 1987 and 1 November 1990.

7 By letter of 3 August 1993, the Commission asked the Italian Republic to explain further its proposal for a transitional arrangement; in the absence of a reply, however, it finally brought the present case.

8 In support of its action, the Commission states that the consequence of postponing until 1 November 1990 by means of the Decree of 31 October 1988 the obligation to make all the curricula of Italian pharmacy faculties comply with Directive 85/432 and of enabling students to undertake until that date a course governed by the rules preceding those laid down in the decree was that the students enrolled in those faculties could still follow a university course in pharmacy which did not comply with Community law.

9 According to the Commission, that situation raises both practical problems and questions of principle. The fact that certain students followed, after 1 October 1987, the curriculum which had previously been taught precludes recognition of their qualification pursuant to Council Directive 85/433/EEC of 16 September 1985 concerning the mutual recognition of diplomas, certificates and other evidence of formal qualifications in pharmacy, including measures to facilitate the effective exercise of the right of establishment relating to certain activities in the

field of pharmacy (OJ 1985 L 253, p. 37). Article 6 of that directive, concerning acquired rights, does not apply to them since it refers only to qualifications testifying to the completion of training either before the implementation of Directive 85/432 or after the implementation of that directive but begun before such implementation, that is before 1 October 1987. Moreover, the authorities of the other Member States can no longer be certain of the equivalence of Italian legislation in the field of pharmaceutical training. This undermines the purpose of Directive 85/433, which is the mutual recognition of professional qualifications in pharmacy.

10 The Italian Republic challenges the admissibility of the action. It acknowledges having implemented Directive 85/432 belatedly but states that it was impossible to give retrospective effect to the implementing provisions. The situation arising therefrom was merely the result of the belated transposition and cannot constitute a separate failure to fulfil obligations. Since the subject-matter of an action may mention only that there has been no implementation within the prescribed time-limit, the action is inadmissible inasmuch as it was brought well after the failure had been brought to an end, that is to say, after implementation.

11 The objection of inadmissibility raised by the Italian Republic is closely linked to a question going to the substance of the dispute, namely the definition of the subject-matter of the action. They should therefore be considered together.

12 In this regard, the arguments submitted by the Italian Republic cannot be accepted.

13 It is abundantly clear from the letter of formal notice, the reasoned opinion and the application that the Italian Republic is criticised for having allowed the students who commenced their studies between 1 October 1987 and 1 November

1990 to complete them in accordance with a curriculum which was not compatible with Directive 85/432. This was not an unavoidable consequence of belated transposition for, even though it did not transpose the directive until 31 October 1988, it was still possible for the Italian Republic to mitigate the harmful consequences of that delay.

14 Although by the time when the letter of formal notice was sent or the reasoned opinion was issued the Italian Republic could no longer lay down retrospectively another time-limit for the adjustment of the curricula, it nevertheless still had the possibility of organizing an additional training programme compatible with the directive for those students who had commenced their studies between 1 October 1987 and 1 November 1990, particularly easily so since, at those dates, they had apparently not yet completed them.

15 It follows from the foregoing that, by postponing from 1 October 1987 to 1 November 1990 the time-limit laid down in Article 5 of Council Directive 85/432/EEC and by retaining until the latter date curricula for training in pharmacy which are incompatible with that directive, the Italian Republic has failed to fulfil its obligations under Directive 85/432 and particularly under Articles 1, 2 and 5 thereof.

Costs

16 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. The Commission has asked that the Italian Republic be ordered to pay the costs. Since the latter has been unsuccessful, it must be ordered to pay the costs.

On those grounds,

THE COURT (Fifth Chamber)

hereby:

1. **Declares that, by postponing from 1 October 1987 to 1 November 1990 the time-limit laid down in Article 5 of Council Directive 85/432/EEC of 16 September 1985 concerning the coordination of provisions laid down by law, regulation or administrative action in respect of certain activities in the field of pharmacy, and by retaining until the latter date curricula for training in pharmacy which are incompatible with that directive, the Italian Republic has failed to fulfil its obligations under Directive 85/432 and particularly under Articles 1, 2 and 5 thereof;**

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

Edward Moitinho de Almeida Gulmann

Sevón Wathelet

Delivered in open court in Luxembourg on 29 February 1996.

R. Grass

Registrar

D. A. O. Edward

President of the Fifth Chamber