JUDGMENT OF THE COURT (Fifth Chamber)

21 March 2002 *

In Case C-298/99,

Commission of the European Communities, represented by E. Traversa and E. Montaguti, 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,

APPLICATION for a declaration that:

(1) by failing to adopt all the measures necessary to implement Articles 4(1), second subparagraph, 4(2), 7, 11 and 14 of Council Directive 85/384/EEC of

* Language of the case: Italian.

10 June 1985 on the mutual recognition of diplomas, certificates and other evidence of formal qualifications in architecture, including measures to facilitate the effective exercise of the right of establishment and freedom to provide services (OJ 1985 L 223, p. 15), as amended by Council Directive 86/17/EEC of 27 January 1986 amending, on account of the accession of Portugal, Directive 85/384 (OJ 1986 L 27, p. 71, and — corrigendum — L 87, p. 36);

(2) by adopting

— Article 4(2)(a) of Legislative Decree No 129 of the President of the Republic of 27 January 1992 (GURI No 41 of 19 February 1992, p. 18) and Article 4(1)(a) of Decree No 776 of the Minister for Universities and Scientific and Technological Research of 10 June 1994 (GURI No 234 of 6 October 1995, p. 3), which impose a general obligation to produce the original diploma or a certified copy thereof,

— Article 4(2)(c) of Decree No 129/92 and Article 4(1)(c) of Decree No 776/94, which impose a general obligation to produce a certificate of nationality,

— Article 4(3) of Decree No 129/92 and Article 10 of Decree No 776/94, which require as a matter of course an official translation of documents,

— Article 11(1)(c) and (d) of Decree No 129/92, which extends the validity of certificates beyond 5 August 1987;

(3) by prohibiting architects providing services in Italy from having an infrastructure in Italy (Article 9(1) of Decree No 129/92);

(4) by requiring architects providing services to register with the local provincial council of the professional body for architects (Article 9(3) of Decree No 129/92 and Articles 7 and 8 of Decree No 776/94) in a manner contrary to Article 22 of Directive 85/384, and

(5) by applying Article 4(6) to 4(8) of Decree No 129/92 in a manner contrary to Article 20(1) of Directive 85/384,

the Italian Republic has failed to fulfil its obligations under Articles 12, 20, 22, 27 and 31 of Directive 85/384 and, in respect of point 3 above, under Article 59 of the EC Treaty (now, after amendment, Article 49 EC),

THE COURT (Fifth Chamber),

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

Advocate General: S. Alber,
Registrar: L. Hewlett, Administrator,

having regard to the Report for the Hearing,

after hearing oral argument from the parties at the hearing on 14 June 2001,

after hearing the Opinion of the Advocate General at the sitting on 13 September 2001,

gives the following

Judgment

1 By application lodged at the Court Registry on 9 August 1999, the Commission of the European Communities brought an action under Article 226 EC for a declaration that:

(1) by failing to adopt all the measures necessary to implement Articles 4(1), second subparagraph, 4(2), 7, 11 and 14 of Council Directive 85/384/EEC of 10 June 1985 on the mutual recognition of diplomas, certificates and other evidence of formal qualifications in architecture, including measures to facilitate the effective exercise of the right of establishment and freedom to provide services (OJ 1985 L 223, p. 15), as amended by Council Directive 86/17/EEC of 27 January 1986 amending, on account of the accession of Portugal, Directive 85/384 (OJ 1986 L 27, p. 71, and — corrigendum — L 87, p. 36; 'Directive 85/384');

(2) by adopting

— Article 4(2)(a) of Legislative Decree No 129 of the President of the Republic of 27 January 1992 (GURI No 41 of 19 February 1992, p. 18; 'Decree No 129/92') and Article 4(1)(a) of Decree No 776 of the Minister for Universities and Scientific and Technological Research of 10 June 1994 (GURI No 234 of 6 October 1995, p. 3; 'Decree No 776/94'), which impose a general obligation to produce the original diploma or a certified copy thereof,

— Article 4(2)(c) of Decree No 129/92 and Article 4(1)(c) of Decree No 776/94, which impose a general obligation to produce a certificate of nationality,

— Article 4(3) of Decree No 129/92 and Article 10 of Decree No 776/94, which require as a matter of course an official translation of documents,

— Article 11(1)(c) and (d) of Decree No 129/92, which extends the validity of certificates beyond 5 August 1987;

(3) by prohibiting architects providing services in Italy from having an infrastructure in Italy (Article 9(1) of Decree No 129/92);

(4) by requiring architects providing services to register with the local provincial council of the professional body for architects (Article 9(3) of Decree No 129/92 and Articles 7 and 8 of Decree No 776/94) in a manner contrary to Article 22 of Directive 85/384, and

(5) by applying Article 4(6) to 4(8) of Decree No 129/92 in a manner contrary to Article 20(1) of Directive 85/384,

the Italian Republic has failed to fulfil its obligations under Articles 12, 20, 22, 27 and 31 of Directive 85/384 and, in respect of point 3 above, under Article 59 of the EC Treaty (now, after amendment, Article 49 EC).

Community legislation

2 Directive 85/384 provides for the automatic recognition of a number of formal qualifications in architecture under two separate schemes.

3 First, Articles 2 to 9 of Directive 85/384, which appear in Chapter II, entitled 'Diplomas, certificates and other evidence of formal qualifications enabling the holder to take up activities in the field of architecture under the professional title of architect', set out a general scheme of automatic mutual recognition for all formal qualifications in the field of architecture which meet the requirements laid down therein. Article 2 thus provides that '[e]ach Member State shall recognise the diplomas, certificates and other evidence of formal qualifications acquired as a result of education and training fulfilling the requirements of Articles 3 and 4 and awarded to nationals of Member States by other Member States...'.

4 In particular, Article 4(1), second subparagraph, of Directive 85/384 states that recognition under Article 2 is to be accorded to 'the training given over three years in the "Fachhochschulen" in the Federal Republic of Germany in the form in which it exists at the time of notification of this directive and in so far as it satisfies the requirements laid down in Article 3, giving access to the activities referred to in Article 1 in that Member State with the professional title of architect, provided that such training is supplemented by a four-year period of professional experience in the Federal Republic of Germany sanctioned by a certificate issued by the professional body on whose list the architect wishing to benefit from the provisions of this directive is registered....'.

5 Similarly, Article 4(2) of Directive 85/384 provides:

'Recognition under Article 2 shall also be accorded to education and training which, as part of a social betterment scheme or a part-time university course, conforms to the requirements of Article 3 and leads to an examination in architecture successfully completed by persons who have been employed in architecture for not less than seven years under the supervision of an architect or firm of architects. This examination must be of degree standard and be equivalent to the final examination referred to in paragraph 1(b).'

6 Under Article 7 of Directive 85/384:

'1. Each Member State shall communicate as soon as possible, simultaneously to the other Member States and to the Commission, the list of diplomas, certificates and other evidence of formal qualifications which are awarded within its territory and which meet the criteria laid down in Articles 3 and 4, together with the establishments and authorities awarding them.

The first list shall be sent within 12 months of notification of this directive.

Each Member State shall likewise communicate any amendments made as regards the diplomas, certificates and other evidence of formal qualifications which are awarded within its territory, in particular those which no longer meet the requirements of Articles 3 and 4.

2. For information purposes, the lists and the updating thereof shall be published by the Commission in the *Official Journal of the European Communities* after expiry of a three-month period following their communication.... Consolidated lists shall be published periodically by the Commission.'

7 Second, Articles 10 to 15 of Directive 85/384, which appear in Chapter III, entitled 'Diplomas, certificates and other evidence of formal qualifications enabling the holder to take up activities in the field of architecture by virtue of established rights or existing national provisions', introduces a transitional scheme of mutual recognition for certain specifically listed qualifications. Under Article 10, '[e]ach Member State shall recognise the diplomas, certificates and other evidence of formal qualifications set out in Article 11, awarded by other Member States to nationals of the Member States, where such nationals already possess these qualifications at the time of notification of this directive or their studies leading to such diplomas, certificates and other evidence of formal qualifications commences during the third academic year at the latest following such notification, even if those qualifications do not fulfil the minimum requirements laid down in Chapter II...'.

8 The formal qualifications entitled to automatic recognition under the second scheme include, as specified in Article 11(k), seventh indent, of Directive 85/384, 'the university diploma in civil engineering awarded by the Faculty of Engineering (Engenharia) of the University of Oporto (*licenciatura em engenharia civil*)'. That provision was inserted in Article 11 of Directive 85/384 by Directive 86/17.

9 Article 12 of Directive 85/384 provides:

'Without prejudice to Article 10, each Member State shall recognise, by giving them as regards the taking up and pursuit under the professional title of architect of the activities referred to in Article 1 the same effect within its territory as the diplomas, certificates and other evidence of formal architectural qualifications which it issues:

— certificates issued to nationals of Member States by Member States in which there are regulations at the time of notification of this directive governing the taking up and pursuit of the activities referred to in Article 1 under the professional title of architect, stating that the holder has received authorisation to bear the professional title of architect before the implementation of this directive and has effectively exercised the activities in question under such regulations for at least three consecutive years during the five years preceding the issue of the certificate;

— certificates issued to nationals of Member States by Member States which between the time of notification and implementation of the Directive introduce regulations governing the taking up and pursuit of the activities referred to in Article 1 under the professional title of architect, stating that the holder has received authorisation to bear the professional title of architect at the time when this directive is implemented and has effectively exercised the activities in question under such regulations for at least three consecutive years during the five years preceding the issue of the certificate.'

10 Under Article 14 of Directive 85/384, 'certificates issued by the competent authorities of the Federal Republic of Germany attesting the equivalence of qualifications awarded from 8 May 1945 onwards by the competent authorities of the German Democratic Republic with the formal qualifications listed in Article 11 shall be recognised under the conditions listed in that article.'

11 Articles 17 to 26 of Directive 85/384 include various provisions to facilitate the effective exercise of the right of establishment and freedom to provide services by holders of diplomas, certificates and other evidence of formal qualifications in architecture.

12 Under Article 20(1) of Directive 85/384, '[t]he procedure for authorising the person concerned to take up the activities referred to in Article 1, pursuant to Article[s] 17 and 18, must be completed as soon as possible and not later than three months after presentation of all the documents relating to that person, without prejudice to delays resulting from any appeal that may be made upon termination of this procedure.'

13 Article 22(1) and (2) of Directive 85/384 states:

'1. Where a Member State requires of its own nationals wishing to take up or pursue the activities referred to in Article 1 either an authorisation from or membership of or registration with a professional organisation or body, that Member State shall, in the case of provision of services, exempt nationals of other Member States from that requirement.

The person concerned shall provide services with the same rights and obligations as nationals of the host Member State; in particular he shall be subject to the rules of conduct of a professional or administrative nature which apply in that Member State.

For this purpose and in addition to the declaration referred to in paragraph 2 relating to the provision of services, Member States may, so as to permit the implementation of the provisions relating to professional conduct in force in their territory, require automatic temporary registration or *pro forma* registration with

a professional organisation or body or in a register, provided that this registration does not delay or in any way complicate the provision of services or impose any additional costs on the person providing the services.

...

2. The host Member State may require the person concerned to make a prior declaration to the competent authorities about the services to be provided where they involve the execution of a project in its territory.'

14 In accordance with Article 27 of Directive 85/384, '[w]here legitimate doubt exists, the host Member State may require the competent authorities of another Member State to confirm the authenticity of the diplomas, certificates and other evidence of formal qualifications awarded in that other Member State and referred to in Chapters II and III.'

15 Article 31 of Directive 85/384 provides:

'1. Member States shall take the measures necessary to comply with this directive within 24 months of its notification and shall forthwith inform the Commission thereof.

Member States shall, however, have three years from the date of notification within which to comply with Article 22.

2. Member States shall communicate to the Commission the texts of the main provisions of national law which they adopt in the field covered by this directive.'

National legislation

16 As a result of the judgment in Case C-296/90 *Commission* v *Italy* [1991] ECR I-3847 in which the Court declared that the Italian Republic had failed to adopt the measures needed to transpose Directive 85/384 into domestic law, that Member State adopted Decrees Nos 129/92 and 776/94.

Pre-litigation procedure

17 The Commission took the view that the transposition of Directive 85/384 into Italian law was in part incomplete and in part incorrect, and therefore initiated the procedure for failure to comply with obligations under the Treaty. Having given the Italian Republic formal notice to submit its observations, the Commission sent a reasoned opinion to that Member State by letter of 23 March 1998, requesting it to adopt the measures necessary to comply with its obligations under that directive within two months of notification of that opinion. Since the Italian Republic did not respond to that opinion, the Commission brought the present action.

The complaint of failure to implement Articles 4(1), second subparagraph, 4(2), 11 and 14 of Directive 85/384

18 The Commission alleges that the Italian Government has failed to implement Articles 4(1), second subparagraph, 4(2), 11(k), seventh indent, and 14 of Directive 85/384.

19 The Italian Government contends that, since those provisions are clear, precise and unconditional, they are 'directly applicable' even if they are not implemented by the Italian legislature. Accordingly, their direct effect precludes any infringement of Directive 85/384 since the objective which they pursue is achieved.

20 The measures adopted by the Italian authorities to implement Directive 85/384 are to be found in Decrees Nos 129/92 and 776/94.

21 However, those decrees do not contain any provision implementing Article 4(1), second subparagraph, of Directive 85/384, on the automatic recognition of the training given in the 'Fachhochschulen' in the Federal Republic of Germany, or Articles 4(2) and 14 of that directive.

22 Furthermore, although an annex to Decree No 129/92 sets out the qualifications listed in Article 11 of Directive 85/384, it does not mention 'the university diploma in civil engineering awarded by the Faculty of Engineering (Engenharia) of the University of Oporto (*licenciatura em engenharia civil*)' referred to in point (k), seventh indent, of that article. The implementation of Article 11 of that directive is thus incomplete.

23 As regards the Italian Government's argument concerning the direct effect of Articles 4(1), second subparagraph, 4(2), 11(k), seventh indent, and 14 of Directive 85/384, it should be borne in mind that, according to settled case-law, a Member State cannot rely on the direct effect of a directive in order to absolve itself from taking in due time implementing measures sufficient to meet the purpose of that directive (see, to that effect, Case 102/79 *Commission* v *Belgium* [1980] ECR 1473, paragraph 12; and Case C-96/95 *Commission* v *Germany* [1997] ECR I-1653, paragraph 37).

24 The complaint of failure to implement Articles 4(1), second subparagraph, 4(2), 11(k), seventh indent, and 14 of Directive 85/384 is therefore well founded.

The complaint of incomplete implementation of Article 7 of Directive 85/384

25 The Commission claims that Article 7 of Directive 85/384 has been implemented only in part by the Italian Government since Annex A to Decree No 129/92 mentions solely the qualifications listed in Article 11 of that directive without referring to the Commission communications which periodically update the list referred to in Article 7 and without stating that the qualifications mentioned in those communications must also be accorded automatic recognition.

26 According to the Italian Government, it is not necessary to list expressly the qualifications which must be accorded automatic recognition under national law. It is sufficient to consult the Commission communications.

27 On that point, it should be borne in mind that Article 7 of Directive 85/384 does not expressly require Member States to set out, in a national list of the

qualifications to be accorded automatic recognition, the diplomas, certificates and other evidence of formal qualifications included in the lists published by the Commission pursuant to Article 7(2).

28 However, according to settled case-law, the transposition of a directive into national law must effectively guarantee the full application of the directive in a sufficiently clear and precise manner so that, where the directive is intended to create rights for individuals, the persons concerned can ascertain the full extent of their rights and, where appropriate, rely on them before the national courts. That condition is of particular importance where the directive in question is intended to confer rights on nationals of other Member States (see Case C-365/93 *Commission* v *Greece* [1995] ECR I-499, paragraph 9; and *Commission* v *Germany*, cited above, paragraph 35).

29 In order to guarantee effective mutual recognition of qualifications in architecture, it is essential that nationals of Member States be able to identify the qualifications which must be accorded automatic recognition by the host Member State.

30 The Italian legislation does not contain provisions adequately stating which qualifications must be recognised by the Italian authorities. More specifically, Annex A to Decree No 129/92 concerns only the recognition on a transitional basis of the diplomas, certificates and other evidence of formal qualifications mentioned in Article 11 of Directive 85/384. Article 2 of the decree provides merely that recognition is to be accorded to the qualifications fulfilling the requirements of Article 3 of the directive. Article 5(1)(a) of the decree authorises the person concerned to establish himself when he possesses a recognised qualification. Finally, Article 9(1)(a) of the decree contains a similar provision on the exercise of freedom to provide services.

31 Consequently, the complaint of incomplete implementation of Article 7 of Directive 85/384 is also well founded.

The complaint concerning the obligation to produce the original diploma or a certified copy

32 Article 4(2)(a) of Decree No 129/92 provides that architects wishing to obtain recognition in Italy of a qualification awarded to them in another Member State are required to submit their original diploma or a certified copy.

33 The Commission claims that that requirement should be reserved for cases in which there is a doubt as to the authenticity of the qualifications. It refers in that regard to Article 27 of Directive 85/384, which states that '[w]here legitimate doubt exists, the host Member State may require the competent authorities of another Member State to confirm the authenticity of the diplomas, certificates and other evidence of formal qualifications awarded in that other Member State'. According to the Commission, that provision must be interpreted as meaning that, where no legitimate doubt exists, the authenticity of a qualification does not have to be proven.

34 The Commission considers that the obligation to produce the original diploma or a certified copy imposes additional costs on architects applying for recognition of their qualifications and thus creates an obstacle to freedom to provide services and to freedom of establishment. The objective pursued by the Italian authorities could be achieved by less restrictive measures, such as an obligation to provide a certified statement or a photocopy of the diploma.

35 The Italian Government submits that the obstacles which the Commission claims are the result of Article 4(2)(a) of Decree No 129/92 are neither unjustified nor

disproportionate. Article 27 of Directive 85/384 does not restrict the power of a host Member State to require the submission of original diplomas or certified copies. That article governs a different situation, namely the confirmation of the authenticity of those documents where doubt exists.

36 It is to be noted that the obligation under Article 4(2)(a) of Decree No 129/92 for the applicant to attach the original diploma or a certified copy to his application for recognition of qualifications is not covered by Article 27 of Directive 85/384. The Italian provision governs the content of any application for recognition made by an interested party, whereas Article 27 of the directive relates to situations in which legitimate doubt exists as to the authenticity of the diplomas, certificates and other evidence of formal qualifications submitted in support of such an application.

37 By contrast, the obligation under Article 4(2)(a) of Decree No 129/92 does constitute an impediment to the freedom of establishment and to the freedom to provide services enshrined in Article 52 of the EC Treaty (now, after amendment, Article 43 EC) and Article 59 of the Treaty, in that it gives rise to additional obstacles for all architects applying for recognition of their qualifications, having regard to the risk of the original diploma being lost or of possible delay on the part of the Member State of origin in awarding that diploma, and the additional steps and costs resulting from the procedures for certifying true copies of original diplomas.

38 As to whether that impediment is justified by overriding reasons in the public interest, it is indeed in the public interest that the profession of architect be practised only by those who have acquired certain qualifications attested by a recognised diploma. Member States are consequently entitled to require evidence that such a diploma exists.

39 However, the requirement in Article 4(2)(a) of Decree No 129/92 specifying that the only acceptable evidence is the original of the diploma or a certified copy is clearly disproportionate to the objective pursued, in that it precludes any other form of evidence which might establish with the same degree of certainty the existence of the diploma in question, such as a certified statement or recognition of the applicant's diploma by the authorities or professional organisations of the Member State of origin.

40 It follows that Article 4(2)(a) of Decree No 129/92 is incompatible with Articles 52 and 59 of the Treaty and that the Commission's complaint must be upheld.

The complaint concerning the obligation to provide an official translation of all documents and that concerning the obligation to provide a certificate of nationality

41 Article 4(2)(c) of Decree No 129/92 and Article 4(1)(c) of Decree No 776/94 provide that the application for recognition of a qualification must be accompanied by a certificate of nationality. Article 4(3) of Decree No 129/92 and Article 10 of Decree No 776/94 state that all documents which have not been drawn up in Italian must be accompanied by a translation into Italian. Those translations must be certified as true to the original by the Italian diplomatic or consular authorities located in the Member State in which the documents were drawn up or by an approved translator.

42 The Commission claims that those obligations are disproportionate and therefore incompatible with Article 52 of the Treaty. As regards the obligation to provide a certificate of nationality, it submits that the production of a copy of the passport is sufficient evidence as to the Member State of which the applicant is a national.

43 In the Commission's submission, the obligation to provide certified true translations of the original documents lengthens the procedure and increases costs when an unofficial translation would be sufficient.

44 The Italian Government acknowledges that, in practice, the performance of those obligations is not usually required. The settled administrative practice of the competent authorities is to consider that, instead of the certificate of nationality, valid copies of personal documents are sufficient for the purposes of recognition. Moreover, requests for translations have substantially decreased to the extent that documents of identical content may already have been supplied in connection with previous procedures for the recognition of diplomas concerning comparable applications.

45 On that point, it is clear from the Italian Government's own statements that the obligation to submit a certificate of nationality and to provide certified translations of all documents relating to the application for recognition cannot be regarded as necessary or be justified by overriding reasons in the public interest.

46 Article 4(2)(c) of Decree No 129/92 and Article 4(1)(c) of Decree No 776/94, on the one hand, and Article 4(3) of Decree No 129/92 and Article 10 of Decree No 776/94, on the other, are therefore incompatible with Article 52 of the Treaty.

The complaint concerning established rights

47 Article 12 of Directive 85/384 provides for an exception to the minimum training requirements defined in Articles 3 and 4 of the directive. Each Member State

must thus accord the title of architect to persons to whom another Member State has issued a certificate stating that, at the time when Directive 85/384 was implemented, they were entitled to bear that title in that other Member State, even though such persons do not fulfil those minimum requirements.

48 Article 11(1)(c) and (d) of Decree No 129/92 accords the title of architect to persons who, before the decree entered into force, that is to say before 19 February 1992, were authorised to bear that title in another Member State.

49 The Commission claims that the deadline for the validity of the certificates which may be issued in the context of Article 12 of Directive 85/384 corresponds to that for the obligation to implement that directive, namely 5 August 1987.

50 The Italian Government submits that the extension of that deadline to February 1992 by Article 11(1)(c) and (d) of Decree No 129/92 is the result of the belated implementation of Directive 85/384. Its intention was to give the persons concerned a transitional period corresponding to that which would have been prescribed if the directive had been implemented in due time.

51 On that point, 'the implementation of the directive' mentioned in Article 12 of Directive 85/384 must be interpreted as referring to the date by which, at the latest, that directive was to be implemented. In accordance with Article 31(1) thereof, it was to be implemented within 24 months of its notification, that is, by 5 August 1987 at the latest.

52 It follows that a Member State which has been late in implementing Directive 85/384 may not extend the transitional period provided for in Article 12 of the directive.

53 Article 11(1)(c) and (d) of Decree No 129/92 is therefore contrary to Article 12 of Directive 85/384.

The complaint concerning the prohibition on having a permanent infrastructure

54 According to the Commission, Article 9(1) of Decree No 129/92, which prohibits architects established in other Member States who wish to provide services in Italy from having there a permanent infrastructure, is contrary to Article 59 of the Treaty.

55 The Italian Government contends that the purpose of that prohibition is to emphasise the temporary nature of the provision of services. It submits that Article 9(1) of Decree No 129/92 does not preclude a provider of services from being able to enjoy a stable basis for the provision of the services in question, provided that it does not become the 'principal or secondary place of business of a professional practice'.

56 On that point, the Court observes that the fact that a provision of services is temporary does not mean that the provider of services within the meaning of the Treaty may not equip himself with some form of infrastructure in the host Member State (including an office, chambers or consulting rooms) in so far as such infrastructure is necessary for the purposes of performing the services in question (Case C-55/94 *Gebhard* [1995] ECR I-4165, paragraph 27, and Case C-145/99 *Commission* v *Italy* [2002] ECR I-2235, paragraphs 22 and 23).

57 It follows that Article 9(1) of Decree No 129/92 is incompatible with Article 59 of the Treaty in so far as the general prohibition which it lays down prevents a provider of services established in another Member State from equipping himself in Italy with an infrastructure necessary for the purposes of the services in question.

The complaint concerning the need to register with the professional body for architects

58 Article 9(3) of Decree No 129/92 provides that, even in respect of the provision of services, architects must be enrolled on the registers held by the provincial councils and the national council of the professional body for architects. That registration is at the expense of the professional body for architects.

59 The registration procedure is defined in Articles 7 and 8 of Decree No 776/94. At the Court's request, the Italian Government provided further details on that procedure. In respect of the first provision of services, the application for registration must be accompanied by evidence that the applicant meets the requirements for pursuit of the profession of architect and of the actual exercise of that profession by the applicant in his Member State of origin, and a declaration as to the nature and probable duration of the provision of services and the indication of any temporary place of business. The council to which the application has been made must give its ruling within 30 days. For subsequent provisions of services, authorisation is automatic on presentation of the declaration beforehand. Enrolment on the register of one provincial body does not authorise the provision of services in another province. Services may be provided only after the council has authorised registration.

60 The Commission submits that the obligation of registration is incompatible with Article 22 of Directive 85/384 and Article 59 of the Treaty.

61 The Italian Government considers that Article 9(3) of Decree No 129/92 is consistent with Article 22(1), third subparagraph, of Directive 85/384 since, it maintains, the latter provision permits Member States to require automatic temporary registration simply on application by the architect. Furthermore, the Government states that the registration provided for in Article 9(3) of Decree No 129/92 does not impose any additional costs on the person providing the services, since the expenses are borne by the professional body for architects.

62 According to Article 22(1), third subparagraph, of Directive 85/384, the host Member State may require automatic temporary enrolment in a register, provided that this registration does not delay or in any way complicate the provision of services.

63 The registration required under the Italian legislation delays the provision of services. The information provided by the Italian Government indicates that enrolment on the register occurs within 30 days of submission of the application and that the first services may be provided only after effective registration.

64 It follows that the obligation of registration in Article 9(3) of Decree No 129/92 delays an architect's first provision of services and that it is therefore incompatible with Article 22 of Directive 85/384. Moreover, the obligation of enrolment on the register of each provincial body in whose district a service is to be provided further complicates that provision of services.

65 This complaint therefore is also well founded.

The complaint concerning the failure to recognise qualifications within the time-limits

66 Under Article 20(1) of Directive 85/384, the procedure for recognising the qualification of an architect from another Member State must be completed as soon as possible and not later than three months after presentation of all the documents relating to the person concerned.

67 The Commission claims that the procedure laid down in Article 4(6) to (8) of Decree No 129/92 does not allow the Italian authorities to comply with the abovementioned time-limit of three months. It points out that it has received complaints in this regard and, by way of example, cites the case of an Austrian architect who has been awaiting a decision from the Italian authorities on his application since 17 March 1994.

68 The Italian Government asserts that most applications are dealt with within the period prescribed. Failure to comply with the time-limit in certain cases is justified by the exceptions laid down in Directive 85/384. Any such failures are not attributable to the Italian authorities but rather to the fact that the persons applying for recognition of their qualifications had not presented all the requisite documents. That is true, in particular, of the Austrian architect whose case is cited by the Commission.

69 The Commission has not been able to contradict the Italian Government's explanation concerning the Austrian architect. In terms of Article 20(1) of Directive 85/384 the period prescribed for recognition does not begin to run if the application is incomplete.

70 Since the Commission has failed to adduce concrete evidence of infringement of Article 20(1) of Directive 85/384, this complaint must be dismissed.

71 In the light of all the foregoing, it must be declared that:

— by failing to adopt all the measures necessary to implement Articles 4(1), second subparagraph, 4(2), 11(k), seventh indent, and 14 of Directive 85/384,

— by failing to adopt all the measures necessary to implement the automatic recognition of diplomas, certificates and other evidence of formal qualifications in accordance with Articles 2, 3, 7, 8 and 9 of Directive 85/384,

— by adopting Article 4(2)(a) of Decree No 129/92 which, in breach of Articles 52 and 59 of the Treaty, lays down a general requirement that the application for recognition of a qualification be accompanied by the original diploma or a certified copy thereof,

— by adopting Article 4(2)(c) of Decree No 129/92 and Article 4(1)(c) of Decree No 776/94 which, in breach of Article 52 of the Treaty, lay down a general requirement that the application for recognition of a qualification be accompanied by a certificate of nationality,

— by adopting Article 4(3) of Decree No 129/92 and Article 10 of Decree No 776/94 which, in breach of Article 52 of the Treaty, require as a matter of course an official translation of all documents attached to an application for recognition of a qualification,

— by adopting Article 11(1)(c) and (d) of Decree No 129/92 which, in breach of Article 12 of Directive 85/384, provides for the recognition of qualifications acquired after 5 August 1987,

— by retaining Article 9(1) of Decree No 129/92 which, in breach of Article 59 of the Treaty, imposes a general prohibition on architects established in other Member States who wish to provide services in Italy from creating on Italian territory a principal or secondary place of business,

— by requiring, under Article 9(3) of Decree No 129/92 and Articles 7 and 8 of Decree No 776/94, architects established in other Member States who wish to provide services in Italy to register with the local provincial council of the professional body for architects and by delaying, by that formality, in breach of Article 22 of Directive 85/384, the provision by architects of their first services in Italy,

the Italian Republic has failed to fulfil its obligations under Articles 12, 22, 27 and 31 of Directive 85/384 and, in respect of the prohibition under Article 9(1) of Decree No 129/92, under Article 59 of the Treaty.

72 The application must be dismissed as to the remainder.

Costs

73 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 in respect of seven out of the eight complaints raised by the Commission, it must be ordered to pay the costs.

On those grounds,

THE COURT (Fifth Chamber)

hereby:

1. Declares that:

— by failing to adopt all the measures necessary to implement Articles 4(1), second subparagraph, 4(2), 11(k), seventh indent, and 14 of Council Directive 85/384/EEC of 10 June 1985 on the mutual recognition of diplomas, certificates and other evidence of formal qualifications in architecture, including measures to facilitate the effective exercise of the right of establishment and freedom to provide services, as amended by Council Directive 86/17/EEC of 27 January 1986 amending, on account of the accession of Portugal, Directive 85/384,

— by failing to adopt all the measures necessary to implement the automatic recognition of diplomas, certificates and other evidence of formal qualifications in accordance with Articles 2, 3, 7, 8 and 9 of Directive 85/384,

— by adopting Article 4(2)(a) of Legislative Decree No 129 of the President of the Republic of 27 January 1992 which, in breach of Articles 52 and 59 of the EC Treaty (now, after amendment, Articles 43 EC and 49 EC), lays down a general requirement that the application for recognition of a qualification be accompanied by the original diploma or a certified copy thereof,

— by adopting Article 4(2)(c) of Decree No 129/92 and Article 4(1)(c) of Decree No 776 of the Minister for Universities and Scientific and Technological Research of 10 June 1994 which, in breach of Article 52 of the Treaty, lay down a general requirement that the application for recognition of a qualification be accompanied by a certificate of nationality,

— by adopting Article 4(3) of Decree No 129/92 and Article 10 of Decree No 776/94 which, in breach of Article 52 of the Treaty, require as a matter of course an official translation of all documents attached to an application for recognition of a qualification,

— by adopting Article 11(1)(c) and (d) of Decree No 129/92 which, in breach of Article 12 of Directive 85/384, provides for the recognition of qualifications acquired after 5 August 1987,

— by retaining Article 9(1) of Decree No 129/92 which, in breach of Article 59 of the Treaty, imposes a general prohibition on architects

established in other Member States who wish to provide services in Italy from creating on Italian territory a principal or secondary place of business,

— by requiring, under Article 9(3) of Decree No 129/92 and Articles 7 and 8 of Decree No 776/94, architects established in other Member States who wish to provide services in Italy to register with the local provincial council of the professional body for architects and by delaying, by that formality, in breach of Article 22 of Directive 85/384, the provision by architects of their first services in Italy,

the Italian Republic has failed to fulfil its obligations under Articles 12, 22, 27 and 31 of Directive 85/384 and, in respect of the prohibition under Article 9(1) of Decree No 129/92, under Article 59 of the Treaty;

2. Dismisses the application as to the remainder;

3. Orders the Italian Republic to pay the costs.

Jann von Bahr Edward

La Pergola Timmermans

Delivered in open court in Luxembourg on 21 March 2002.

R. Grass P. Jann

Registrar President of the Fifth Chamber