

JUDGMENT OF THE COURT (Fifth Chamber)

7 March 2002 *

In Case C-145/99,

Commission of the European Communities, represented by E. Traversa and B. Mongin, acting as Agents, with an address for service in Luxembourg,

applicant,

v

Italian Republic, represented by U. Leanza, acting as Agent, assisted by F. Quadri, Avvocato dello Stato, with an address for service in Luxembourg,

defendant,

* Language of the case: Italian.

APPLICATION for a declaration that:

- by maintaining, contrary to Article 59 of the EC Treaty (now, after amendment, Article 49 EC), the general prohibition whereby lawyers established in other Member States and practising in Italy in the exercise of their freedom to provide services cannot have in that State the infrastructure needed to provide their services,

- by making enrolment at the Italian Bar conditional upon the possession of Italian nationality, the possession of qualifications acquired only in Italy and maintenance of a residence in an Italian judicial district, contrary to Article 52 of the EC Treaty (now, after amendment, Article 43 EC),

- by applying in a discriminatory manner against lawyers from other Member States the ‘compensatory measures’ (aptitude test) provided for in Article 4 of Council Directive 89/48/EEC of 21 December 1988 on a general system for the recognition of higher-education diplomas awarded on completion of professional education and training of at least three years’ duration (OJ 1989 L 19, p. 16), and

- by incompletely transposing Directive 89/48, inasmuch as no rules have been laid down regulating the conduct of the aptitude test for lawyers from other Member States,

the Italian Republic has failed to fulfil its obligations under Articles 52 and 59 of the Treaty and Directive 89/48,

THE COURT (Fifth Chamber),

composed of: S. von Bahr, President of the Fourth Chamber, acting for the President of the Fifth Chamber, D.A.O. Edward (Rapporteur), A. La Pergola, M. Wathelet and C.W.A. Timmermans, Judges,

Advocate General: C. Stix-Hackl,
Registrar: L. Hewlett, Administrator,

having regard to the Report for the Hearing,

after hearing oral argument from the parties at the hearing on 15 February 2001, at which the Commission was represented by E. Traversa and the Italian Republic by I. Braguglia, Avvocato dello Stato,

after hearing the Opinion of the Advocate General at the sitting on 3 May 2001,

gives the following

Judgment

- 1 By application lodged at the Court Registry on 21 April 1999, the Commission of the European Communities brought an action under Article 169 of the EC Treaty (now Article 226 EC) for a declaration that:
 - by maintaining, contrary to Article 59 of the EC Treaty (now, after amendment, Article 49 EC), the general prohibition whereby lawyers established in other Member States and practising in Italy in the exercise of their freedom to provide services cannot have in that State the infrastructure needed to provide their services,
 - by making enrolment at the Italian Bar conditional upon the possession of Italian nationality, the possession of qualifications acquired only in Italy and maintenance of a residence in an Italian judicial district, contrary to Article 52 of the EC Treaty (now, after amendment, Article 43 EC),
 - by applying in a discriminatory manner against lawyers from other Member States the ‘compensatory measures’ (aptitude test) provided for in Article 4 of Council Directive 89/48/EEC of 21 December 1988 on a general system for the recognition of higher-education diplomas awarded on completion of professional education and training of at least three years’ duration (OJ 1989 L 19, p. 16), and

- by incompletely transposing Directive 89/48, inasmuch as no rules have been laid down regulating the conduct of the aptitude test for lawyers from other Member States,

the Italian Republic has failed to fulfil its obligations under Articles 52 and 59 of the Treaty and Directive 89/48.

- 2 By order of the President of the Court of 5 July 1999 an application by J. Lau for leave to intervene in support of the form of order sought by the Commission was dismissed as manifestly inadmissible.

Legal framework

The Community rules

- 3 Directive 89/48 establishes a general system for the recognition of higher-education diplomas awarded on completion of professional education and training of at least three years' duration.
- 4 The first subparagraph of Article 1(g) of Directive 89/48 defines the term 'aptitude test' as 'a test limited to the professional knowledge of the applicant, made by the competent authorities of the host Member State with the aim of

assessing the ability of the applicant to pursue a regulated profession in that Member State’.

- 5 The second, third and fourth subparagraphs of Article 1(g) are in the following terms:

‘In order to permit this test to be carried out, the competent authorities shall draw up a list of subjects which, on the basis of a comparison of the education and training required in the Member State and that received by the applicant, are not covered by the diploma or other evidence of formal qualifications possessed by the applicant.

The aptitude test must take account of the fact that the applicant is a qualified professional in the Member State of origin or the Member State from which he comes. It shall cover subjects to be selected from those on the list, knowledge of which is essential in order to be able to exercise the profession in the host Member State. The test may also include knowledge of the professional rules applicable to the activities in question in the host Member State. The detailed application of the aptitude test shall be determined by the competent authorities of that State with due regard to the rules of Community law.

The status, in the host Member State, of the applicant who wishes to prepare himself for the aptitude test in that State shall be determined by the competent authorities in that State.’

- 6 Article 3 of Directive 89/48, which lays down the principles governing the taking up and pursuit of a regulated profession, provides:

‘Where, in a host Member State, the taking up or pursuit of a regulated profession is subject to possession of a diploma, the competent authority may not, on the grounds of inadequate qualifications, refuse to authorise a national of a Member State to take up or pursue that profession on the same conditions as apply to its own nationals:

(a) if the applicant holds the diploma required in another Member State for the taking up or pursuit of the profession in question in its territory, such diploma having been awarded in a Member State; or

(b) if the applicant has pursued the profession in question full-time for two years during the previous ten years in another Member State which does not regulate that profession, within the meaning of Article 1(c) and the first subparagraph of Article 1(d), and possesses evidence of one or more formal qualifications:

— which have been awarded by a competent authority in a Member State, designated in accordance with the laws, regulations or administrative provisions of such State,

— which show that the holder has successfully completed a post-secondary course of at least three years’ duration, or of an equivalent duration part-time, at a university or establishment of higher education or another

establishment of similar level of a Member State and, where appropriate, that he has successfully completed the professional training required in addition to the post-secondary course and

— which have prepared the holder for the pursuit of his profession.

The following shall be treated in the same way as the evidence of formal qualifications referred to in the first subparagraph: any formal qualifications or any set of such formal qualifications awarded by a competent authority in a Member State if it is awarded on the successful completion of training received in the Community and is recognised by that Member State as being of an equivalent level, provided that the other Member States and the Commission have been notified of this recognition.'

- 7 Article 4 of Directive 89/48 authorises the host Member State to impose certain conditions on the taking up of a regulated profession. Thus, under Article 4(1), Article 3 of the directive does not preclude the host Member State from requiring the applicant:

'...

- (b) to complete an adaptation period not exceeding three years or take an aptitude test:

— where the matters covered by the education and training he has received, as laid down in Article 3(a) and (b), differ substantially from those covered by the diploma required in the host Member State, or

- where, in the case referred to in Article 3(a), the profession regulated in the host Member State comprises one or more regulated professional activities which are not in the profession regulated in the Member State from which the applicant originates or comes and that difference corresponds to specific education and training required in the host Member State and covers matters which differ substantially from those covered by the diploma adduced by the applicant, or

- where, in the case referred to in Article 3(b), the profession regulated in the host Member State comprises one or more regulated professional activities which are not in the profession pursued by the applicant in the Member State from which he originates or comes, and that difference corresponds to specific education and training required in the host Member State and covers matters which differ substantially from those covered by the evidence of formal qualifications adduced by the applicant.

...’

- 8 In addition, the second sub-subparagraph of Article 4(1)(b) provides that, ‘for professions whose practice requires precise knowledge of national law and in respect of which the provision of advice and/or assistance concerning national law is an essential and constant aspect of the professional activity, the host Member State may stipulate either an adaptation period or an aptitude test...’
- 9 Article 4(2) of Directive 89/48 prohibits Member States from cumulatively requiring the applicant to provide evidence of his professional experience and to complete an adaptation period or take an aptitude test.

The Italian rules

- 10 The basic provisions on enrolment and practice as a member of the Bar in Italy are contained in Royal Decree-Law No 1578 on the organisation of the professions of *avvocato* and *procuratore* of 27 November 1933 (GURI No 281 of 5 December 1933, p. 5521, hereinafter ‘Decree-Law No 1578/33’).
- 11 Article 17(1) of Decree-Law No 1578/33 provides:

‘In order to be enrolled as a member of the Bar, a person must:

(1) be an Italian citizen or an Italian from a region not politically linked to Italy;

...

(4) hold a diploma in law (“*laurea in giurisprudenza*”) issued or approved by a university in the Italian Republic;

(5) after obtaining that diploma, have completed, satisfactorily and profitably, a period of at least two consecutive years as a trainee in chambers, involving attendance at hearings in civil and criminal proceedings before the *Corte*

d'Appello (Court of Appeal) and the *Tribunale* (District Court), in accordance with detailed rules to be promulgated pursuant to Article 101; or, over the same period, have conducted cases before the courts of first instance within the meaning of Article 8;

...

(7) reside in the judicial district of the court to which the Bar at which enrolment is sought is attached.'

- 12 Law No 31 on freedom for lawyers who are nationals of a Member State of the European Community to provide services of 9 February 1982 (GURI No 42 of 12 February 1982, p. 1030, hereinafter 'Law No 31/82') is intended to transpose Council Directive 77/249/EEC of 22 March 1977 to facilitate the effective exercise by lawyers of freedom to provide services (OJ 1977 L 78, p. 17). Article 2 of Law No 31/82 provides:

'Provision of professional services

[Nationals of Member States authorised to practise as lawyers in the Member State from which they come] shall be permitted to practise the profession of lawyer on a temporary basis in contentious and non-contentious matters in accordance with the detailed rules laid down in this title.

For the purpose of the pursuit of the professional activities referred to in the preceding paragraph, the establishment on the territory of the Republic either of chambers or of a principal or branch office is not permitted.'

- 13 Legislative Decree No 115 of 27 January 1992 (GURI No 40 of 18 February 1992, p. 6, hereinafter 'Legislative Decree No 115/92') is intended to transpose Directive 89/48. It provides, in Article 6(2):

'Recognition (of a professional qualification) shall, as regards the professions of lawyer, accountant and patent agent, be conditional on the passing of an aptitude test.'

- 14 According to Article 8(1) and (2) of Legislative Decree No 115/92:

'(1) The aptitude test shall consist of an examination designed to test the applicant's professional knowledge and knowledge of the rules of conduct governing the profession in question, taking into account the fact that the applicant holds a professional qualification in his State of origin or the country from which he comes.

(2) The subjects to be covered by the examination shall be chosen on the basis of their prime importance for the practice of the profession in question.'

15 Article 9 of Legislative Decree No 115/92 is in the following terms:

‘Legislative provisions and general guidelines shall be promulgated by decrees issued by the competent Minister within the meaning of Article 11 [in the present case, the Minister for Justice], with the agreement of the Minister for Coordination of Community Policies and the Minister for Universities and Scientific and Technological Research, and after obtaining the opinion of the *Consiglio di Stato* (Council of State), for the purposes of application of Articles 5, 6, 7 and 8, by reference to the different professions and the professional education and training relating thereto.’

16 Article 12 of Legislative Decree No 115/92 provides:

‘(1) Applications for recognition shall be submitted to the competent Minister, accompanied by the documentation relating to the diplomas to be recognised in accordance with the conditions laid down in Article 10.

...

(3) Within 30 days from receipt of the application, the Minister shall check that the documentation provided is complete and, in so far as may be necessary, inform the person concerned of any further documents which may be needed.

...

(5) The competent Minister shall complete the recognition procedure by issuing a decree within four months from submission of the application or of the additional documents required, in accordance with paragraph 3 above.

(6) In the cases referred to in Article 6 (“compensatory measures”), the decree shall determine the conditions governing the adaptation period or aptitude test, specifying the competent organisation or body in accordance with Article 15.

(7) The decrees referred to in paragraph 5 above shall be published in the *Giornale Ufficiale* (Official Journal).

...’

17 Article 15(1) of Legislative Decree No 115/92 is worded as follows:

‘The organisations and bodies responsible for keeping professional rolls, lists or registers shall be competent to lay down detailed rules governing completion and assessment of the adaptation period or aptitude test.

...’

18 Law No 146 of 22 February 1994 laying down rules for fulfilment of the obligations arising from Italy’s membership of the European Community

(Community Law 1993, published in Ordinary Supplement No 39 to GURI No 52 of 4 March 1994, p. 1, hereinafter 'Law No 146/94') provides in Article 10:

'Nationals of Member States of the European Community shall be treated in the same way as Italian citizens for the purposes of enrolment as a member of the Bar as referred to in Article 17 of Royal Decree-Law No 1578 of 27 November 1933... on the organisation of the Bar.'

Pre-litigation procedure

- 19 In accordance with the procedure under the first paragraph of Article 169 of the Treaty, and having given the Italian Republic formal notice to submit its observations, the Commission sent a reasoned opinion to that Member State by letter dated 8 October 1998, requesting it to adopt the measures necessary to comply with its obligations under Articles 52 and 59 of the Treaty and under Directive 89/48 within two months of the date of notification of that opinion. Since it was not satisfied by the response of the Italian Government to that opinion, the Commission decided to bring this action.

The first complaint

- 20 By its first complaint, the Commission asserts that the second paragraph of Article 2 of Law No 31/82 infringes Article 59 of the Treaty, inasmuch as that national provision does not permit lawyers established in other Member States and wishing to provide services in Italy to have any form of infrastructure in that Member State.

21 The Italian Government maintains, in essence, that that prohibition is designed to prevent abuse of the freedom of establishment. If it did not exist, lawyers exercising their freedom to provide services could create an establishment under the guise of a certain structure. It further states, however, that in order to remove all doubt regarding the compatibility of the second paragraph of Article 2 of Law No 31/82 with Article 59 of the Treaty, a draft law repealing that national provision has been submitted to the Italian Parliament for its consideration.

22 As the Court has previously held, 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).

23 It follows that the general prohibition laid down in the second paragraph of Article 2 of Law No 31/82, whereby a lawyer established in a Member State other than the Italian Republic and exercising in Italy his freedom to provide services may not establish chambers or a principal or branch office in Italy, is incompatible with Article 59 of the Treaty.

24 The Commission's first complaint must therefore be upheld.

The second complaint

The first part

- 25 By the first part of its second complaint, the Commission asserts that the obligation laid down in point 7 of Article 17(1) of Decree-Law No 1578/33, requiring members of the Bar to reside in the judicial district of the court to which the Bar at which they are enrolled is attached, is contrary to the principle of freedom of establishment enshrined in Article 52 of the Treaty.
- 26 The Italian Government contends that the residence obligation meets certain requirements of judicial organisation, inasmuch as it facilitates the checks necessary in order for the local Bar to function. However, it states that, in practice, members of the Bar from Member States other than the Italian Republic are no longer required to comply with that obligation, as is apparent from Opinion No 6/1994 of the National Bar Council of Italy. The Italian Government further states that the draft law reforming the profession provides for the residence obligation to be replaced by an obligation of professional domicile, which means that the person concerned may establish or maintain his official residence in one Member State and his professional domicile in another.
- 27 The Court has repeatedly held that the right of establishment enshrined in Article 52 of the Treaty entails the right to set up and maintain, subject to observance of the rules of professional practice, more than one place of work within the Community (see, to that effect, Case 107/83 *Klopp* [1984] ECR 2971, paragraph 19, Case C-106/91 *Ramrath* [1992] ECR I-3351, paragraphs 20 to 22 and 28, and Case C-162/99 *Commission v Italy* [2001] ECR I-541, paragraph 20).

- 28 The residence obligation complained of by the Commission is therefore incompatible with Article 52 of the Treaty, inasmuch as it prevents members of the Bar established in Member States other than the Italian Republic from maintaining an establishment in Italy.
- 29 The Italian Government's argument that Article 52 is not infringed because the residence obligation is not applied in practice cannot be accepted.
- 30 The Court has consistently held that the incompatibility of national legislation with Community provisions, even provisions which are directly applicable, can be finally remedied only by means of national provisions of a binding nature which have the same legal force as those which must be amended. Mere administrative practices, which by their nature are alterable at will by the authorities and are not given the appropriate publicity, cannot be regarded as constituting the proper fulfilment of obligations under the Treaty (see, in particular, Case C-197/96 *Commission v France* [1997] ECR I-1489, paragraph 14, and Case C-358/98 *Commission v Italy* [2000] ECR I-1255, paragraph 17).
- 31 The first part of the Commission's second complaint is therefore well founded.

The second part

- 32 By the second part of its second complaint, the Commission asks the Court to declare that points 1, 4 and 5 of Article 17(1) of Decree-Law No 1578/33 violate the principle of freedom of establishment, since they make access to the Bar

conditional on possession of Italian nationality and of an Italian diploma in law (*'laurea in giurisprudenza'*), as well as completion of a period of two years as a trainee working within the jurisdiction of the Italian courts.

- 33 It is common ground that the nationality requirement was abolished by Article 10 of Law No 146/94, according to which nationals of Member States other than the Italian Republic are to be treated in the same way as nationals of Italy for the purposes of enrolment at the Bar. Similarly, the provisions relating to possession of an Italian diploma in law and completion of a period as a trainee were repealed by Legislative Decree No 115/92, which provides for a procedure for recognition of the professional qualification as a member of the Bar obtained in another Member State.
- 34 The Commission considers, nevertheless, that the requirements of legal certainty are not met, since the changes made to Article 17(1) of Decree-Law No 1578/33 have not been transcribed into that provision. The fact that there exist two contradictory provisions makes it more difficult for an individual to know which legal rules apply, and thus complicates the exercise by lawyers from other Member States of the rights which they enjoy under Community law.
- 35 The Italian Government refers in that context to the principle that, where one law follows another in time, the later rule overrides the earlier where they are inconsistent.
- 36 In that connection, it is common ground, first, that the amending provisions contained in Law No 146/94 and in Legislative Decree No 115/92 have binding

force and, second, that their effect is to abolish the obligations prescribed in Article 17(1) of Decree-Law No 1578/33 making access to the Bar conditional on possession of Italian nationality and of an Italian diploma in law and completion of a period of two years as a trainee working within the jurisdiction of the Italian courts.

- 37 Those amending provisions satisfy the two conditions which the Court requires to be fulfilled in order for national law to be compatible with primary Community law. These are that the incompatibility of national legislation with Community provisions, even directly applicable provisions, can be definitively remedied only by means of national provisions that are binding and have the same legal force as those that have to be modified (see, in particular, Case C-358/98 *Commission v Italy*, cited above, paragraph 17).
- 38 In the present case, the relevant provisions of Decree-Law No 1578/33 are automatically repealed by Law No 146/94 and Legislative Decree No 115/92, in application of the principle that subsequent legislation overrides prior legislation, which is common to the legal traditions of the Member States.
- 39 It must therefore be held that there has been no failure in the present case to comply with the requirements of legal certainty.
- 40 Consequently, the second part of the Commission's second complaint cannot be upheld.

The third and fourth complaints

- 41 The Commission's third and fourth complaints, which it is appropriate to consider together, relate to the transposition and practical application of Article 4 of Directive 89/48 as regards the aptitude test for which it provides.

Arguments of the parties

- 42 By its fourth complaint, the Commission claims that the Italian Republic has not fully transposed Directive 89/48, since it has not drawn up any detailed rules for the conduct of the aptitude test as defined in the first subparagraph of Article 1(g) of that directive.
- 43 The Commission points out that Articles 9 and 11 of Legislative Decree No 115/92, which is intended to transpose Articles 1(g) and 4 of Directive 89/48, provide that 'legislative provisions and general guidelines' for application of the aptitude test are to be promulgated by the Italian Minister for Justice. No such measures have been adopted.
- 44 In practice, Articles 1(g) and 4 of Directive 89/48 have been applied by the Italian authorities by means of individual ministerial decrees, with a personal aptitude test being prepared for each candidate. According to the Commission, that administrative practice places candidates in a position of legal uncertainty, since they are unable to predict the subjects to be covered by the aptitude test or the

number of those subjects, the way in which the test will be divided into written and oral examinations, the criteria for the marking of those examinations and other basic aspects of the way in which the test is to be conducted.

- 45 By its third complaint, the Commission contests the way in which the Italian authorities have actually implemented the aptitude test provided for in Article 4(1)(b) of Directive 89/48 as regards lawyers from other Member States.
- 46 The Commission maintains that it is apparent from the information in its possession, namely the texts of the individual ministerial decrees recognising professional qualifications, as referred to in Article 12(5) of Legislative Decree No 115/92, and information received in the context of complaints made to it by lawyers from Member States other than the Italian Republic, that the aptitude test may relate to 10 subjects, as well as judicial organisation and the rules of professional conduct of lawyers, and that it is composed of a written examination and an oral examination. The written examination, which consists of the drafting of a legal document or opinion, covers three subjects chosen by the examining board from amongst the 10 possible subjects, as well as judicial organisation and rules of professional conduct, and the oral examination, which consists of answering short practical questions, covers all those subjects as well as judicial organisation and rules of professional conduct.
- 47 The Commission claims that the practice followed by the Italian authorities is discriminatory, since the aptitude test is excessively difficult by comparison with the qualifying examination which Italian lawyers are required to sit. The latter examination is also composed of a written part and an oral part. However, the written part relates to only three subjects, one of which is chosen by the candidate, and the oral part relates to only five subjects, all of them chosen by the candidate, together with questions on judicial organisation and rules of professional conduct.

- 48 According to the statistics for 1998 provided by the Commission in its reply, 18 out of 29 lawyers from other Member States who applied for and obtained recognition of their professional qualification in Italy sat an aptitude test covering a single subject. The Commission observes nevertheless that, as regards the 11 other applicants, the aptitude test covered seven subjects in one case, nine subjects in another and, in eight other cases, all of the subjects plus judicial organisation and rules of professional conduct.
- 49 The Italian Government maintains that Legislative Decree No 115/92 fully transposes Directive 89/48.
- 50 As regards the detailed content of the aptitude test, the Italian Government states that a certain degree of latitude is necessary, since the professional competence acquired by lawyers is different in each Member State. It further maintains that the aptitude test takes into account the professional skills acquired by lawyers in Member States other than the Italian Republic and that Legislative Decree No 115/92 and the application thereof meet the requirements of Community law.

Findings of the Court

- 51 The second subparagraph of Article 1(g) of Directive 89/48 provides that, in order to permit the aptitude test to be organised, the competent authorities of the host Member State are to 'draw up a list of subjects which, on the basis of a comparison of the education and training required in [their] Member State and that received by the applicant, are not covered by the diploma or other evidence of formal qualifications possessed by the applicant'.

- 52 Thus, the precise content of the aptitude test must be determined on a case-by-case basis following a point-by-point comparison between the qualifications and experience of the applicant, who, as stated in the ninth recital in the preamble to Directive 89/48, 'is a person who has already received his professional training in another Member State', and the list of subjects regarded as indispensable for education and training for the profession concerned.
- 53 Whilst Article 1(g) of Directive 89/48 does not require the Member States to regulate in detail all aspects of the aptitude test, it does not relieve them of the obligation to specify and publish the subjects regarded as indispensable for practising the profession concerned and the rules regulating the conduct of the aptitude test, so that applicants can be aware, in a general way, of the nature and content of the test which they may be required to sit. In the absence of such rules, the comparison called for in the second subparagraph of Article 1(g) of Directive 89/48 on a case-by-case basis is at risk of being arbitrary or even discriminatory.
- 54 It is common ground that Legislative Decree No 115/92 does not determine the subjects regarded as indispensable for practising as a lawyer in Italy or the rules regulating the conduct of the aptitude test, thus creating a situation of fluidity, if not of legal uncertainty. That legislative decree cannot therefore be regarded as fully transposing Directive 89/48.
- 55 It must therefore be held that the Italian Republic has not fully transposed Directive 89/48, so that the Commission's fourth complaint is well founded.
- 56 As to the particular matters relied on by the Commission in support of its third complaint, whilst they may, at the very least, create the impression that the practical implementation of the aptitude test lacks coherence and transparency,

the Court has not been provided with sufficient evidence to establish that implementation of the aptitude test on a case-by-case basis has resulted in a failure to fulfil the obligations imposed by Directive 89/48. In those circumstances, the Commission's third complaint cannot be upheld.

57 Having regard to all the foregoing, it must be held that:

- by maintaining, contrary to Article 59 of the Treaty, the general prohibition whereby lawyers established in other Member States and practising in Italy in the exercise of their freedom to provide services cannot have in that State the infrastructure needed to provide their services,

- by requiring members of the Bar to reside in the judicial district of the court to which the Bar at which they are enrolled is attached, contrary to Article 52 of the Treaty, and

- by incompletely transposing Directive 89/48, inasmuch as no rules have been laid down to regulate the conduct of the aptitude test for lawyers from other Member States,

the Italian Republic has failed to fulfil its obligations under Articles 52 and 59 of the Treaty and Directive 89/48.

58 The remainder of the application must be dismissed.

Costs

59 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. However, under the first subparagraph of Article 69(3), the Court may order that the costs be shared or that the parties bear their own costs where each party succeeds on some and fails on other heads. Since the Italian Republic and the Commission have each been partially unsuccessful, the parties must be ordered to bear their own costs.

On those grounds,

THE COURT (Fifth Chamber),

hereby:

1. Declares that:

—by maintaining, contrary to Article 59 of the EC Treaty (now, after amendment, Article 49 EC), the general prohibition whereby lawyers established in other Member States and practising in Italy in the exercise of their freedom to provide services cannot have in that State the infrastructure needed to provide their services,

- by requiring members of the Bar to reside in the judicial district of the court to which the Bar at which they are enrolled is attached, contrary to Article 52 of the EC Treaty (now, after amendment, Article 43 EC), and

- by incompletely transposing Council Directive 89/48/EEC of 21 December 1988 on a general system for the recognition of higher-education diplomas awarded on completion of professional education and training of at least three years' duration, inasmuch as no rules have been laid down to regulate the conduct of the aptitude test for lawyers from other Member States,

the Italian Republic has failed to fulfil its obligations under Articles 52 and 59 of the Treaty and Directive 89/48;

2. Dismisses the remainder of the application;

3. Orders the Italian Republic and the Commission of the European Communities to bear their own costs.

von Bahr	Edward	
La Pergola	Wathelet	Timmermans

Delivered in open court in Luxembourg on 7 March 2002.

R. Grass

Registrar

P. Jann

President of the Fifth Chamber