

JUDGMENT OF THE COURT
10 July 1991 *

In Case C-294/89,

Commission of the European Communities, represented by Étienne Lasnet, Legal Adviser, acting as Agent, with an address for service in Luxembourg at the office of Guido Berardis, a member of its Legal Service, Wagner Centre, Kirchberg,

applicant,

v

French Republic, represented by Jean-Pierre Puissochet, Director of the Legal Affairs Department at the Ministry of Foreign Affairs, acting as Agent, and Marc Giacomini, Secretary for Foreign Affairs, acting as Deputy Agent, with an address for service in Luxembourg at the French Embassy, 9 Boulevard du Prince-Henri,

defendant,

supported by

Federal Republic of Germany, represented by Horst Teske, Ministerialrat at the Federal Ministry of Justice, Ernst Röder, Regierungsdirektor at the Federal Ministry of Economic Affairs, and Heinz Weil, of the Paris Bar, acting as Agents, with an address for service in Luxembourg at the Embassy of the Federal Republic of Germany, 20-22 Avenue Émile Reuter,

intervener,

* Language of the case: French.

APPLICATION for a declaration that the French Republic has failed to fulfil its obligations under the EEC Treaty by not adopting, in compliance with Articles 59 and 60 of the Treaty, all the laws, regulations and administrative provisions needed to comply with Council Directive 77/249/EEC of 22 March 1977 to facilitate the effective exercise by lawyers of freedom to provide services (Official Journal 1977 L 78, p. 17).

THE COURT,

composed of: O. Due, President, T. F. O'Higgins, J. C. Moitinho de Almeida and M. Díez de Velasco (Presidents of Chambers), C. N. Kakouris, F. A. Schockweiler, F. Grévisse, M. Zuleeg and P. J. G. Kapteyn, Judges,

Advocate General: G. Tesauro,
Registrar: H. A. Rühl, Principal Administrator,

having regard to the Report for the Hearing,

after hearing oral argument from the parties at the hearing on 21 March 1991,

after hearing the Opinion of the Advocate General at the sitting on 7 May 1991,

gives the following

Judgment

- 1 By application lodged at the Court Registry on 25 September 1989, the Commission of the European Communities brought an action under Article 169 of the EEC Treaty for a declaration that the French Republic has failed to fulfil its obligations under the Treaty by not adopting, in compliance with Articles 59 and 60 of the Treaty, all the laws, regulations and administrative provisions needed to comply with Council Directive 77/249/EEC of 22 March 1977 to facilitate the effective exercise by lawyers of freedom to provide services.

- 2 The provisions adopted by the French Republic for the implementation of Directive 77/249 are set out in Decree No 72-468 of 9 June 1972 regulating the legal profession, as amended by Decree No 79-233 of 22 March 1979 on freedom for lawyers who are nationals of Member States of the European Communities to provide services in France (*Journal Officiel de la République Française* of 23 March 1979, p. 659).

- 3 The first paragraph of Article 126-2 of Decree No 72-468 provides that 'nationals of other Member States of the European Communities who carry on their professional activities in their country of origin' under one of the designations listed in Article 1(2) of Directive 77/249 'shall be recognized in France as lawyers'.

- 4 Furthermore, the fourth paragraph of Article 126-3 of Decree No 72-468 provides that 'in order to conduct the proceedings or carry out the procedural formalities' a lawyer providing services 'must, in civil cases where it is compulsory to be represented by a lawyer, retain in proceedings before the Tribunal de Grande Instance (Regional Court) a lawyer who is a member of the Bar of that court or is authorized to plead before it, and in proceedings before the Cour d'Appel (Court of Appeal) an *avoué* practising before that court or, if none, a lawyer authorized to plead before it'. In addition, according to the fifth paragraph of Article 126-3 of that decree, the lawyer providing services must, 'in proceedings before the other courts, disciplinary or judicial bodies or the public authorities, . . . subject to the practices in force on the date when this article enters into effect, work in conjunction with a lawyer who is a member of a French Bar and who will, where necessary, be answerable to that court, body or authority'.

- 5 In the letter of formal notice and the reasoned opinion which it sent to the French Republic in accordance with Article 169 of the Treaty, the Commission set out three distinct complaints against the provisions of Decree No 72-468 on the freedom for lawyers to provide services in France. The first complaint concerns the persons covered by those provisions, as set out in the first paragraph of Article 126-2 of the decree. The second complaint relates to the scope of the obligation, imposed on the lawyer providing the services, to work in conjunction with a lawyer established in France. The third complaint concerns the obligation, imposed

on the lawyer providing services, to retain, in proceedings before certain courts, a lawyer who is a member of the Bar of the judicial authority in question in order to plead or carry out the procedural formalities.

- 6 The French Republic failed to comply with the reasoned opinion issued by the Commission, whereupon the latter instituted these proceedings.
- 7 Reference is made to the Report for the Hearing for a fuller account of the procedure and the pleas in law and arguments of the parties, which are mentioned or discussed hereinafter only in so far as is necessary for the reasoning of the Court.

A — Persons covered by Decree No 72-468

- 8 The Commission considers that the first paragraph of Article 126-2 of Decree No 72-468 is contrary to Article 1(2) of Directive 77/249 because it deprives French nationals practising as lawyers in a Member State other than the French Republic of the benefit of the provisions on the freedom for lawyers to provide services in France.
- 9 The French Republic does not dispute the infringement with which it is thereby charged.
- 10 According to Article 1(2) of Directive 77/249, the term 'lawyer', for the purposes of that directive, means any person entitled to pursue his professional activities under one of the designations listed in that provision. Furthermore, Article 2 of that directive provides that the persons referred to in Article 1(2) are to be recognized as lawyers by each Member State for the purpose of pursuing their activities by providing services.

11 Accordingly, not only nationals of Member States other than the French Republic, but also French nationals authorized to pursue their professional activities in a Member State other than the French Republic, under one of the designations listed in Article 1(2) of Directive 77/249, must be recognized as lawyers in France.

12 It must therefore be held that, by depriving French nationals who practise as lawyers in a Member State other than the French Republic of the benefit of the provisions on freedom for lawyers to provide services in France, the French Republic has failed to fulfil its obligations under the Treaty.

B — Scope of obligation to work in conjunction with a lawyer established in France

13 The Commission considers that the fifth paragraph of Article 126-3 of Decree No 72-468 is contrary to Article 5 of Directive 77/249 inasmuch as it requires the lawyer providing services to work in conjunction with a lawyer who is a member of a French Bar in proceedings before bodies and authorities which are not involved in the administration of justice, and in proceedings in which, under French law, the assistance of a lawyer is not compulsory.

14 The French Republic does not dispute the infringement with which it is charged.

15 It should be pointed out that Article 5 of Directive 77/249 authorizes the Member States to require lawyers providing services to work in conjunction with a lawyer who practises before the judicial authority in question, exclusively 'for the pursuit of activities relating to the representation of a client in legal proceedings'.

- 16 Accordingly, that requirement cannot be imposed for the pursuit of activities before bodies or authorities which have no judicial function.
- 17 Furthermore, as the Court held in its judgment in Case 427/85 *Commission v Germany* [1988] ECR 1123, at paragraph 13, Article 5 of Directive 77/249 may not have the effect of imposing upon a lawyer providing services requirements for which there is no equivalent in the professional rules which would apply in the absence of any provision of services within the meaning of the Treaty.
- 18 It is common ground that, in the case of certain proceedings conducted before the courts, French legislation does not require the parties to be assisted by a lawyer but allows the parties to conduct their own defence or, in proceedings before the commercial courts, to be assisted and represented by a person who is not a lawyer, but holds a special authorization.
- 19 Accordingly, the lawyer providing services cannot be required to work in conjunction with a lawyer practising before the judicial authority in question, in judicial proceedings in respect of which the French legislation does not make the assistance of a lawyer compulsory.
- 20 It must therefore be held that, by requiring a lawyer providing services to work in conjunction with a lawyer who is a member of a French Bar when acting before authorities or bodies which have no judicial function and when acting in situations where French law does not make the assistance of a lawyer compulsory, the French Republic has failed to fulfil its obligations under the Treaty.

C — Territoriality of the right to plead

- 21 The Commission considers that the fourth paragraph of Article 126-3 of Decree No 72-468 is contrary to Articles 59 and 60 of the Treaty and to Article 5 of

Directive 77/249 inasmuch as it lays down that a lawyer providing services who appears before a Tribunal de Grande Instance must, in civil cases where it is compulsory to be represented by a lawyer, retain a lawyer who is a member of the Bar of that court or is authorized to plead before it, in order to conduct the proceedings or carry out the procedural formalities.

- 22 According to the Commission, a lawyer providing services must be able to appear in France before any court on the same terms as a lawyer who is a member of the Bar of that court, that is to say, in particular, a lawyer permitted to plead, subject only to the reservation that he must work in conjunction with a lawyer practising before that court.
- 23 The French Republic considers that the requirement imposed by the fourth paragraph of Article 126-3 of Decree No 72-468 is consistent with the concept of work in conjunction with another lawyer, as set out in Article 5 of Directive 77/249. In that regard, it maintains that the obligation to retain a lawyer who is a member of the Bar of the judicial authority in question in order to conduct the proceedings is justified by the fact that, under Article 5 of that directive, that lawyer is answerable to the judicial authority in question as regards compliance with the relevant procedural rules and rules of professional conduct.
- 24 A preliminary point to bear in mind is that the Court, ruling in the matter of freedom of establishment, pointed out in its judgment in Case 107/83 *Ordre des Avocats au Barreau de Paris v Klopp* [1984] ECR 2971, at paragraph 20, that although, in view of the special nature of the legal profession, the host Member State must have the right, in the interests of the due administration of justice, to require that lawyers enrolled at a Bar in its territory should practise in such a way as to maintain sufficient contact with their clients and the judicial authorities and abide by the rules of the profession, those requirements must not prevent the nationals of other Member States from exercising properly a right guaranteed to them by the Treaty.
- 25 So far as the freedom to provide services is concerned, all restrictions thereon are to be abolished, according to Article 59 of the Treaty, in order in particular to enable a person providing a service to pursue his activity in the State where the service is provided under the same conditions as are imposed by that State on its own nationals, to use the wording of the third paragraph of Article 60 of the Treaty.

- 26 The aim of those provisions is primarily to enable the person providing the service to pursue his activities in the host Member State without suffering discrimination in favour of nationals of that State. As the Court pointed out in its judgment in Case 279/80 *Webb* [1981] ECR 3305, at paragraph 16, those provisions do not mean that all national legislation applicable to nationals of that State and usually applied to the permanent activities of persons established therein may be similarly applied in their entirety to the temporary activities of persons who are established in other Member States.
- 27 The rule of territorial exclusivity laid down in the fourth paragraph of Article 126-3 of Decree No 72-468 is in fact part of national legislation normally relating to a permanent activity of lawyers established in the territory of the Member State concerned, all of whom are entitled to plead before the Tribunal de Grande Instance within whose area of jurisdiction they are established. However, a lawyer providing services who is established in another Member State is not in a position where he can plead before a French Tribunal de Grande Instance.
- 28 In those circumstances, it must be stated that the rule of territorial exclusivity cannot be applied to activities of a temporary nature pursued by lawyers established in other Member States, since the conditions of law and fact which apply to those lawyers are not in that respect comparable to those applicable to lawyers established on French territory.
- 29 However, that finding only applies subject to the obligation of the lawyer providing services to work in conjunction with a lawyer admitted to practise before the judicial authority in question, within the limits and on the conditions laid down by the Court in its judgment in Case 427/85 *Commission v Germany*.
- 30 In that judgment, the Court considered that the obligation which Member States may impose on a lawyer providing services to work in conjunction with a lawyer practising before the judicial authority in question was intended to provide the former with the support necessary to enable him to act within a judicial system different from that to which he was accustomed and to assure the judicial authority concerned that he actually had that support and was thus in a position fully to comply with the procedural and ethical rules that applied.

- 31 Accordingly, the lawyer providing services and the local lawyer, both being subject to the ethical rules applicable in the host Member State, must be regarded as being capable, in compliance with those ethical rules and in the exercise of their professional independence, of agreeing upon a form of cooperation appropriate to their client's instructions.
- 32 That does not mean that it would not be possible for the national legislatures to lay down a general framework for cooperation between the two lawyers. However, the resultant obligations must not be disproportionate in relation to the objectives of the duty to work in conjunction, as defined above.
- 33 The French Republic maintains that the rule laid down in the fourth paragraph of Article 126-3 of Decree No 72-468 is necessary in order to assure the judicial authority in question that the lawyer providing services will comply fully with the procedural and ethical rules applicable in France. In the first place, that rule is essential in order to ensure compliance with the provisions which are intended to ensure that the procedure is conducted expeditiously, with both sides being given an opportunity to state their case, in particular during the preliminary procedure, and which presuppose the existence between the lawyer who is pleading and the judicial authority in question of permanent contact which a lawyer established in another Member State is not in a position to guarantee. Secondly, that rule is such as to facilitate the initiation of disciplinary proceedings against a local lawyer working in conjunction with the lawyer providing services.
- 34 Those arguments cannot be accepted.
- 35 In the first place, as the Court stated in its judgment in *Klopp*, at paragraph 21, modern methods of transport and telecommunications enable lawyers to maintain the necessary contacts with clients and the judicial authorities. Furthermore, the expeditious conduct of the proceedings, in compliance with the principle that both sides must be given the opportunity to state their case, can be ensured by imposing on the lawyer providing services obligations which restrict the pursuit of his activities to a lesser extent. That aim could therefore be achieved by requiring the lawyer providing services to have an address for service at the chambers of the

lawyer in conjunction with whom he works, where notifications from the judicial authority in question could be duly served.

36 Secondly, although it may facilitate disciplinary proceedings against the local lawyer, the rule of territorial exclusivity is not necessary for the conduct of such proceedings.

37 Accordingly, it must be held that, by requiring a lawyer providing services who appears before a Tribunal de Grande Instance, in civil cases where it is compulsory to be represented by a lawyer, to retain a lawyer who is a member of the Bar of that court or is authorized to plead before it in order to plead or carry out the procedural formalities, the French Republic has failed to fulfil its obligations under the Treaty.

Costs

38 Under Article 69(2) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs. Since the French Republic has been unsuccessful, it must be ordered to pay the costs. The Federal Republic of Germany, which has intervened in support of the form of order sought by the French Republic, must be ordered to bear its own costs.

On those grounds,

THE COURT

hereby:

1. Declares that the French Republic has failed to fulfil its obligations under Articles 59 and 60 of the EEC Treaty and Council Directive 77/249/EEC of

22 March 1977 to facilitate the effective exercise by lawyers of freedom to provide services by:

- depriving French nationals who practise as lawyers in a Member State other than the French Republic of the benefit of the provisions on freedom for lawyers to provide services in France;
- requiring a lawyer providing services to work in conjunction with a lawyer who is a member of a French Bar when acting before authorities or bodies which have no judicial function and when acting in situations where French law does not make the assistance of a lawyer compulsory; and
- requiring a lawyer providing services who appears before a Tribunal de Grande Instance (Regional Court), in civil cases where it is compulsory to be represented by a lawyer, to retain a lawyer who is a member of the Bar of that court or is authorized to plead before it in order to plead or carry out the procedural formalities;

2. Orders the French Republic to pay the costs;

3. Orders the Federal Republic of Germany to bear its own costs.

Due	O'Higgins	Moitinho de Almeida	Díez de Velasco	
Kakouris	Schockweiler	Grévisse	Zuleeg	Kapteyn

Delivered in open court in Luxembourg on 10 July 1991.

J.-G. Giraud
Registrar

O. Due
President