

JUDGMENT OF THE COURT (First Chamber)

9 September 2004*

In Case C-417/02,

ACTION under Article 226 EC for failure to fulfil obligations,

brought on 19 November 2002,

Commission of the European Communities, represented by M. Patakia, acting as Agent, with an address for service in Luxembourg,

applicant,

v

Hellenic Republic, represented by E. Skandalou, acting as Agent, with an address for service in Luxembourg,

defendant,

* Language of the case: Greek.

THE COURT (First Chamber),

composed of: P. Jann, President of the Chamber, A. Rosas, S. von Bahr, K. Lenaerts and K. Schiemann (Rapporteur), Judges,

Advocate General: J. Kokott,

Registrar: L. Hewlett, Principal Administrator,

having regard to the written procedure and further to the hearing on 4 March 2004,

after hearing the Opinion of the Advocate General at the sitting on 30 March 2004,

gives the following

Judgment

- 1 By its application, the Commission of the European Communities has brought an action for a declaration that, by adopting and retaining in force the provisions of Article 3(1)(c) and (2) of Presidential Decree No 107/1993 ('Decree No 107/1993') of 22 March 1993, and by accepting that the Technico Epimelitirio Elladas (Greek Technical Board; 'Technical Board') with which a person must be registered in order to be able to pursue the profession of architect in Greece, systematically refuses to register Community nationals holding diplomas which have not been awarded in Greece and which ought to be recognised under 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), the Hellenic Republic has failed to fulfil its obligations under that directive.

Relevant provisions and pre-litigation procedure

- 2 Articles 2 to 9 of Directive 85/384 lay down general rules regarding the taking up of activities in the field of architecture. For the purposes of facilitating the functioning of the system of mutual recognition, Article 7(1) of Directive 85/384 provides that each Member State is to 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. Under Article 7(2), those lists are to be published for information purposes by the Commission in the *Official Journal of the European Communities* ('the Official Journal') after expiry of a three-month period following their communication.
- 3 Article 10 of Directive 85/384 relates to the recognition of academic titles enabling the holder to take up activities in the field of architecture by virtue of established rights. Under that article, each Member State is to recognise the diplomas, certificates and other evidence of formal qualifications set out in Article 11 of that directive, awarded by other Member States to nationals of the Member States, where such nationals already possess these qualifications at the time of notification of the directive or their studies leading to such diplomas, certificates and other evidence of formal qualifications commence 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 of the directive, by giving them, as regards the taking up and pursuit of activities in the field of architecture, the same effect within its territory as the diplomas, certificates and other evidence of formal qualifications which it awards in architecture.

- 4 Article 20(1) of Directive 85/384 provides that the procedure for authorising the holder to take up one of the activities in the field of architecture is to 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 that procedure.
- 5 In Greece, Decree No 107/1993 was adopted in order to implement, among others, Directive 85/384.
- 6 Article 3(1)(c) of Decree No 107/1993 laid down, among the conditions for obtaining authorisation from the Technical Board to pursue the profession of architect, the obligation to produce the certificate issued by the competent authorities of the person's Member State of origin or of the State from which he comes, attesting that the diplomas or other evidence of formal qualifications submitted corresponded to those provided for by that decree. Presidential Decree No 107/1993 was amended by Decree No 272/2000 of 17 October 2000 ('amended Decree No 107/1993'). Article 3(1)(c) of amended Decree No 107/1993 requires that the same certificate as before be issued by the competent authorities of the person's Member State of origin or of the State from which he comes in cases where the qualifications or the schools issuing them are not expressly referred to in the annexes to Article 13 of amended Decree No 107/1993. Those annexes include all the diplomas, certificates and other evidence of formal qualifications on the list published by the Commission in the Official Journal in accordance with Article 7(2) of Directive 85/384.
- 7 Article 3(2) of Decree No 107/1993 required persons applying for registration with the Technical Board to supply an official Greek translation of the documentary evidence provided for in Article 3(1)(c) of Decree No 107/1993. Article 3(2) in amended Decree No 107/1993 adds that the documentary evidence must be translated either officially into Greek or by the competent authorities of the person's Member State of origin or of the State from which he comes.

- 8 Following examination of the provisions notified and various complaints that the Technical Board had, since 1996, systematically refused the registration of Community nationals holding diplomas recognised under Directive 85/384, the Commission complained that the Greek Government had incorrectly implemented and applied Directive 85/384. Having given the Hellenic Republic notice to submit its observations, the Commission, on 24 February 2000, sent a reasoned opinion to that Member State in accordance with the first paragraph of Article 226 EC, calling on it to take the measures necessary to comply with its obligations under Directive 85/384 within a period of two months of notification of that opinion.
- 9 Having considered the replies of the Hellenic Republic, the Commission took the view that the infringement stated in the reasoned opinion was continuing, and decided to bring this action.

The action

- 10 In support of its action, the Commission raised three complaints. In its reply, the Commission decided however to withdraw its complaint relating to Article 3(2) of amended Decree No 107/1993.

The first complaint: Article 3(1)(c) of amended Decree No 107/1993

Arguments of the parties

- 11 By its first complaint, the Commission submits that the obligation imposed by the Greek Government in Article 3(1)(c) of amended Decree No 107/1993 does not

comply with the provisions of Directive 85/384. Article 27 of Directive 85/384 provides that such a certificate can be required only in exceptional circumstances, where legitimate doubt exists. This is however not the case in regard to the obligation in question, which is principally intended to overcome significant delays found in the updating of the annexes to amended Decree No 107/1993. Accordingly, with a delay of more than 10 months, the last update related only to the Commission's communication of 4 December 1999.

- 12 In its defence, the Greek Government maintained that Article 3(1)(c) of amended Decree No 107/1993 was intended, in the interest of applicants, to facilitate the application of the registration procedure by the competent authority where there is a discrepancy between the updated annex to that directive and the annex to the decree. That discrepancy stemmed from the periods usually necessary for the updating of the annexes to Article 13 of amended Decree No 107/1993.

- 13 The Greek Government also relies on the 15th recital in the preamble to Directive 85/384, according to which Member States may prescribe that, in addition to evidence of qualifications, holders are to provide a certificate from the competent authorities of their Member State of origin or of the country from which they come stating that these qualifications are in fact those referred to by the Directive.

- 14 On the other hand, in its rejoinder, the Greek Government stated that, in order to respond to the Commission's complaint, Article 3(1)(c) of amended Decree No 107/1993 would be amended. Therefore the obligation to provide the certificate in question would be removed and, although the corresponding Greek ministerial order had not yet been published, the holder could merely give the reference of the Official Journal in which his qualifications had been published. Subsequently, the Greek Government informed the Court of the publication on 17 February 2004 of the presidential decree repealing amended Decree No 107/1993 which contains the amendment described above.

Findings of the Court

- 15 As appears from the Commission's legal arguments, the first complaint relates to Article 3(1)(c) of amended Decree No 107/1993. However, the reasoned opinion issued by the Commission concerns the version of that provision before it was amended. Therefore the Court must of its own motion deal with the question of the admissibility of the first complaint, a question which was not raised by the Greek Government.
- 16 In accordance with its case-law, the Court may of its own motion examine the question whether the conditions laid down in Article 226 EC for the bringing of an action for failure to fulfil obligations are satisfied (Case C-362/90 *Commission v Italy* [1992] ECR I-2353, paragraph 8).
- 17 It is also apparent from the case-law of the Court that the Commission's reasoned opinion and its action must be based on identical grounds for complaint. That requirement cannot, however, go so far as to make it necessary that in every event the national provisions mentioned in the reasoned opinion and in the application should be completely identical. Where a change in the legislation occurred between those two phases in the procedure, it is sufficient that the system established by the legislation contested in the pre-litigation procedure has as a whole been maintained by the new measures which were adopted by the Member State after the issue of the reasoned opinion and have been challenged in the application (Case C-105/91 *Commission v Greece* [1992] ECR I-5871, paragraph 13).
- 18 In this case, the fundamental obligation in Article 3(1)(c) of Decree No 107/1993, namely the obligation to provide a certificate attesting that the evidence of formal qualifications submitted correspond to those provided for by that decree, was also

contained in Article 3(1)(c) of amended Decree No 107/1993. It follows that in this action it is the original text of Decree No 107/1993 which is to be considered on the merits. It also follows that the complaint is admissible.

- 19 As regards the merits, the obligation laid down in Article 3(1)(c) of Decree No 107/1993 required the persons concerned to adduce additional proof not provided for in Directive 85/384. That obligation had a deterrent effect which went against the facilitation of the effective exercise of the right of establishment, which Directive 85/384 and Article 43 EC seek to achieve and to maintain.
- 20 The periods usually required for the updating of the annexes to Decree No 107/1993 to which the Greek Government refers cannot justify the barriers hindering the taking up of the profession of architect in Greece. According to the case-law of the Court, internal difficulties relating to the circumstances in which laws and regulations are drawn up cannot exempt Member States from their Community obligations (see, inter alia, Case C-374/98 *Commission v France* [2000] ECR I-10799, paragraph 13).
- 21 As regards the argument of the Greek Government based on the 15th recital to Directive 85/384, the wording of that recital cannot in itself be used as the legal basis for requiring a person to provide a certificate from the competent authorities of his Member State of origin or of the State from which he comes.
- 22 Regarding the Greek Government's adoption of legislation removing the obligation on holders to submit the certificate from the competent authorities of his Member State of origin or of the State from which he comes, it is settled case-law that the

question whether there has been a failure to fulfil obligations must be determined by reference to the situation prevailing in that Member State at the end of the period laid down in the reasoned opinion, and subsequent changes cannot be taken into account by the Court (see, inter alia, Case C-384/97 *Commission v Greece* [2000] ECR I-3823, paragraph 35).

- 23 In this case, the reasoned opinion calling on the Hellenic Republic to take the measures necessary to comply with it within a period of two months was sent on 24 February 2000. However, it was not until February 2004 that the Greek Government published a presidential decree removing that obligation to provide the certificate in question.
- 24 The first complaint pleaded by the Commission is therefore well founded.

The second complaint: the practices of the Technical Board

Arguments of the parties

- 25 By its second complaint, the Commission claims that the non-compliance of the Technical Board with Directive 85/384 is shown by its failure to examine applications for registration within the time-limits laid down in Directive 85/384 or even to notify applicants of the reasons for refusal of their registration. The Commission states that it asked for information, by letter of 5 November 2001, about action taken in relation to the application for registration with the Technical Board of certain architects who had submitted their applications 7 to 10 months beforehand without receiving a reply. As at 1 April 2002, those applicants had still received no reply.

- 26 The Greek Government does not deny that there may be administrative problems within the Technical Board which could result in delays in processing applications from candidates for recognition as architects, but contends that, given the frequency of earthquakes in Greece, the Technical Board has to carry out a careful examination of the files in order to determine the skills of the persons concerned regarding the prevention of risks associated with earthquakes.
- 27 The Court requested the Greek Government to provide specific information in writing on the processing of applications for registration submitted to the Technical Board and to state, for each application, the date of the application, the date of registration, and, where appropriate, the date on which the Board demanded further documentary evidence from the applicant.
- 28 In its reply of 21 January 2004, the Greek Government stated that 41 applications for registration had been lodged as at that date. An examination of these shows that:
- 9 architects had been registered;

 - 2 architects had withdrawn their registration;

 - 14 architects, having submitted an application between 1988 and 2002 and completed their files, had been registered by decision of 8 January 2004;

- 12 files relating to applications made between 1992 and 2002, were still incomplete;

- 4 applications not supported by documentary evidence had been made in 2003.

Findings of the Court

- 29 In view of the information provided by the Greek Government in its reply of 21 January 2004, the Court finds that, at the end of the period laid down in the reasoned opinion, the registration procedure of 8 of the abovementioned 14 architects, which had been completed on 8 January 2004, had taken more than three months, since the corresponding applications were made in 1989, 1995, 1996, 1997 and 1998.
- 30 As regards the other 12 files mentioned above, the official letter calling on the persons concerned to complete their file was not sent until 30 December 2002, even though six of them had lodged their application in 1992, 1995, 1997, 1998, 1999 and 2000 respectively. Therefore the conclusion must be drawn that, at the relevant date for the purposes of determining whether there has been a failure to fulfil obligations, namely two months after notification of the reasoned opinion of 24 February 2000, those six persons, some of whom had lodged their application several years before, had not received any official communication from the Technical Board inviting them to complete their file and stating which documents were missing.
- 31 In that regard, Article 20 of Directive 85/384 requires that the procedure for authorising the person concerned to take up one of the activities in the field of architecture is to be completed as soon as possible and not later than three months after presentation of all the documents relating to that person. The only exceptions to that requirement are where an appeal is made or, under Articles 17(4) and 18(2)

of Directive 85/384, where it is necessary to carry out a re-examination of the file if the host Member State has detailed knowledge of a serious matter which has occurred prior to the establishment of the person concerned in that State, or if it knows that the declaration referred to in Article 17(3) of the directive contains incorrect information. In that case, the Member State of origin or the Member State from which the foreign national comes may be notified thereof and verifies the accuracy of those facts. The Member State consulted must submit its response within a period of three months.

- 32 None of the above derogations have been pleaded by the Greek Government.
- 33 So far as concerns the need to determine the skills of applicants regarding the prevention of risks associated with earthquakes pleaded by the Greek Government to justify its delays in processing the files, that consideration cannot justify either the registration of architects over such lengthy periods or the delay noted in sending the persons concerned requests for the submission of missing documents.
- 34 A quick and effective registration procedure is one of the objectives envisaged by Directive 85/384. Accordingly, the need to register the persons concerned as soon as possible applies to the whole of the procedure for processing of applications, and also requires the persons concerned to be called upon to complete their application by submitting any missing documentary evidence as soon as possible. That obligation is also among those flowing from Article 43 EC, which seeks to eliminate restrictions on the freedom of establishment.
- 35 The Greek Government has not pleaded any ground capable of justifying the delays of its competent authorities in processing the files and has not adduced any evidence to show that those delays were attributable to the fault of the persons concerned.

36 The second complaint pleaded by the Commission is therefore well founded.

Costs

37 Under Article 69(2) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs. Since the Commission has applied for costs and the Hellenic Republic has been largely unsuccessful, it must be ordered to pay the costs.

On those grounds,

THE COURT (First Chamber)

hereby:

- 1. Declares that, by adopting and retaining in force the provisions of Article 3 (1)(c) of Presidential Decree No 107/1993 of 22 March 1993, and by accepting that the Technico Epimelitirio Elladas (Greek Technical Board), with which a person must be registered in order to pursue the profession of architect in Greece, carries out, with significant delays, the processing of the files and the registration of Community nationals holding foreign diplomas which ought to be recognised under 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, the Hellenic Republic has failed to fulfil its obligations under that directive;**
- 2. Orders the Hellenic Republic to pay the costs.**

Signatures.