

*Pleas in law and main arguments*

Medico-technical laboratory, radiology and orthoptic services may not be exercised on an independent basis in Austria. For the exercise of those three professions, an employment relationship is necessary. A member of those professional categories from another Member State, where the exercise of those professions on an independent basis is entirely normal, therefore has no opportunity to carry on his or her profession in Austria as an independent. That national measure therefore undoubtedly constitutes an obstacle to the freedom of establishment and the freedom to provide services.

The Commission finds the Republic of Austria's argument to justify that measure unconvincing. It has not been sufficiently demonstrated that salaried employment relationships in the paramedical sector concerned are in themselves sufficient to ensure, or at least better able to ensure, a higher level of health. The prohibition under Austrian law of the exercise of those three professions on an independent basis constitutes an unjustified restriction and therefore an infringement of the freedom of establishment and the freedom to provide services laid down by Articles 43 and 49 EC.

**Action brought on 25 February 2003 by the Commission of the European Communities against the Italian Republic**

**(Case C-82/03)**

(2003/C 101/41)

An action against the Italian Republic was brought before the Court of Justice of the European Communities on 25 February 2003 by the Commission of the European Communities, represented by Antonio Aresu, acting as Agent.

The applicant claims that the Court should:

- a) find that the Italian Republic, by failing to offer the Commission any genuine cooperation in a case concerning the health and safety of workers, has failed to fulfil its obligations under Article 10 EC, and
- b) order the Italian Republic to pay the costs.

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In 2000 the Commission received a complaint from an economic operator alleging wrongful implementation in Italian law of Council Directive 89/655/EEC<sup>(1)</sup> of 30 November 1989 concerning the minimum safety and health requirements for the use of work equipment by workers at work (second individual Directive within the meaning of Article 16(1) of Directive 89/391/EEC).

Despite being contacted by the Commission on numerous occasions, the Italian authorities have failed to provide any information on the complainant's allegations. That failure to communicate information repeatedly requested by the Commission constitutes a failure to fulfil the obligation, imposed on Member States by Article 10 EC, to offer genuine cooperation to the Community institutions.

<sup>(1)</sup> OJ L 393 of 30.12.1989, p. 13.

**Action brought on 26 February 2003 by the Commission of the European Communities against the Kingdom of Spain**

**(Case C-84/03)**

(2003/C 101/42)

An action against the Kingdom of Spain was brought before the Court of Justice of the European Communities on 26 February 2003 by the Commission of the European Communities, represented by G. Valero Jordana and K. Wiedner, with an address for service in Luxembourg.

The applicant claims that the Court of Justice should:

1. declare that, by failing correctly to incorporate into national law Council Directive 93/36/EEC of 14 June 1993 coordinating procedures for the award of public supply contracts<sup>(1)</sup> and Council Directive 93/37/EEC of 14 June 1993 concerning the coordination of procedures for the award of public works contracts<sup>(2)</sup> and, in particular:
  - by excluding from the scope of Royal Legislative Decree 2/2000 of 16 June approving the revised and codified Public Contracts Law by, specifically,