complex of economic activities seek to ensure. Far from involving a departure from these fundamental rules, the object of the rules relating to the common transport policy is to implement and complement them by means of common action. Consequently the said general rules must be applied insofar as they can achieve these objectives.

4. Under Article 84 (2), sea and air transport, so long as the Council has not decided otherwise, is excluded only from the rules of Title IV of Part Two of the Treaty relating to the common transport policy. It remains, on the same basis as the other modes of transport, subject to the general rules of the Treaty.

5. Since the provisions of Article 48 and of Regulation No 1612/68 are directly applicable in the legal order of every Member State, and Community law has priority over national law, these provisions give rise, on the part of those concerned, to rights which the national authorities must respect and safeguard and as a result of which all contrary provisions of internal law are rendered inapplicable to them.

6. Although Article 48 and Regulation No 1612/68 are directly applicable in the territory of the French Republic, nevertheless the maintenance in these circumstances of the wording of the Code du Travail Maritime gives rise to an ambiguous state of affairs by maintaining, as regards those subject to the law who are concerned, a state of uncertainty as to the possibilities available to them of relying on Community law.

7. The absolute nature of the prohibition on discrimination under Article 48 (2) of the EEC Treaty has the effect of not only allowing in each State equal access to employment to the nationals of other Member States, but also of guaranteeing to the State's own nationals that they shall not suffer the unfavourable consequences which could result from the offer or acceptance by nationals of other Member States of conditions of employment or remuneration less advantageous than those obtaining under the national law. It thus follows from the general character of the prohibition on discrimination in Article 48 and the objective pursued by the abolition of discrimination that discrimination is prohibited even if it constitutes only an obstacle of secondary importance as regards the equality of access to employment and other conditions of work and employment.

In Case 167/73

COMMISSION OF THE EUROPEAN COMMUNITIES, represented by its Legal Adviser, Marc Sohier, acting as agent, with an address for service in Luxembourg at the office of its Legal Adviser Pierre Lamoureux, 4, boulevard Royal,

applicant,

v

FRENCH REPUBLIC, represented by Robert Luc, Ambassador, acting as agent, with an address for service in Luxembourg at the Embassy of the French Republic,

defendant,

Application for a declaration that by not amending the provision of Article 3 (2) of the Code du Travail Maritime dated 13 December 1936 in relation to the nationals of other Member States, the French Republic has not complied with its obligations under the provisions of the EEC Treaty as regards freedom of movement for workers and, in particular, Articles 1, 4 and 7 of Regulation No 1612/68/EEC of the Council of 15 October 1968 on freedom of movement for workers within the Community (OJ L 257, 19. 10. 1968, p. 2),

THE COURT

composed of: R. Lecourt, President, A. M. Donner and M. Sørensen, Presidents of Chambers, R. Monaco, J. Mertens de Wilmars (Rapporteur), P. Pescatore, H. Kutscher, C. Ó Dálaigh, Lord Mackenzie Stuart, Judges,

Advocate-General: G. Reischl
Registrar: A. Van Houtte

gives the following

JUDGMENT

Facts

The facts and procedure may be summarized as follows:

I — Facts and procedure

Article 3 (2) of the French Code du Travail Maritime of 13 December 1926 provides that 'such proportion of the crew of a ship as is laid down by order of the Minister for the Merchant Fleet must be French nationals'.

The Ministerial Order of 21 November 1960 (JORF of 1. 12. 1960, p. 10770), as amended by the Ministerial Order of 12 June 1969 (JORF of 13. 6. 1969, p. 5923) issued in implementation of this provision, reserves, subject to special exemptions, employments on the bridge, in the engine room and in the wireless room on French vessels to persons of French nationality, and general employment on board is limited in the ratio of three French to one non-French.

In the view of the Commission this Article contravenes the provisions of Articles 1, 4 and 7 of Regulation No 1612/68/EEC of the Council of 15 October 1968 (OJ L 257, 19. 10. 1968, p. 2) and at the end of an exchange of correspondence it invited the French Government on 8 October 1971, in accordance with Article 169 of the Treaty, to amend its legislation on the subject to comply with the Community provisions. By letter dated 30 November 1971 the French Government undertook

to lay the necessary draft law to this effect 'before the next parliamentary session'.

Since there was no reply to a second letter dated 18 April 1972 in which a request to remedy the infringement before 1 July 1972 was repeated, the Commission on 15 December 1972 delivered a reasoned opinion under the first paragraph of Article 169 of the Treaty, which opinion was received by the French Government on 29 December 1972, requesting it to take the required measures within a period of 30 days.

On 15 January 1973 the French Government acknowledged receipt of the reasoned opinion and by letter dated 6 February 1973 it stated that a draft law, put befor Parliament on 7 December 1972, has been adopted on a first reading by the National Assembly and passed to the Senate, but that it had not been possible to conclude the process of enactment before the end of the parliamentary session. The French Government undertook 'to do all in its power to ensure that the examination of the draft would be taken up again by the Senate on the opening of the new session'. Since in the Commission's view this undertaking was not honoured, the Commission on 11 September 1973 referred the matter to the Court of Justice.

The application was filed at the Court on 14 September 1973.

Upon hearing the report of the Judge-Rapporteur and the opinion of the Advocate-General, the Court decided to open the oral procedure without any preparatory inquiry.

II — Submissions of the parties

The Commission claims that the Court should:

(a) Adjudge and find that the French Republic has failed to fulfil its obligations under the provisions of the EEC Treaty relating to freedom of movement for workers and in particular Articles 1, 4 and 7 of Regulation (EEC) No 1612/68 of the Council of 15 October 1968 on freedom of movement for workers within the Community in that it has not removed the discriminatory provisions of its Code du Travail Maritime relating to the opportunity for employment in sea transport;

(b) Order the French Republic to pay the costs.

The French Government contends that the Court should:

(a) Declare that the Commission has not established its legal interest;

(b) Alternatively, reject the Commission's claims;

(c) Order the Commission to pay the costs.

III — Pleas and arguments of the parties

According to the *Commission,* the French Government seems to have decided not to pursue the procedure necessary to remove the alleged discrimination.

Moreover, during the parliamentary debates it justified the draft on the grounds of expediency, but demurred at recognizing the soundness of the argument that the general rules of the Treaty on freedom of movement for workers apply equally to transport, including sea transport. There is accordingly an interest of principle in settling the dispute.

A — Article 3 (2) of the French law of 13 December 1926 contravenes Articles 1, 4 and 7 of Regulation No 1612/68 of the Council of 15 October 1968 (OJ L 257, 19. 10. 1968, p. 2) to the extent that it provides, to the detriment of the

nationals of other Member States, for discrimination, the extent of which is left to the discretion of the national administration and which means, at the very least, a potential restriction on access to the employments in question.

B — According to the Commission it is not possible to conclude from the fact that transport is the subject of a special title (Title IV, Articles 74 to 84) that the general rules of the Treaty do not apply here. The very structure of the Treaty implies that its scope extends in all respects to all branches of the economy, to all goods and to all services, in such a way that, whenever provisions or groups of general provisions do not have to be applied to a particular sector, these exceptions are the subject of express provisions. Such is the case with Article 61 (1), which exempts the field of transport from the general rules on freedom to provide services, and with Article 77, which partially limits the application of the rules of competition to transport.

These two exceptions confirm that as regards the rest the general rules apply, for if the contrary were the case they would have been superfluous. As regards freedom of movement for workers and subject to limitations justified on grounds of public policy, the only exception permitted in the application of the provisions relating thereto refers to employment in the public service.

The application of the general rules of the Treaty to transport has moreover been implicitly accepted by the Court of Justice in its judgment of 31 March 1971 (Case 22/70, *Commission v Council,* Rec. 1971, p. 263).

C — Nor can Article 84 of the Treaty be relied on. Article 84 (1) provides that the provisions of Title IV shall apply to transport by rail, road and inland waterway, and Article 84 (2) enables the Council to decide 'whether, to what extent and by what procedure appropriate provisions may be laid down for sea and air transport'. This provision, read as a whole, means that the special rules for transport do not apply to sea and air transport, but it does not follow that the other provisions of the Treaty are inapplicable to them. The contrary argument would impair the principle of legal certainty. It would be necessary, each time an activity had a more or less direct connexion with sea or air transport, to define some criterion to decide whether the activity in question came within the scope of the Treaty or whether it had to be excluded.

D — Two regulations of the Council concerning social security have moreover confirmed the application of the principle of freedom of movement for workers to persons employed by transport undertakings. They are Regulations No 3 of 25 September 1958 concerning social security for migrant workers (Article 13 (b)) (OJ of 16. 12. 1958, p. 561/58) and No 1408/71 on the application of social security schemes to employed persons and their families moving within the Community (Article 13 (b) and 4 (2)) (OJ L 149, 5. 7. 1971, p. 2).

There is thus no doubt that the discriminatory clause of Article 3 (2) of the French law of 13 December 1926 has been incompatible with Regulation No 1612/68 of the Council since the Regulation came into force on 8 November 1968.

E — The Commission notes that a possible objection to the proceedings could be made on the basis of, first, the direct effect of Regulation No 1612/68, which confers on individuals the possibility of vindicating their rights before the national courts and, secondly, the existence of national administrative directions intended to ensure that the law in question is not applied during the period until it is amended by the legislature.

On the first point the Commission points out that in its opinion disregard of Regulation No 1612/68 can give rise to an action under Article 169, whatever

be the scope of this Regulation in the internal legal system and the extent of the rights which it confers on nationals of Member States before national courts. The Court has stressed that the two remedies have different aims and effects (judgment of 17 February 1970, *Commission v Italian Republic,* Case 31/69, Rec. 1970, p. 25).

On the second point the Commission considers that the maintenance in force in the laws of a Member State of provisions which are incompatible with the provisions of the Community rules, constitutes in itself a failure to fulfil Community obligations. Such maintenance, contrary to the obligation expressed in Article 5 of the Treaty, would create in any event a doubt in the mind of citizens and would compel them to initiate judicial proceedings in the national courts, or at least, as appears from a consideration of the Ministerial Order of 21 November 1960, amended by that of 12 June 1969, issued in implementation of the law in question, to request exemption from the prohibition, which in itself would already constitute discrimination.

The main contention in the *French Government's* statement of defence is that the proceedings are otiose and alternatively that the Commission has not sufficiently established its legal interest.

The proceedings are alleged to be otiose because the French Government, far from having given up its legislative plans, is on the contrary intent on fulfilling them, whatever the foreseeable social difficulties. The fact that the alleged default will disappear the date of the promulgation of the future law means that the action by the Commission should be found to have become otiose.

In the event of the Court finding that, notwithstanding the disappearance of the object of the proceedings at the date of the promulgation of the law, such object existed at the date the proceedings were initiated, nevertheless the Commission should be regarded as having no legal interest, since it has not shown that the fulfilment of possible Community obligations had been frustrated.

There had been no discrimination against a national of a Member State and moreover there was not risk of doubt in the mind of the subjects or public services.

In its reply the Commission states that there are in any case grounds of principle in pursuing the proceedings by reason of the legal dispute which exists as to the applicability of the general rules of the Treaty to transport and in particular to sea and air transport.

As regards its legal interest where there is a failure to fulfil the obligations which fall upon Member States, the Commission observes that this interest exists independently of whether those concerned have actually been affected by the failure.

Moreover, an analysis of the effects of the Ministerial Order of 21 November 1960, as amended by that of 12 June 1969, shows that a discriminatory situation actually exists. The 'administrative directions' to which the French Government refers could not indeed have any other object than to require the competent authorities systematically to make exceptions in favour of applicants for employment who are nationals of Member States. Such applicants must however request an exemption and comply with more or less long formalities to which French workers are not subject, and this in itself constitutes discrimination.

A risk of doubt exists because of the fact that the French Government persists in denying that Regulation No 1612/68 of the Council applies to sea transport.

In its rejoinder the *French Government* refers first of all to the arguments which it has already developed in its defence. The Commission had no legal interest because in spite of the terms of the law in dispute there was in fact no discrimination against nationals of other

Member States, since the directions given verbally to the merchant navy authorities required them to treat nationals of the Community in the same way as French. Such nationals did not have to comply with any formalities or suffer any delays to obtain by way of exemption the right to employment. It was sufficient for them, as for any French national, to be in possession of a trade book in respect of which the conditions of issue were the same for them as for French nationals, or to have an offer of employment on a ship.

As regards the interpretation of the Treaty and the obligations on Member States which derive therefrom, the French Government does not, however, agree with the argument of the Commission that the general rules of the Treaty apply to transport except to the extent that particular provisions derogate therefrom.

In the first place it rejects the argument that the fact that Articles 61 and 77 of the Treaty provide expressly that certain rules of the Treaty, in particular those relating to the provision of services (Article 61) and certain of those relating to state aids (Article 177), are not applicable to transport, enables the corollary to be drawn that the other rules of the Treaty do in fact apply to it. These provisions do not enable such a corollary to be drawn, at any rate as regards sea transport, which is expressly declared not to be subject to the Community rules relating to transport, so long as the Council has not decided otherwise.

In the second place the French Government contends that the general system of the Treaty does not allow its rules, and in particular those relating to freedom of movement for workers, to be applied automatically to sea transport.

The Treaty comprises, besides provisions of a quite general character, such as the preliminary Articles and those relating to the institutions, provisions relating to particular objects such as free movement of goods, free movement of persons, services and capital, agriculture and, *inter alia,* transport (Articles 74 to 84). These latter provisions, justified both by the distinctive features of transport (Article 75) and by the fact that in these matters the objectives of the Treaty are to be pursued within the framework of a common policy (Article 74), are 'on an equal footing' with the other provisions of the Treaty, and they make special provision for sea transport. If this latter is also to be subject to a common policy, all the Treaty does is to mention this policy without even sketching its outlines, so that as regards sea transport 'everything is projected in the common policy which the Council has the task of establishing under Article 84 (2)'. In these circumstances the postponement of the establishment of a common policy for sea transport cannot indicate an intention of making such transport subject to the general rules of the Treaty, even provisionally.

The argument of the Commission would moreover lead, according to the defendant, to paradoxical results, for it would lead to denying sea transport, because it is at present excluded from the common policy for transport, the benefit of the exemptions in the Treaty, for example as regards aids, which are intended to adapt the rules of the Treaty to the special requirements of transport and from which transport by land and inland waterways benefits.

Although it is conscious of the need to secure freedom of movement for workers, the French Government considers that this objective should not be pursued at the expense of the rules of the Treaty. The Council could decide that this freedom of movement forms one of the items of the common policy for sea transport as for other transport.

Since this Community route has not been followed, the French Government, which considers such freedom desirable, has taken the initiative of submitting a draft law to its parliament making this amendment, but it has at present been rejected. This initiative does not prevent

it from still being of the opinion that the provisions which should govern sea transport ought to be the subject of a decision of the Council to conform with Article 84 (2) and that the decisions of the Council must be included in a common transport policy, which is required by Article 3 of the Treaty.

The French Government concludes by stating that its position is not, as alleged by the Commission, that no provision of the Treaty is applicable to sea and air transport without a previous decision having been taken by the Council. It is apparent that a large number of the general provisions of the Treaty, including the provisions relating to the institutions, can be applied to sea transport. On the other hand, any application of the rules of substance must take account of the requirements of Articles 3 and 84 (2).

This position is confirmed by the practice of the Council. Regulation No 141 of 26 November 1962 (OJ of 28. 11. 1962, p. 2751/62) has stated that the rules of competition cannot apply to sea transport so long as provisions appropriate to the special needs in this sphere have not been made. In the same way the general programme for the abolition of restrictions on freedom of establishment, adopted by the Council on 18 December 1961, does not include a timetable for sea and air transport. It leaves the task of stating the general programme in the spheres of sea and air transport to the Council, acting unanimously.

Since the Council has not taken a decision extending the scope of Regulation No 1612/68 to sea transport, the French Government submits that the arguments of the Commission should be rejected.

During the course of the oral procedure on 12 February 1974 the parties developed the arguments set out in the written procedure.

The applicant was represented by its agent, Marc Sohier; the defendant was represented by Monsieur Delacharrière, Minister plenipotentiary, and Georges Sidère, Adviser.

The Advocate-General delivered his opinion on 6 March 1974.

Law

1 By an application filed on 14 September 1973, the Commission, under Article 169 of the Treaty establishing the European Economic Community, brought an action before the Court for a declaration that by not repealing, insofar as it affects the nationals of other Member States, the provision of Article 3 (2) of the French Code du Travail Maritime of 13 December 1926 as amended by Order No 58-1358 of 27 December 1958, the French Republic has not complied with its obligations under the provisions of the Treaty relating to freedom of movement for workers and in particular Articles 1, 4 and 7 of Regulation No 1612/68 of the Council of 15 October 1968 (OJ L 257, 19. 10. 1968, p. 2) on freedom of movement for workers within the Community.

2 Under Article 3 (2) of the aforementioned law such proportion of the crew of a ship as is laid down by an order of the Minister of the Merchant Fleet must be of French nationality.

3 By Ministerial Order of 21 November 1960 (OJ of the French Republic of 1 December 1960, p. 10 770) as amended by that of 12 June 1969 (OJ of the French Republic of 13 June 1969, p. 5923) it was decided that, apart from special exemptions granted by the competent local administrative authorities, employment on the bridge and in the engine and wireless rooms on board merchant ships or fishing vessels or pleasure cruisers was reserved to persons of French nationality, and employment generally was so limited in the ratio of three to one.

4 In so far as it applies to nationals of other Member States, Article 3 (2), according to the Commission, is incompatible with Article 48 of the Treaty, under which freedom of movement for workers entails the abolition of any discrimination based on nationality between workers of the Member States as regards employment, remuneration and other conditions of work and employment.

5 The continuance of the provision in question is likewise said to be incompatible with Regulation No 1612/68 and, in particular, with Article 4 thereof under which provisions laid down by law, regulation or administrative action of Member States which restrict by number or percentage the employment of foreign nationals in any undertaking, branch of activity or region, or at a national level, shall not apply to nationals of the other Member States.

6 The Government of the French Republic contends that the Commission has not established a legal interest because, in spite of the continuance of the provision in question, there is no discrimination in its application between French nationals and those of other Member States, taking into account that the directions given verbally to the naval authorities requires that the 'nationals of the Community shall be treated as French nationals', so that these nationals are not 'obliged to comply with any formalities nor to suffer any delay in obtaining the right to employment by way of exemption'.

7 The Government of the French Republic, however, considers that although it exempts the nationals of Member States from the disparity in treatment provided for by the said law, it is not bound to do so by the provisions of the Treaty.

8 It maintains that the rules of the Treaty regarding freedom of movement for workers do not apply to transport and, in any event, not to sea transport so long as the Council has not so decided under Article 84 (2) of the Treaty.

9 It follows (it is said) from Articles 3 (e) and 74 of the Treaty that the rules of the Treaty relating to the complex of economic activities covered by it, and in particular Articles 48 to 51, apply to transport only within the framework of a common policy.

10 It is for the Council alone to decide the implementation of this policy in accordance with the procedure provided for this purpose by Article 75.

11 This is even more so as regards sea transport since it is excluded by reason of Article 84 (2) from the application of Articles 74 to 84 to the Treaty, since Article 84 (2) provides only that the Council may, acting unanimously, decide whether, to what extent and by what procedure appropriate provisions may be laid down for sea and air transport.

12 Finally the special aspects of transport, which Article 75 requires to be taken into account, make it impossible to apply a large number of the provisions of the Treaty relating to economic activities as a whole to transport, and, *a fortiori*, to sea and air transport.

A — Admissibility of the Action

13 The Government of the French Republic challenges the existence of a legal interest on the part of the Commission.

14 This plea may be understood either as aimed at the admissibility of the action or as denying the existence of the alleged default.

15 The Commission, in the exercise of the powers which it has under Articles 155 and 169 of the Treaty, does not have to show the existence of a legal

interest, since, in the general interest of the Community, its function is to ensure that the provisions of the Treaty are applied by the Member States and to note the existence of any failure to fulfil the obligations deriving therefrom, with a view to bringing it to an end.

16 The action is admissible.

B — The interpretation of Article 84 (2) of the Treaty

17 To determine whether, in the sphere of transport, Member States are bound by the obligations provided in Articles 48 to 51 of the Treaty, it is proper to consider the place of Title IV of Part Two of the Treaty, relating to transport, in the general system of the Treaty, and the place of Article 84 (2) within Title IV.

18 Under Article 2 of the Treaty, which is placed at the head of the general principles which govern it, the Community has as its task to promote throughout the Community a harmonious development of economic activities by establishing a common market and progressively approximating the economic policies of Member States.

19 The establishment of the common market thus refers to the whole of the economic activities in the Community.

20 The basic object of Part Two of the Treaty, devoted to foundations of the Community, is to establish the basis of the common market, i.e. free movement of goods (Title I) and free movement of persons, services and capital (Title III).

21 Conceived as being applicable to the whole complex of economic activities, these basic rules can be rendered inapplicable only as a result of express provision in the Treaty.

22 Such exemption is provided, in particular, by Article 38 (2) under which the rules laid down for the establishment of the common market shall apply to agricultural products save as provided in Title II of this part of the Treaty.

23 As regards transport, which is the subject of Title IV of this part, it is proper to enquire, viewing Article 84 (2) in the framework of this Title, whether the provisions of the Title contain a similar exemption.

24 When Article 74 refers to the objectives of the Treaty, it means the provisions of Articles 2 and 3, for the attainment of which the fundamental provisions applicable to the whole complex of economic activity are of prime importance.

25 Far from involving a departure from these fundamental rules, therefore, the object of the rules relating to the common transport policy is to implement and complement them by means of common action.

26 Consequently the said general rules must be applied insofar as they can achieve these objectives.

27 Since transport is basically a service, it has been found necessary to provide a special system for it, taking into account the special aspects of this branch of activity.

28 With this object, a special exemption has been provided by Article 61 (1), under which freedom to provide services in the field of transport 'shall be governed by the provisions of the Title relating to transport', thus confirming that the general rules of the Treaty must be applied insofar as they are not excluded.

29 Article 84 (1) provides that the provisions of the Title relating to transport shall by to transport by rail, road and indland waterway.

30 Article 84 (2) provides that as regards sea transport, the Council may decide whether, to what extent and by what procedure appropriate provisions may be laid down.

31 Far from excluding the application of the Treaty to these matters, it provides only that the special provisions of the Title relating to transport shall not automatically apply to them.

32 Whilst under Article 84 (2), therefore, sea and air transport, so long as the Council has not decided otherwise, is excluded from the rules of Title IV of Part Two of the Treaty relating to the common transport policy, it remains, on the same basis as the other modes of transport, subject to the general rules of the Treaty.

33 It thus follows that the application of Articles 48 to 51 to the sphere of sea transport is not optional but obligatory for Member States.

C — Existence of a default

34 In challenging the legal interest of the Commission the Government of the French Republic has also sought to deny that a default exists in the case in question solely as a result of the maintenance in the national legal system of the law in dispute without taking into consideration the application which is made of it in practice.

35 A correct assessment of the legal position should have led the French authorities to find that since the provisions of Article 48 and of Regulation No 1612/68 are directly applicable in the legal system of every Member State and Community law has priority over national law, these provisions give rise, on the part of those concerned, to rights which the national authorities must respect and safeguard and as a result of which all contrary provisions of internal law are rendered inapplicable to them.

36 In reply to a formal notice under the first paragraph of Article 169 dated 8 October 1971 by the Commission to the French Government, the latter stated in a letter of 30 November 1971 that it had already on several occasions indicated its intention of amending Article 3 (2) of the Code du Travail Maritime.

37 In the same letter the Government declared itself ready to put the necessary draft law before the 1972-1973 parliamentary session.

38 Following the reasoned opinion from the Commission dated 15 December 1972 the French Government stated that it had submitted the draft law in question to Parliament and that it would do all in its power to have it adopted.

39 It appears from the grounds of the draft law submitted to the National Assembly on 7 December 1972 that the Government 'wishes . . . to amend the Code du Travail Maritime in order to abolish the discrimination which exists against nationals of Member States of the Community'.

40 It appears both from the argument before the Court and from the position adopted during the parliamentary proceedings that the present state of affairs is that freedom of movement for workers in the sector in question continues to be considered by the French authorities not as a matter of right but as dependent on their unilateral will.

41 It follows that although the objective legal position is clear, namely, that Article 48 and Regulation No 1612/68 are directly applicable in the territory of the French Republic, nevertheless the maintenance in these circumstances of the wording of the Code du Travail Maritime gives rise to an ambiguous state of affairs by maintaining, as regards those subject to the law who are concerned, a state of uncertainty as to the possibilities available to them of relying on Community law.

42 This uncertainty can only be reinforced by the internal and verbal character of the purely administrative directions to waive the application of the national law.

43 The free movement of persons, and in particular workers, constitutes, as appears both from Article 3 (c) of the Treaty and from the place of Articles 48 to 51 in Part Two of the Treaty, one of the foundations of the Community.

44 According to Article 48 (2) it entails the abolition of any discrimination based on nationality, whatever be its nature or extent, between workers of the Member States as regards employment, remuneration and other conditions of work and employment.

45 The absolute nature of this prohibition, moreover, has the effect of not only allowing in each State equal access to employment to the nationals of other Member States, but also, in accordance with the aim of Article 177 of the Treaty, of guaranteeing to the State's own nationals that they shall not suffer the unfavourable consequences which could result from the offer or acceptance by nationals of other Member States of conditions of employment or remuneration less advantageous than those obtaining under national law, since such acceptance is prohibited.

46 It thus follows from the general character of the prohibition on discrimination in Article 48 and the objective pursued by the abolition of discrimination that discrimination is prohibited even if it constitutes only an obstacle of secondary importance as regards the equality of access to employment and other conditions of work and employment.

47 The uncertainty created by the maintenance unamended of the wording of Article 3 of the Code du Travail Maritime constitutes such an obstacle.

48 It follows that in maintaining unamended, in these circumstances, the provisions of Article 3 (2) of the Code du Travail Maritime as regards the nationals of other Member States, the French Republic has failed to fulfil its obligations under Article 48 of the Treaty and Article 4 of Regulation No 1612/68 of the Council of 15 October 1968.

Costs

49 Under Article 69 (2) of the Rules of Procedure, the unsuccessful party shall be ordered to pay the costs, if a submission has been made to that effect.

50 The French Republic has failed in its pleas;

51 The French Republic must therefore be ordered to pay the costs.

On those grounds,

THE COURT

hereby:

1. **Declares that in maintaining unamended the provisions of Article 3 (2) of the Code du Travail Maritime as regards the nationals of other Member States, the French Republic has failed to fulfil its obligations under Article 48 of the Treaty and Article 4 of Regulation No 1612/68 of the Council of 15 October 1968.**

2. **Orders the French Republic to pay the costs.**

Lecourt Donner Sørensen Monaco Mertens de Wilmars
Pescatore Kutscher Ó Dálaigh Mackenzie Stuart

Delivered in open court in Luxembourg on 4 April 1974.

A. Van Houtte
Registrar

R. Lecourt
President