JUDGMENT OF THE COURT
25 MAY 1982 [1]

Commission of the European Communities v Kingdom of the Netherlands

(Failure of a Member State to fulfil its obligations — Admission to the occupation of road-haulage operator)

Case 100/81

Member States — Obligations — Implementation of directives — Absence — Justification — Not possible
(EEC Treaty, Art. 169)

A Member State may not plead provisions, practices or circumstances existing in its internal legal system in order to justify a failure to comply with obligations resulting from Community directives.

In Case 100/81

COMMISSION OF THE EUROPEAN COMMUNITIES, represented by its Legal Adviser Robert Caspar Fischer, assisted by Auke Haagsma, a member of its Legal Department, acting as Agents, with an address for service in Luxembourg at the office of Oreste Montalto, a member of the Commission's Legal Department, Jean Monnet Building, Kirchberg,

applicant,

v

THE KINGDOM OF THE NETHERLANDS, represented by its Agent, Adriaan Bos, Assistant Legal Adviser to the Ministry for Foreign Affairs, with an address for service in Luxembourg at the Netherlands Embassy,

defendant,

1 — Language of the Case: Dutch

APPLICATION for a declaration that, by not introducing within the period prescribed the measures needed to comply with Council Directive No 74/561/EEC of 12 November 1974 on admission to the occupation of roadhaulage operator in national and international transport operations (Official Journal 1974, L 308, p. 18) the Kingdom of the Netherlands has failed to fulfil its obligations under the EEC Treaty,

THE COURT,

composed of: J. Mertens de Wilmars, President, G. Bosco and A. Touffait (Presidents of Chambers), Lord Mackenzie Stuart, A. O'Keeffe, T. Koopmans and U. Everling, Judges,

Advocate General: F. Capotorti
Registrar: P. Heim

gives the following

JUDGMENT

Facts and Issues

The facts of the case, the course of the procedure and the conclusions, submissions and arguments of the parties may be summarized as follows:

I — Facts and written procedure

Article 7 of Council Directive No 74/561/EEC of 12 November 1974 on admission to the occupation of road-haulage operator in national and international transport operations provides that Member States, after consulting the Commission and before 1 January 1977, are to adopt the measures necessary for implementation of the directive.

By letter from its Permanent Representation of 22 October 1976, the Netherlands sent to the Commission, for the purpose of consultation in accordance with Article 7 of the directive, the text of a draft law

implementing the directive. In reply to that letter, the Commission sent the Netherlands Government on 16 March 1977 a recommendation containing certain observations on the draft.

Subsequently, by letter of 7 June 1979, the Commission informed the Netherlands, in accordance with the first paragraph of Article 169 of the Treaty, that it had failed to fulfil its obligation to implement Article 7 of the directive and invited the Netherlands Government to submit its observations within a period of two months.

By letter from its Permanent Representation of 22 October 1979, the Netherlands pointed out to the Commission in particular that, the judgments delivered by the Court in Cases 145/78 and 146/78 *(Augustijn and Wattenberg,* [1976] ECR 1025 and 1041) obliged it to modify the draft law amending the Wet Autovervoer Goederen [Law on the carriage of goods by motor-vehicle] which had already been submitted to the States General and which was intended in particular to implement the directive and that therefore the said amending law and also the necessary amendment to the Uitvoeringsbesluit Autovervoer Goederen [Implementing order relating to the carriage of goods by motor-vehicle] (hereinafter referred to as "the Implementing Order") would enter into force no earlier than the middle of the following year (that is to say 1980).

By letter of 15 April 1980 the Commission then sent to the Netherlands, in accordance with the first paragraph of Article 169 of the Treaty, a reasoned opinion in which it stated that, by not taking the measures necessary to implement the directive in question, the Netherlands had failed to fulfil its obligations under the Treaty and invited the Netherlands to comply with the opinion within a period of two months.

In its reply to the reasoned opinion, contained in a letter of 24 June 1980 from its Permanent Representation, the Netherlands Government referred to its above-mentioned letter of 22 October 1979 and stated that still more time would be needed for preparation of the draft law amending the law relating to the carriage of goods by motor-vehicle.

No further information has been received by the Commission.

The present application, dated 23 April 1981, was received at the Court Registry on 24 April 1981. By letter of 9 September 1981, received at the Court Registry on 11 September 1981, the Netherlands Government waived its right to submit a rejoinder.

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

II — Conclusions of the parties

The *Commission* claims that the Court should:

Declare that by not adopting within the prescribed period the measures needed for the implementation of Council Directive No 64/561/EEC of 12 November 1974, the Kingdom of the Netherlands has failed to fulfil one of its obligations under the Treaty;

Order the Kingdom of the Netherlands to pay the costs.

The Kingdom of the Netherlands has not stated its conclusions and leaves the matter to the Court.

III — Submissions and arguments of the parties

In its application the *Commission* states that pursuant to Article 189 of the Treaty a directive is binding, as to the result to be achieved, on every Member State even though it leaves to the national authorities the choice of form and methods. That binding character places the Member States under an obligation to observe the time-limits prescribed in the directives. An act or omission may constitute a failure by a Member State to fulfil an obligation under the Treaty, regardless of the State body responsible for that failure. A Member State may not plead provisions, practices or circumstances existing in its internal legal system in order to justify a failure to comply with obligations and time-limits resulting from Community directives.

Those principles are confirmed in the case-law of the Court (Case 52/75 [1976] ECR 277; Case 10/76 [1976] ECR 1359; Case 163/78 [1979] ECR 771; Case 42/80 [1980] ECR 3635 and Case 43/80 [1980] ECR 3643 — *Commission* v *Italy* in all cases).

The Netherlands Government does not deny that Directive No 74/561 was not totally implemented before 1 January 1977, as required by Article 7 thereof. It draws attention to the fact that Article 3 of the directive requries measures to be adopted concerning (a) good repute (b) appropriate financial standing, (c) occupational skills. It is clear from Article 7 (1) that the directive attaches particular importance to the implementation of national measures concerning occupational skills.

It appears from the letter of 24 June 1980 from the Netherlands Permanent Representation to the Commission that the requirements as to the occupational skills and financial standing of haulage operators have been satisfied for quite some time. Thus, since 1954, by virtue of the law relating to the carriage of goods by motor-vehicle referred to above, examinations are organized for the award of a certificate qualifying the holder for admission to the occupation of road-haulage operator. The Netherlands Government refers in that regard to Article 128 of the Implementing Order, to Order No A-2/087231 of the Ministry of Transport, Water Control and Construction of 16 March 1956 and to the examination conditions for the award of the occupational certificate. As regards the condition relating to financial standing, reference is made to Article 127 of the Implementing Order.

The only matter remaining to be dealt with is the condition relating to the good repute of road-haulage operators. In that regard, the draft law bringing the law relating to the carriage of goods by motor-vehicle into line with the directive in that respect was adopted by the First Chamber of the States General on 7 April 1981, and is to be published shortly in the Staatsblad [State Gazette]. It is due to enter into force at the same time as the necessary amendments to the Implementing Order relating to the carriage of goods, based on the law relating to the carriage of goods.

The Netherlands Government also states that by reason of the content of Directives Nos 74/551 (carriage of goods) and 74/562 (passenger transport), their incorporation into national legislation should be synchronized to the maximum extent possible, it being desirable moreover that the date of entry

into force of the two enactments should coincide. Furthermore, the formal procedures and the procedures of consultation with the trade organizations, which had to be observed in the case of both directives, had given rise to difficulties and inevitable delays.

The *Commission* states in reply that there is no need for it to comment on the clarifications given by the Netherlands Government regarding the partial implementation of the directive in question. The question whether or not the measures referred to in the defence conform with the relevant provisions of the directives is of little importance to the result of the application once it has been established — as is the case — that the directive has not been completely implemented. The same applies, *mutatis mutandis,* to comments on the draft law which is to be published shortly in the Staatsblad.

IV — Oral procedure

The parties presented oral argument at the sitting on 2 March 1982.

The Advocate General delivered his opinion at the sitting on 31 March 1982.

Decision

1 By application received at the Court Registry on 24 April 1981 the Commission brought an action under Article 169 of the EEC Treaty for a declaration that by not adopting within the prescribed period the provisions necessary to comply with Council Directive No 74/561/EEC of 12 November 1974 on admission to the occupation of road-haulage operator in national and international transport operations (Official Journal 1974, L 308, p. 18) the Kingdom of the Netherlands had failed to fulfil its obligations under the Treaty.

2 Pursuant to Article 7 of Council Directive No 74/561/EEC, the Member States were required to adopt the measures needed in order to conform with that directive within a period which expired on 1 January 1977.

3 The Netherlands Government does not deny that it has not fully complied with that obligation. It claims on the other hand that the conditions required by the Community rules regarding the occupational skills and financial standing of the owners of transport undertakings have been satisfied in the Netherlands for a considerable time. The only point remaining to be dealt with is the condition regarding the good repute of haulage operators. In that respect, the delay to which attention has been drawn may be accounted for

by the obligation created by the judgments delivered by the Court on 22 March 1979 in Cases 145 and 146/78 *(Augustijn* and *Wattenberg* [1979] ECR 1025 and 1041), as a result of which the draft law already adopted by the First Chamber of the States General must be amended so that it conforms with all the obligations imposed by the directive in question.

4 These circumstances cannot expunge the failure to fulfil its obligations, with which the Kingdom of the Netherlands is charged. According to well-established case-law, a Member State may not plead provisions, practices or circumstances existing in its internal legal system in order to justify a failure to comply with obligations resulting from Community directives.

5 It must therefore be declared that by not adopting within the prescribed period the provisions needed in order to comply with Council Directive No 74/561 of 12 November 1974, the Kingdom of the Netherlands has failed to fulfil one of its obligations under the Treaty.

Costs

6 Under Article 69 (2) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs, if they have been asked for in the successful party's pleading.

7 Since the defendant has failed in its submissions, it must be ordered to pay the costs.

On those grounds,

THE COURT

hereby:

1. **Declares that by not adopting within the prescribed period the provisions needed in order to comply with Council Directive No 74/561 of 12 November 1974 on admission to the occupation of**

road-haulage operator in national and international transport operations (Official Journal 1974, L 308, p. 18), the Kingdom of the Netherlands has failed to fulfil one of its obligations under the Treaty;

2. Orders the defendant to pay the costs.

Mertens de Wilmars Bosco Touffait

Mackenzie Stuart O'Keeffe Koopmans Everling

Delivered in open court in Luxembourg on 25 May 1982.

For the Registrar

H. A. Rühl

Principal Administrator

J. Mertens de Wilmars

President

OPINION OF MR ADVOCATE GENERAL CAPOTORTI

(see Case 96/81, p. 1807)