JUDGMENT OF THE COURT OF 6 JUNE 1978 [1]

Commission of the European Communities v Italian Republic

"Slaughter of animals"

Case 147/77

In Case 147/77

COMMISSION OF THE EUROPEAN COMMUNITIES, represented by its Legal Adviser, Cesare Maestripieri, acting as Agent, with an address for service in Luxembourg at the office of Mario Cervino, Jean Monnet Building, Kirchberg,

applicant,

v

ITALIAN REPUBLIC, represented by its Ambassador, Adolfo Maresca, acting as Agent, assisted by the Vice-Avvocato dello Stato (Deputy State Advocate), Ivo Mario Braguglia, with an address for service in Luxembourg at the Italian Embassy,

defendant,

APPLICATION for a declaration that the Italian Republic has failed to fulfil its obligations under Article 5 of the EEC Treaty and the Council Directive of 18 November 1974 on stunning of animals before slaughter (Official Journal L 316 of 26 November 1974, p. 10),

THE COURT

composed of: H. Kutscher, President, M. Sørensen and G. Bosco (Presidents of Chambers), A. M. Donner, J. Mertens de Wilmars, P. Pescatore, Lord Mackenzie Stuart, A. O'Keeffe and A. Touffait, Judges,

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

gives the present

1 — Language of the Case: Italian.

JUDGMENT

Facts and Issues

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

I — Summary of facts and procedure

On 18 November 1974 the Council of the European Communities, with the double object of avoiding disparities in the national legislation in the field of protection of animals of such a nature as to affect the functioning of the Common Market, and on the same occasion of preventing all forms of cruelty to animals, adopted Directive No 75/577/EEC on stunning of animals before slaughter.

Article 5 of the said directive provides:

"The Member States shall, not later than 1 July 1975, bring into force the laws, regulations and administrative provisions necessary to comply with this directive and shall immediately inform the Commission thereof."

After an exchange of correspondence between the Directorate General of the Commission for Agriculture and the Italian authorities the Commission on 15 December 1976 informed the Italian Minister for Foreign Affairs that it was initiating the procedure laid down in Article 169 for failure to apply the directive. After an extension of one month requested and obtained by the Italian Government to present its observations, the letter was followed by a reasoned opinion sent by the Commission on 5 May 1977. The reasoned opinion invited the Italian Republic to take the necessary measures within one month. A new extension was granted on 16 June 1977 until 6 July 1977. On 20 September 1977 the Permanent Representation of Italy with the Communities brought to the notice of the Commission "a preliminary draft law relating to the incorporation into the Italian legal system of the whole of the provisions of Council Directive No 74/577/EEC on stunning of animals before slaughter". The said draft was submitted on 20 July 1977 for the approval of the Italian Senate.

As matters remained in this state, on 29 November 1977 the Commission lodged an application with the Court.

The written procedure followed the normal course. The Court, on hearing the report of the Judge-Rapporteur and the views of the Advocate General, decided to open the oral procedure without any preparatory inquiry.

II — Conclusions of the parties

The *Commission* claimed that the Court should:

"(a) declare that the Italian Republic has failed to fulfil its obligations under Article 5 of the EEC Treaty and the Council Directive of 18 November 1974 on stunning of animals before slaughter;

(b) Order the Italian Republic to pay the costs."

The Italian Government did not present any formal conclusions but expressed the hope that the steps which were about to be taken would deprive the present action of its purpose.

III — Summary of the submissions and arguments of the parties put forward during the written procedure

The *Commission* recalls the obligations flowing from Article 5 of the Treaty for Member States; it emphasizes that, in pursuance of the first indent of Article 155, it had on serveral occasions asked for information from the Italian Government but had not received it.

The Commission stresses the mandatory nature of directives under Article 189 of the Treaty and the case-law of the Court (judgments of 26 June 1976 in Case 52/75 *Commission* v *Italy* [1976] ECR 277 and of 22 September 1976 in Case 10/76 *Commission* v *Italy* [1976] ECR 1359).

To this day the Italian Republic has not yet adopted the measures necessary to comply with the directive of 18 November 1974:

— The reference made by the Italian authorities in the course of the discussions to Royal Decree No 3298 of 20 December 1928 (Offical Journal of the Kingdom of Italy No 36 of 12 February 1929) is insufficient as it does not require observance either of the exclusive nature of the stunning process, which may be effected only by a mechanically-operated instrument, electricity or gas, or of the necessity to put the animal into a state of insensibility which lasts until it is slaughtered; the approval by the Italian Government of a draft law at present before the Italian Parliament moreover recognizes that the former provision was insufficient.

— The draft law in question, which has not yet been passed, will not permit the matter to be put in order in the near future; moreover Article 3 thereof does not put faithfully into force Article 3 of the directive as it allows for the possibility of derogative provisions.

The *Italian Government* points out that the purposes of the directive in question, both those of an economic nature referred to in the first recital in the preamble, and that relating to the protection of animals, referred to by the second recital, are to all intents and purposes attained by the application of Article 9 of Royal Decree No 3298 of 20 December 1928 (Official Journal of the Kingdom of Italy No 36 of 12 February 1929). The charge made against Italy of failing to comply with its obligations therefore appears to be more formal than real; its failure could in no sence affect the working of the Common Market nor does it necessarily imply cruel treatment for animals.

Nevertheless, so as to complete the application of the directive and, above all, for the purposes of legal certainty, the Italian Government has prepared draft Law No 840, which was presented to the Senate of the Republic on 20 July 1977.

The Italian Government hopes that approval of the draft law will be forthcoming as soon as possible so that it may be considered that the present action has lost its purpose.

The *Commission*, in its reply, contents itself with recalling that:

— The defendant does not deny that it has not applied the directive;

— The necessity for Community legislation results from a study carried out on the Commission's behalf by Professor G. von Mickwitz and T. M. Leach ("Darstellung der zur Betäubung vor dem Schlachten zur Zeit gebräuchlichen Methoden und ihre Beurteilung" — an account of the methods used for stunning before slaughter at the present time and comments on them) which

points out the frequently horrible conditions in which animals are still today slaughtered in Community countries;

— Directive No 75/577/EEC represents a first step and will not be the last; it is possible that the Community may accede to the draft convention worked out in this sphere by the Council of Europe;

— Public opinion in the Community is interested in the directive in question and will react if its provisions are not observed ("Compassion in World Farming" has written to complain of infringements which have taken place in another Member State and the Balfour undertakings in force in the United Kingdom since 1957 at one time led to a prohibition on export of animals to States which did not promise to observe in particular the obligation to stun animals before slaughter;

— The Commission hopes that the Italian Parliament may approve the draft law submitted to it by the Government during the course of the present proceedings thus making it pointless to pursue the action.

In its rejoinder the *Italian Government* repeats the arguments put forward in its defence and stresses the purely formal nature of the shortcoming with which it is charged. The Royal Decree of 1928 does not prohibit stunning of animals before slaughter although it does not require it.

Legislative delays due to the Government crisis have not so far permitted the adoption of draft Law No 840; a suspension of the present proceedings and an adjournment of the oral procedure until the end of June or July will make it possible to dispose of the present action after the said draft has been approved by Parliament.

IV — Oral procedure

The parties appeared at the hearing on 10 May 1978.

The *applicant* pursued the line of argument already put forward at the time of the written procedure and stressed the following points:

— The Royal Decree of 1928 does not prohibit but neither does it require the stunning of animals before slaughter; the purpose of the directive is to require it.

— A report of an inquiry by Professor von Mickwitz and Counsellor Leach (lodged during the hearing) proves the necessity of Community intervention in view of the horrible methods used in some slaughterhouses in the Community.

— The Commission had chosen for the directive a special and sufficient legal basis (Article 43) to which the Council thought it right to add a general legal basis (Article 100) which requires unanimity of the Member States.

— The present case illustrates the difficulties met with by the Commission in supervising the application of directives if Member States do not collaborate in a more active manner in keeping it informed.

Finally the Commission expresses the wish that the operative part of judgments given by the Court in pursuance of Article 169 with regard to failure to comply with directives should be harmonized.

The *defendant* put forward a document reproducing the decree of the President of the Italian Republic of 10 August 1972 approving a regulation making mandatory the stunning before slaughter of poultry, rabbits and game. The defendant alleged that this document proves that in the context of

the Royal Decree of 1928 stunning might be made mandatory. By reason of the government crisis it has not hitherto been possible to approve a parallel draft law with regard to the species of animals referred to in the directive in question.

The defendant, in reply to a question put by the Court, stated that it was not asking for the application to be dismissed.

The Advocate General delivered his opinion at the hearing on 11 May 1978.

Decision

1 In pursuance of the second paragraph of Article 169 of the EEC Treaty the Commission lodged at the Court Registry on 6 December 1977 an application for a declaration that the Italian Republic, by not adopting within the prescribed period the laws, regulations and administrative provisions necessary to comply with the requirements of Council Directive No 74/577/EEC of 18 November 1974 (Official Journal L 316, p. 19) on stunning of animals before slaughter, has failed to fulfil its obligations under Article 5 of the Treaty and under the aforementioned directive.

2 The Council, in examining the national provisions governing the protection of animals, noted that they presented disparities of such a nature as to affect directly the functioning of the Common Market since the costs arising from such requirements were variable from one Member State to another.

3 Furthermore, it appeared to the Council that the Community should also take action to avoid in general all forms of cruelty to animals and it appeared desirable, as a first step, that such action should consist in laying down conditions such as to avoid all unnecessary suffering on the part of animals when being slaughtered.

4 For the above reasons the aim of the directive is to generalize the practice of stunning animals by the use of a mechanically-operated instrument, electricity or gas anaesthesia and it requires the Member States to put such provisions into force by 1 July 1975 at the latest.

5 Before delivering on 5 May 1977 the reasoned opinion provided for by Article 169 of the Treaty, the Commission, in pursuance of the first indent of Article 155 of the Treaty, on several occasions, and in particular on 12 January, 31 March, 2 November and 15 December 1976, invited the Italian Government to notify it of the facts and provisions regarding the incorporation of Community standards into the Italian legal system.

6 The Italian Government, whilst not claiming that the Commission's application is unfounded, has stated that the purposes of Directive No 74/577/EEC, both those of an economic nature and those having as their aim the protection of animals, could be realized by the application of Article 9 of Royal Decree No 3298 of 20 December 1928 (Official Journal of the Kingdom of Italy No 36 of 12 February 1929) adopting procedures which make it possible to produce the death of animals in the most rapid possible manner.

7 However, in order to complete the processes employed and to make them comply with the provisions of Directive No 74/577/EEC, the Italian Government has presented to the Senate of the Republic on 20 July 1977 a draft Law, No 840, which has not yet become the law of the State.

8 It follows that by not having brought into force within the prescribed period the provisions necessary to comply with Directive No 74/577/EEC on stunning of animals before slaughter the Italian Republic has failed to fulfil an obligation under the Treaty.

Costs

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

10 The defendant has failed in its submissions.

11 It must therefore be ordered to pay the costs.

On those grounds,

THE COURT

hereby:

1. **Declares that by not having brought into force within the prescribed period the laws, regulations and administrative provisions necessary to comply with the provisions of Council Directive No 74/577 of 18 November 1974 on stunning of animals before slaughter the Italian Republic has failed to fulfil its obligations under the Treaty;**

2. **Orders the defendant to pay the costs.**

Kutscher Sørensen Bosco Donner Mertens de Wilmars

Pescatore Mackenzie Stuart O'Keeffe Touffait

Delivered in open court in Luxembourg on 6 June 1978.

A. Van Houtte
Registrar

H. Kutscher
President

OPINION OF MR ADVOCATE GENERAL REISCHL DELIVERED ON 11 MAY 1978 [1]

Mr President,
Members of the Court,

In Council Directive No 74/577/EEC of 18 November 1974 on stunning of animals before slaughter (Official Journal L 316 of 26 November 1974, p. 10) the Council provided that: "For the slaughter of animals belonging to the following species: bovine animals, swine, sheep, goats and solipeds, Member States shall ensure that suitable measures are taken to induce death as rapidly as possible after stunning, in accordance with appropriate procedures". The directive lays down details as to the permissible means of

1 — Translated from the German