Case 101/84

Commission of the European Communities
v
Italian Republic

'Failure of a Member State to fulfil its obligations — Statistical returns in respect of carriage of goods by road'

Summary

Member States — Obligations — Implementation of directives — Failure to fulfil obligations — Justification — Force majeure *— Conditions*
(EEC Treaty, Art. 169)

Although a Member State which has encountered momentarily insurmountable difficulties may plead *force majeure* to justify its failure to comply with its obligations imposed by a Community directive, this applies only to the period needed by an administration showing a normal degree of diligence to overcome those difficulties.

OPINION OF MR ADVOCATE GENERAL DARMON
delivered on 21 May 1985 *

Mr President,
Members of the Court,

1. The European Economic Community is gradually developing a common transport policy pursuant to the provisions of Article 74 et seq. of the EEC Treaty. To do so it is necessary that it should be able to assess precisely the volume of transport in the Community. According to Article 213 of the Treaty, the Commission may, within the limits and under conditions laid down by the Council, collect all requisite information. It was for that purpose that Council Directive No 78/546 of 12 June 1978 was adopted, 'on statistical returns in respect of

* Translated from the French.

carriage of goods by road, as part of regional statistics', so that, as its first recital states, there might be 'a better knowledge of the scale and development of the carriage of goods by road by means of vehicles registered in the Community'.

That directive imposed the following obligations on Member States:

(1) The compilation in model tables and forwarding of annual statistical data on the carriage of goods by vehicles registered in a Member State on the territory of that State (national transport) and between that State and another Member State or a non-member country (international transport) (Article 3).

(2) The forwarding each year before the end of the year following the reference year and beginning in 1979 of tables drawn up in accordance with Article 3 (Article 5).

(3) The forwarding to the Commission of a detailed report on the methods used in compiling the data on or before the date on which the first results are forwarded;

The necessary steps must be taken to obtain sufficient results regarding the total tonnage carried in national and international transport;

Information must be forwarded to the Commission each year on the non-response rate, the degree of accuracy of the results and the method used in calculating the figures (Article 6).

(4) Article 10 (1) further provides:

'Member States shall take the measures necessary to comply with this directive not later than 1 January 1979.'

2. The Italian Republic stands accused of having failed to fulfil its obligations under the aforesaid directive. The Commission contends that it failed to compile the statistics of the carriage of goods by road as provided for in the directive.

The Commission states that

(i) since 1979 the Italian Government has not forwarded any data on national transport; and

(ii) has supplied only incomplete data for 1979 and 1980 as regards international transport.

Italy pleads that the data processing centre of its Ministry of Transport was attacked and the records and data already stored, which are the basis for obtaining the necessary samples for the statistical compilations, were destroyed. It was therefore necessary to restore those archives. Italy states that, as far as national transport for hire or reward is concerned, that task has been entrusted to a specialist undertaking but it is still necessary to correct the information gathered, which is taking longer than expected.

It appears from questions put to the Italian Government during the written procedure that:

(i) the data relating to international transport for hire or reward was to be available by the end of March 1985;

(ii) as far as international transport on own account is concerned, it is still looking into the method to be applied to the data collected, but there are still 'major difficulties';

(iii) The data relating to national transport on own account and for hire and

reward still require very substantial corrections and cannot be forwarded before the end of 1985.

Italy maintains that that state of affairs is due to *force majeure* and in particular to the 'practical difficulties' arising from it.

In a letter dated 8 June 1982 addressed to the Italian Minister for Foreign Affairs the Commission expressly recognized that the bomb attack was a typical event of *force majeure*. The argument it puts to the Court is that the failure by the Italian Government is due not only to the undeniable difficulties arising from the attack but also to the 'conduct of a public administration which, following an event which was indeed unforeseen and unforeseeable, has not shown that it was able to remedy the situation by exercising the normal degree of diligence which an administration must show in all circumstances' and there is no reason why the alleged difficulties should still subsist five years after the attack. It states that in 1979 the Italian Minister for Transport gave an assurance that the first return of national transport statistics would be made from January 1980, but in spite of the assurances given none of the announced dates has been observed and in 1981 it was also pleaded by way of justification that the computer centre was overloaded and that there was not enough staff.

3. Objectively speaking, the failure to fulfil its obligations with which the defendant State is accused is not denied. It is nevertheless common ground that at the date of the hearing it had still not satisfied its obligations under the directive.

The Treaty itself states that, as regards the implementation of Community directives, Member States have an obligation, not to adopt particular means, but to achieve a particular result.

The first paragraph of Article 5 of the Treaty states:

'Member States shall take all appropriate measures, whether general or particular, to ensure fulfilment of the obligations arising out of this Treaty or resulting from actions taken by the institutions of the Community. They shall facilitate the achievement of the Community's tasks.'

The third paragraph of Article 189 further provides:

'A directive shall be binding, as to the result to be achieved, upon each Member State to which it is addressed, but shall leave to the national authorities the choice of form and methods.'

Article 10 of the directive recalls the nature of that obligation and also fixes the date by which it must be fulfilled.

A person under an obligation to achieve a particular result must, in the event of its non-fulfilment, prove that it is and *remains* due to an unforeseeable and insurmountable event.

No one would deny that the destruction of statistical data records is such an event and constitutes *force majeure*. The Italian Ministry of transport informed the competent Community departments of the event in a letter dated 18 January 1979. The attack therefore took place between the end of 1978 and the beginning of 1979. In the period which immediately followed its occurrence the Italian Republic could not be required to fulfil its obligation. Therefore the Commission, exercising its discretion, allowed Italy a period of three years before initiating the procedure laid down in Article 169 of the Treaty for establishing a Member State's failure to fulfil its obligations.

It was justified in doing so. The occurrence of the bomb attack, which excused Italy

from fulfilling its obligation at the actual time when the directive centered into force, could not release it for good from its obligation or give it the power to decide in a discretionary way when the directive should be implemented.

On the question of the importance of observing such time-limits the Court has held that:

'The correct application of a directive is particularly important since the implementing measures are left to the discretion of the Member State and would be ineffective if the desired aims are not achieved within the prescribed time-limits. Although the provisions of a directive are no less binding on the Member State to which they are addressed than the provisions of any other rule of Community law, such an effect attaches *a fortiori* to the provisions relating to the periods allowed for implementing the measures prescribed . . . ' (Case 52/75, *Commission* v *Italy*, [1976] ECR 277, paragraph 10 at p. 284).

The question which arises is therefore whether the Italian Government which, as I have said, was unable to comply immediately with the time-limits laid down in the directive because of the bomb attack, may still, six years after its occurrence, rely on that event before this Court to justify its continued failure to fulfil its obligation. I do not think so. An impediment, however serious it may be, cannot be relied upon indefinitely. In any event, after a certain period, this can be done only by the appropriate means, as defined by the Court. The Court has in fact held that:

'If the period allowed for the implementation of a directive proves to be too short the only means of action compatible with Community law available to the Member State concerned consists in taking the appropriate initiatives within the Community in order to obtain the necessary extension of the period by the competent Community institution.' (Case 52/75, cited above, paragraph 12 at p. 284).

Such a step would have allowed this Court to determine whether or not there was still a diriment impediment arising from the bomb attack. There is no shortage of cases in which Council directives have extended, at the request of a Member State, the periods originally laid down for the implementation of a directive.

The Italian Government does not claim to have made any such request. Since it has not done so, it must be regarded as having failed to fulfil its obligations under the aforesaid directive.

4. My opinion is therefore that the Court should declare that:

By failing to compile statistical returns in respect of the carriage of goods by road in accordance with the rules laid down in Council Directive No 78/546, the Italian Republic has failed to fulfil its obligations under that directive;

The Italian Republic must be ordered to pay the costs.