JUDGMENT OF THE COURT
17 June 1987 *

In Case 154/85

Commission of the European Communities, represented by its Legal Adviser, Antonio Abate, acting as Agent, with an address for service in Luxembourg at the office of Georges Kremlis, a member of its Legal Department, Jean Monnet Building, Kirchberg,

applicant,

v

Italian Republic, represented by Luigi Ferrari Bravo, Head of the Department for Contentious Diplomatic Affairs, acting as Agent, assisted by O. Fiumara, Avvocato dello Stato, 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 30 of the EEC Treaty with regard to parallel imports of motor vehicles from other Member States,

THE COURT

composed of: Lord Mackenzie Stuart, President, Y. Galmot and C. Kakouris, Presidents of Chambers, G. Bosco, T. Koopmans, U. Everling, R. Joliet, J. C. Moitinho de Almeida and G. C. Rodríguez Iglesias, Judges,

Advocate General: M. Darmon
Registrar: B. Pastor, Administrator

having regard to the Report for the Hearing and further to the hearing on 17 February 1987,

* Language of the Case: Italian.

after hearing the Opinion of the Advocate General delivered at the sitting on 31 March 1987,

gives the following

Judgment

1 By an application lodged at the Court Registry on 22 May 1985, the Commission of the European Communities brought an action before the Court under Article 169 of the EEC Treaty for a declaration that, by hindering, through the rules concerning the registration of imported vehicles, parallel imports of motor vehicles from other Member States, the Italian Republic has failed to fulfil its obligations under Article 30 of the Treaty.

2 The national rules at issue in this action are contained in circulars issued by the Italian Minister for Transport, namely:

(i) Circular No 66/84 of 19 March 1984 and Circular No 125/84 of 11 June 1984 which came into force on 1 July 1984 and amended Circular No 104/83 of 3 May 1983;

(ii) Circular No 22/85 of 15 February 1985 which came into effect on 1 March 1985, remained in force until 21 June 1985 and partially repealed and replaced the preceding circulars.

3 Reference is made to the Report for the Hearing for the course of the procedure and the submissions and arguments of the parties, which are mentioned or discussed hereinafter only in so far as is necessary for the reasoning of the Court.

4 The Italian Government contends, by way of a preliminary objection, that it has repealed the contested rules and that therefore there is no longer any need to rule on the Commission's application.

5 It contends that following the interim order of the President of the Court dated 7 June 1985, it issued Circular No 105 of 21 June 1985 suspending the contested circulars on a temporary basis and until new rules were adopted, thereby bringing Circular No 104/83 back into effect. Furthermore, it indicates that the new rules concerned were adopted on 28 August 1985 in Circular No 133/85 of the Italian Minister for Transport, which definitively repealed the circulars challenged by the Commission.

6 It must be emphasized, however, that according to settled case-law, repeated *inter alia* in the judgment of 7 February 1973 (Case 39/72 *Commission* v *Italy* [1973] ECR 111, at p. 112), the object of an action under Article 169 is established by the Commission's reasoned opinion, and even when the default has been remedied after the time-limit prescribed by paragraph 2 of the same article, pursuit of the action still has an object. That object may consist in particular in establishing the basis of the liability that a Member State could incur towards those who acquire rights as a result of its default.

7 The Italian Government's objection cannot therefore be upheld.

8 With regard to the substance of the case, it is evident that the Italian rules concerned made the registration of imported vehicles subject to conditions which differed according to whether the vehicle concerned was new (that is to say, not yet registered) or had already been registered in the exporting country.

9 With regard to new vehicles, Circular No 22/85 of 15 February 1985 required not only the production of a certificate of origin, already required by Circular No 104/83, but also a technical certificate when the information needed to draw up the authorization to put the car on the road was not contained in the certificate of origin. The technical certificate was to contain certain information indicating, in particular, the vehicle type and chassis number. The certificate of origin and the technical certificate must be supplied by the manufacturer of the vehicle or, in the case of foreign makes, by the manufacturer's legal representative in Italy, at a 'reasonable cost' and 'within 40 working days of the application therefor'.

10 With regard to vehicles already registered in the exporting country, Circulars Nos 66 and 125/84 required production either of the certificate of origin required by Circular No 104/83, but only in respect of new vehicles, or of a new document which replaced the certificate of conformity and the registration book previously required by Circular No 104/83 and which was required to indicate all the specifications of the vehicle. That new document also had to be certified by the Italian consular authorities in the exporting Member State and had to be a single and individual document. Finally, the time-limit for carrying out technical tests, previously 30 days, was increased to 60 days.

11 It is true that Circular No 22/85 of 15 February 1985 abolished the requirement to produce a single document and also abolished the certification requirement. It none the less continued to make registration of vehicles already registered in the exporting country subject to production not merely of the registration book previously required by Circular No 104/83 but also of a certificate of origin, in principle required only for new vehicles, and a technical certificate indicating the characteristics of the vehicle.

12 It is common ground that Circulars Nos 66 and 125/84 and 22/85, which followed Circular No 104/83 of 3 May 1983, made the registration of imported vehicles more complicated, longer and more costly. They were therefore likely to hinder intra-Community trade in motor vehicles and constituted measures having an effect equivalent to quantitative restrictions of the type prohibited by Article 30 of the Treaty.

13 However, the Italian Government contends that the purpose of the obstacles thus created to the importation of vehicles into Italy was to avoid the registration of stolen vehicles, so that they were therefore justified under Article 36 on grounds of public policy.

14 However, it cannot be deduced either from the documents on the file or from the arguments presented to the Court that the increase in the number of requirements laid down both for new vehicles and for vehicles already registered in the exporting Member State may be regarded as necessary to detect or prevent dealing in stolen vehicles. Furthermore, the Italian Government does not contest the Commission's statements to the effect that, on the one hand, certain information duplicates information supplied by the authorities of the exporting Member State

and, on the other, less restrictive measures, such as, for example, a check of the chassis number, would be sufficient to achieve the desired objective.

15 It must therefore be held that by adopting Circulars Nos 66/84, 125/84 and 22/85, applicable from 1 July 1984 to 21 June 1985, the Italian Republic failed to fufil its obligations under Article 30 of the Treaty.

Costs

16 Under Article 69 (2) of the Rules of Pocedure the unsuccessful party is to be ordered to pay the costs. Since the Italian Republic has failed in its submissions, it must be ordered to pay the costs.

On those grounds,

THE COURT

hereby:

(1) Declares that by adopting Circulars Nos 66/84, 125/84 and 22/85, applicable from 1 July 1984 to 21 June 1985, the Italian Republic failed to fulfil its obligations under Article 30 of the Treaty;

(2) Orders the Italian Republic to pay the costs.

Mackenzie Stuart Galmot Kakouris Bosco

Koopmans Everling Joliet Moitinho de Almeida Rodríguez Iglesias

Delivered in open court in Luxembourg on 17 June 1987.

P. Heim
Registrar

A. J. Mackenzie Stuart
President