OPINION OF ADVOCATE GENERAL GULMANN
delivered on 28 October 1992 *

Mr President,
Members of the Court,

1. By three decisions [1] the Council authorized Italy to derogate temporarily, until 31 December 1983, from the rules contained in the Sixth VAT Directive in such a way that VAT was not charged in connection with emergency relief for the victims of the earthquake which had struck southern Italy in November 1980.

2. On 21 February 1989 the Court gave judgment in a case brought by the Commission against Italy. [2] The Court declared that

'by granting, for the period between 1 January 1984 and 31 December 1988, an exemption from value-added tax with reimbursement of the tax paid at the preceding stage in respect of certain transactions carried out for earthquake victims in Campania and Basilicata, the Italian Republic infringed Article 2 of the Sixth Council Directive ...'.

3. In the present case the Commission claims that the Court should declare that, by failing to take the measures necessary to comply with the judgment of the Court of 21 February 1989 in Case 203/87, the Italian Republic has failed to fulfil its obligations under Article 171 of the EEC Treaty.

4. The Italian Republic, which does not dispute that the VAT exemption which was the subject-matter of the Court's judgment in Case 203/87 has been maintained until the end of 1992, essentially makes two submissions in its defence.

5. It submits first of all that it is clear from the operative part of the judgment in Case 203/87 that that judgment limited its effects to the application of the VAT exemption during the period from 1 January 1984 to 31 December 1988. The application of the exemption after the period taken into consideration by the Court in its judgment in Case 203/87 cannot therefore be regarded as conduct constituting a breach of the obligation to comply with that judgment as laid down in Article 171.

That argument must certainly be rejected. The operative part of the judgment must be construed with reference to the grounds which form its essential support. Paragraph 10 of the judgment in Case 203/87 does not

* Original language: Danish.

1 — Council Decision 81/890/EEC of 3 November 1981 (OJ 1981 L 322, p. 40), Council Decision 82/424/EEC of 21 June 1982 (OJ 1982 L 184, p. 26) and Council Decision 84/87/EEC of 6 February 1984 (OJ 1984 L 40, p. 30).

2 — Case 203/87 *Commission* v *Italy* [1989] ECR 371.

attach any temporal limitation to the finding of a breach of obligations since it simply states that Italy infringed Article 2 of the Directive by prolonging the exemption, without the Council's authorization, beyond the date prescribed by the Council when it temporarily authorized the derogation. Italy does not argue that there was any break between the period considered in Case 203/87 and the period which followed. Far from being exhausted, the effects of the judgment in Case 203/87 necessarily cover Italy's subsequent conduct which amounts to a continued breach of the same obligation.

Moreover, that legal view corresponds to the view taken by the Court in its judgment of 8 May 1991 in Case 266/89 *Commission* v *Italy*. [3]

6. The Italian Government submits in the second place that the VAT exemption is covered by the rules in the Treaty on state aid and is compatible with the common market in accordance with Article 92(2)(b) concerning aid granted consequent upon natural disasters.

That argument was also put forward by the Italian Government in Case 203/87. The Court did not expressly consider it, no doubt because it was put forward too late — see in this regard the Opinion of Advocate General Mischo in which he proposed that the argument should be rejected for being out of time.

In my view, the legal argument in this case is circumscribed by the judgment in Case 203/87; for reasons of legal certainty, Italy should not be allowed to put forward an argument which it could have raised but which it did not properly put forward in Case 203/87. The Commission argues rightly that the procedure for establishing that Italy has failed to fulfil its obligations under Article 171 may not be turned into an informal appeal against the judgment in Case 203/87.

Conclusion

7. For those reasons I propose that the Court should uphold the Commission's claim and order the Italian Republic to pay the costs.

3 — Case C-266/89 *Commission* v *Italy* [1991] ECR 2411.