JUDGMENT OF THE COURT
11 OCTOBER 1983 [1]

Commission of the European Communities v Italian Republic

(Failure of a State to fulfil its obligations — Mutual recognition of diplomas and other evidence of formal qualifications for goods haulage and passenger transport operators)

Case 273/82

Member States — Obligations — Implementation of directives — Failure — Justification based on internal legal system — Not permissible
(EEC Treaty, Art. 169 and third para. of Art. 189)

A Member State may not plead provisions, practices or circumstances in its internal legal system to justify a failure to comply with obligations under Community law.

In Case 273/82

COMMISSION OF THE EUROPEAN COMMUNITIES, represented by Alberto Prozzillo, a member of its Legal Department, acting as Agent, with an address for service in Luxembourg at the office of Oreste Montalto, Jean Monnet Building, Kirchberg,

applicant,

v

ITALIAN REPUBLIC, in the person of its Agent, A. Squillante, Head of the Department for Contentious Diplomatic Legal Affairs, Treaties and Legislative Matters, represented and assisted by Pier Giorgio Ferri, Avvocato dello Stato, with an address for service in Luxembourg at the Italian Embassy, 5 Rue Marie-Adélaïde,

defendant,

1 — Language of the Case: Italian.

Application for a declaration that by not adopting within the prescribed period the measures necessary to comply with Council Directive 77/796/EEC of 12 December 1977 aiming at the mutual recognition of diplomas, certificates, and other evidence of formal qualifications for goods haulage operators and road passenger transport operators, including measures intended to encourage those operators effectively to exercise their right to freedom of establishment (Official Journal 1977, L 334, p. 37), has failed to fulfil its obligations under the EEC Treaty,

THE COURT,

composed of: J. Mertens de Wilmars, President, T. Koopmans and Y. Galmot (Presidents of Chambers), A. O'Keeffe, G. Bosco, U. Everling and C. Kakouris, Judges,

Advocate General: Sir Gordon Slynn
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 procedure

1. Council Directive 77/796/EEC of 12 December 1977 aiming at the mutual recognition of diplomas, certificates and other evidence of formal qualifications for goods haulage operators and road passenger transport operators, including measures intended to encourage these operators effectively to exercise their right to freedom of establishment provides that Member States are to take certain measures in relation to the establishment in their territory of the natural persons and undertakings referred to in Title I of the General

Programme for the abolition of restrictions on freedom of establishment for the activities of goods haulage operators and road passenger transport operators (Journal Officiel 1962 of 15. 1. 1962, p. 36). The measures contemplated related to the production and acceptance of documents certifying that operators were of good repute, not bankrupt, of sound financial standing and professionally competent.

Article 7 (1) of the directive provides:

"Member States shall bring into force the measures necessary to comply with this directive before 1 January 1979 and shall immediately inform the Commission thereof."

2. By 9 October 1980 the Commission had still received no communication on the subject from the Italian Government and it therefore considered that the national provisions had not been adopted; on the same date it sent a letter inviting the Italian Government to forward it within two months its observations regarding the breach. That letter seems to have brought no reply.

On 8 January 1982 the Commission delivered a reasoned opinion which it forwarded to the Italian Government on 15 January 1982. In the reasoned opinion the Commission considers that by not complying with Directive 77/796/EEC the Italian Government has failed to fulfil its obligations under the EEC Treaty. The Commission allowed Italy a further period of two months to take the measures necessary to comply with the reasoned opinion.

By letter dated 22 January 1982 from the Deputy Permanent Representative of Italy to the European Communities the Italian Government acknowledged receipt of that opinion.

II — Conclusions of the parties

1. In its application filed on 6 October 1982 the Commission claims that the Court should:

Declare that the Italian Republic, by not adopting within the prescribed period the measures necessary to comply with Directive 77/796/EEC aiming at the mutual recognition of diplomas, certificates and other evidence of formal qualifications for goods haulage operators and road passenger transport operators, including measures intended to encourage these operators effectively to exercise their right to freedom of establishment, has failed to fulfil its obligations under the EEC Treaty;

Order the Italian Republic to pay the costs.

2. The Italian Government has not presented any formal conclusions.

III — Oral procedure

The application was received at the Court Registry on 6 October 1982.

By letter dated 17 January 1983 the Commission stated that it would not submit a reply.

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

IV — Submissions and arguments of the parties

1. In its application the Commission refers to the various approaches it made to the Italian Government urging the latter to bring into force the measures necessary to comply with Directive 77/796/EEC and alleges that it is plain that Italy ought to have adopted those measures and that by omitting to do so it has, according to the case-law of the Court, failed to fulfil its obligations under the EEC Treaty.

2. In its defence the Italian Government observes that before the measures necessary to implement the directive in question in the Italian legal system could be adopted it had had to prepare and present to Parliament a draft law containing the appropriate provisions. The draft law has already been approved by the 10th Committee of the Chamber of Deputies and requires only the approval of the Senate for the legislative procedure to be complete; that approval should be given very shortly. The Italian Government does not specify whether the said draft law refers only to goods haulage operators but that is apparent from the fact that the Italian Government states that another draft law is in course of preparation for road passenger transport operators.

The Italian Government acknowledges the delay in preparing the measures necessary to implement Directive 77/796/EEC but affirms its commitment to bringing its legislative procedures to a successful conclusion as soon as possible.

3. In its letter of 14 January 1983 the Commission submits that in its defence the Italian Government recognizes the breach and in those circumstances the Commission states that it is not submitting a reply.

V — Oral procedure

At the sitting on 14 September 1983 the Government of the Italian Republic, represented by P. Ferri, Avvocato dello Stato, and the Commission, represented by A. Prozzillo, a member of its Legal Department, presented oral argument.

The Advocate General also delivered his opinion at the sitting on 14 September 1983.

Decision

1 By application lodged at the Court Registry on 6 October 1982, the Commission of the European Communities brought an action pursuant to Article 169 of the EEC Treaty for a declaration that by not adopting within the prescribed period the measures necessary to comply with Directive 77/796/EEC of the Council of 12 December 1977 aiming at the mutual

recognition of diplomas, certificates and other evidence of formal qualifications for goods haulage operators and road passenger transport operators, including measures intended to encourage these operators effectively to exercise their right to freedom of establishment (Official Journal 1977, L 334, p. 37), the Italian Republic has failed to fulfil its obligations under the Treaty.

2 By virtue of Article 7 (1) of that directive the Member States had to bring into force the measures necessary to comply with the directive before 1 January 1979.

3 The Italian Government states that it has been at pains to initiate the legislative procedure for the adoption of the measures necessary to implement the directive but nevertheless does not deny that it has not satisfied the obligation to implement the directive within the prescribed period.

4 In particular the Italian Government explains that it had to prepare and submit to Parliament a draft law containing the appropriate provisions to give effect to the part of the directive concerning diplomas and other evidence of formal qualifications for goods haulage operators, that the draft law has been approved by the 10th Committee of the Chamber of Deputies and for the legislative procedure to be complete the draft law needs only to have the approval of the Senate which may be given very shortly.

5 As regards the implementation of the part of the directive relating to road passenger transport operators the Italian Government states that another draft law is in preparation.

6 Those circumstances do not expunge the failure to fulfil one of its obligations with which the Italian Republic is charged. According to established case-law of the Court, a Member State may not plead provisions, practices or circumstances in its internal legal system to justify a failure to comply with obligations under Community directives.

7 The Court must therefore declare that by not adopting within the prescribed period the provisions necessary to comply with Council Directive

77/796/EEC of 12 December 1977 the Italian Republic has failed to fulfil its obligations under the EEC Treaty.

Costs

8 Under Article 69 (2) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs. 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 necessary to comply with Council Directive 77/796/EEC of 12 December 1977 aiming at the mutual recognition of diplomas, certificates and other evidence of formal qualifications for goods haulage operators and road passenger transport operators, including measures intended to encourage these operators effectively to exercise their right to freedom of establishment, the Italian Republic has failed to fulfil its obligations under the EEC Treaty;**

2. **Orders the Italian Republic to pay the costs.**

Mertens de Wilmars Koopmans Galmot

O'Keeffe Bosco Everling Kakouris

Delivered in open court in Luxembourg on 11 October 1983.

P. Heim
Registrar

J. Mertens de Wilmars
President