JUDGMENT OF THE COURT
13 JULY 1972[1]

Commission of the European Communities v Italian Republic[2]

Case 48/71

Summary

1. Community law — Application — General principles.

2. Member States — Rights and powers — Transfer to the Community — Sovereignty — Limitation — Definitive nature

1. The attainment of the objectives of the Community requires that the rules of Community law established by the Treaty itself or arising from procedures which it has instituted are fully applicable at the same time and with identical effects over the whole territory of the Community without the Member States being able to place any obstacles in the way.

2. The grant made by Member States to the Community of rights and powers in accordance with the provisions of the Treaty involves a definitive limitation on their sovereign rights and no provisions whatsoever of national law may be invoked to override this limitation.

In Case 48/71

COMMISSION OF THE EUROPEAN COMMUNITIES, represented by its Legal Adviser, Armando Toledano-Laredo, acting as Agent, with an address for service in Luxembourg at the office of its Legal Adviser, Émile Reuter, 4 boulevard Royal,

applicant,

v

ITALIAN REPUBLIC, represented by its Ambassador, Adolfo Maresca, acting as Agent, assisted by Pietro Peronaci, Deputy State Advocate-General, with an address for service in Luxembourg at the Italian Embassy,

defendant,

1 — Language of the Case: Italian.
2 — CMLR.

Application for a declaration that the Italian Republic had failed to fulfil the obligations imposed on it by the Treaty establishing the European Economic Community and in particular by Article 171 by not complying with the judgment given on 10 December 1968 by the Court of Justice in Case 7/68, *Commission of the EC* v *Italian Republic* [1968] ECR 423,

THE COURT,

composed of: R. Lecourt, President, J. Mertens de Wilmars and H. Kutscher, Presidents of Chambers, A. M. Donner (Rapporteur), A. Trabucchi, R. Monaco and P. Pescatore, Judges,

Advocate-General: K. Roemer
Registrar: A. Van Houtte

gives the following

JUDGMENT

Issues of fact and of law

I — Facts and procedure

The facts and procedure may be summarized as follows:

On 7 March 1968 the Commission of the European Communities brought an action against the Italian Republic before the Court of Justice for a declaration that the Italian Republic had failed to fulfil the obligations imposed on it by Article 16 of the EEC Treaty by continuing to levy, after 1 April 1962, the progressive tax provided for by Law No 1089 of 1 January 1939 on exports to other Member States of the Community of objects of artistic, historic, archaeological or ethnographic interest. By its judgment of 10 December 1968 the Court declared that the Italian Republic, by continuing to levy after 1 January 1962 the tax in question had failed to fulfil its obligations under Article 16 of the EEC Treaty.

Since the Italian Republic did not as from 10 December 1968 adopt appropriate measures to conform to the decision of the Court of Justice, the situation has remained unchanged.

By letters dated 2 June 1969 and 1 October 1970 the President of the Commission demanded that the Government of the Italian Republic apply the measures necessary to repeal the aforesaid tax.

Since id did not consider the submission to the Italian Parliament of a draft law providing, *inter alia*, for the abolition of the tax in question as satisfactory, the Commission, by letter of 21 December 1970, gave the Italian Republic an opportunity to submit its observations and on 18 May 1971 delivered a reasoned opinion under Article 169 of the EEC Treaty calling on it to take the necessary measures within one month to put an end to the infringement in question.

Since the Italian Government neither replied to the reasoned opinion of the Commission nor adopted the necessary measures within the time-limit prescribed,

the Commission brought an action before the Court of Justice by application lodged at the Court Registry on 29 August 1971.
The written procedure followed the normal course.
After 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.
The oral submission of the parties were heard on 17 May 1972.
The Advocate-General delivered his opinion on 22 June 1972.
By telegram of 4 July 1972 confirmed by letter of 10 July 1972 the Government of the Italian Republic informed the Court that it had adopted Decree-Law No 288 of 5 July 1972 (Gazetta Ufficiale of 6 July 1972, No 172), which in compliance with the judgment given by the Court in Case 7/68 formally abolished as from 1 January 1962 the levying of the tax on the export of works of art to other Member States and declared that the taxes levied after that date would be reimbursed on application by those concerned. The defendant is of the opinion that there is no longer any purpose in the action.
By telegram of 10 July 1972 the Commission informed the Court that it would no longer pursue the action when the aforementioned decree-law was made a formal law.

II — Submissions of the parties

The *applicant* considers that the Court should

(a) Declare that the Italian Republic in failing to comply with the judgment given by the Court of Justice on 10 December 1968 in Case 7/68 has failed to fulfil the obligations imposed on it by Article 171 of the EEC Treaty;

(b) Order the Italian Republic to bear the costs.

The *defendant* considers that the Court should

(a) Dismiss the application by the Commission;

(b) Order the Commission to bear the costs.

III — Submissions and arguments of the parties

The submissions and arguments of the parties may be summarized as follows:
The *applicant* maintains that since the Italian Republic did not adopt the measures necessary to comply with the judgment of 10 December 1968 in Case 7/68, it failed to fulfil the obligations imposed on it by Article 171 of the EEC Treaty.
In the exercise of the powers conferred on it by Article 155 of the EEC Treaty, the Commission drew the attention of the State concerned to the necessity of complying with the aforementioned judgment and of the gravity of the precedent which such a failure would constitute.
Since the Italian Government did not react to the invitation made to it to take the necessary measures, the Commission considers that the conditions required for bringing the action provided for in the second paragraph of Article 169 of the EEC Treaty are fulfilled.
The *defendant* in answer says that the Commission disregarded the fact that the abolition of the tax in question is closely linked with the approval of the Italian Parliament and the implementation of rules calculated to ensure proper protection for the artistic, historic, archaeological and ethnographical national heritage hitherto protected by the tax provided for by Law No 1089 of 1 June 1939.
The Italian Government complied with the judgment of the Court of 10 December 1968 since it submitted for consideration by the Italian Parliament, a draft law providing *inter alia* for the abolition of the tax referred to in Article 37 of Law No 1089 of 1 June 1939. The reorganization of the whole area of law relating to the protection of a considerable cultural heritage is involved in the present case. A reasonable period is necessary to effect the

abolition of this tax in view of the difficulties inherent therein.

In its statement in reply the *applicant* observes that the Court of Justice in its judgments in Cases 77/69 *Commission* v *Kingdom of Belgium* [1970] ECR 237 and 8/70 *Commission* v *Italian Republic* [1970] ECR 961 clearly established that 'the liability of a Member State under Article 169 arises whatever the agency of the State whose action or inaction is the cause of failure to fulfil its obligations, even in the case of a constitutionally independent institution'. Therefore the argument that the Italian Government by submitting a draft law providing for the abolition of the tax in question to the Italian Parliament satisfied its obligations must be rejected as irrelevant.

The Commission further draws attention to the following facts:

— In 1966 the Italian Government had submitted to Parliament a draft law on the abolition of the tax in question, which draft was made abortive by the dissolution of the Senate and the Chamber of Deputies on 11 March 1968;

— After the judgment of 10 December 1968 the Member State should have proceeded promptly to choose the means enabling it to put an end as soon as possible to a levy contrary to the provisions of the EEC Treaty. The Government could have: submitted again to Parliament the text of the abortive draft law treating it as urgent; adopted a decree-law drawing Parliament's attention to the necessity of making it into a Law; or given appropriate instructions to the departments concerned with the levying of the tax in question etc.;

— The procedure actually followed by the Italian Government by which an unnecessarily complicated draft law was submitted to the Italian Parliament —almost two years after the judgment of the Court and without attention being drawn to its urgent nature— resulted in the tax continuing to be levied three years after the judgment given by the Court. In such circumstances it is obvious that Article 171 of the EEC Treaty is infringed.

The Commission considers that Article 171 should be understood as prescribing that the necessary measures be adopted within the shortest possible time. It appears from the judgment of 10 December 1968 that since 1 January 1962, the end of the first stage of the transitional period, the defendant has been failing to comply with the obligations imposed on it by Article 16 of the EEC Treaty. The fact that the Court ruled in its judgment of 26 October 1971 in Case 18/71 *Eunomia di Porro* v *Italian Republic* [1971] ECR 811 that 'since 1 January 1962 ... Article 16 of the Treaty has produced direct effects in the legal relations between the Member States and those persons subject to their jurisdiction and has conferred on the latter rights which the national courts must protect' does not eliminate the infringement although the parties may enforce their right not to pay the tax in question. The Italian authorities have also continued with the consent of the Government to demand payment of the tax and to resist even in the courts claims to the contrary by individuals. Accordingly the Commission, which is required by Article 155 of the EEC Treaty to ensure that the Community provisions are applied, is bound to find an infringement of Article 171 and to bring the matter before the Court.

In its statement in rejoinder the *defendant* maintains that the Commission may not raise the issue of the draft law submitted to the Italian Parliament in 1966. Since this was an event prior to the judgment of 10 December 1968, it cannot constitute a factor to be taken into account in the present case, the sole object of which is the alleged non-compliance with the aforesaid judgment. The Italian Government maintains that the procedure followed, that is to say the drawing up of a draft law not limited to the simple abolition of the tax in question, is the only reasonable solution. The need to protect the cultural heritage requires that the abolition of the tax

should be effected as part of an arrangement adopting adequate provisions to replace it. This is why the behaviour of the Italian Republic cannot be regarded as a failure to fulfil the obligations set out in Article 171 of the EEC Treaty.

At the invitation of the Court the Italian Republic stresses once more that it was unable to resubmit the draft law No 4341 of 3 August 1967 which had lapsed with the end of the IVth legislative period. It was necessary to bring about a new accord between the ministries concerned taking into account the objections which had been made to the inadequacy of the previous draft which provided simply for the abolition of the tax.

The submission of a decree-law would have met with the Italian Parliament's disapproval.

Recourse to such an exceptional instrument is permissible only where urgent necessity requires it. This is not so in the present case which is concerned with compliance with the decisions of the Court of Justice.

It is likewise impossible to adopt as a solution administrative instructions to make the law in question inapplicable. The national legal system of the Italian Republic allows a law to be repealed only by an instrument of equivalent authority.

Grounds of judgment

1 By application dated 23 July 1971 the Commission has brought before the Court under Article 169 of the Treaty an application for a declaration that the Italian Republic by not complying with the judgment given on 10 December 1968 in Case 7/68 has failed to fulfil the obligations imposed on it by Article 171 of the EEC Treaty.

2 In this judgment the Court had declared that the Italian Republic, by continuing to levy after 1 January 1962 the progressive tax laid down by Article 37 of the Law of 1 June 1939 No 1089 on the export to other Member States of the Community of articles of an artistic, historic, archaeological or ethnographic interest, had failed to fulfil the obligations imposed on it by Article 16 of the EEC Treaty.

3 The Italian Republic, while recognizing that it is bound to take measures to comply with this judgment, cites the difficulties which it met with in regard to parliamentary procedure aimed at abolishing the tax and reforming the system of protection of the national artistic heritage. These measures must necessarily be adopted in the form and according to the procedures provided for by its constitutional law. Since the levying of the tax can cease only on its formal repeal and since the delays in effecting this repeal are due to circumstances outside the control of the competent authorities, there are no grounds for finding a failure to comply with the obligations under Article 171 of the Treaty.

4 The Commission maintains that the national provisions could have been repealed by more expeditious means.

5 Without having to examine the validity of such arguments, it suffices for the Court to observe that by judgment of 10 December 1968 it answered in the affirmative the question in dispute between the Italian Government and the Commission: whether or not the tax in questions was to be regarded as a tax having an effect equivalent to a customs duty on exports within the meaning of Article 16 of the Treaty.
Further by another judgment of 26 October 1971 given in Case 18/71, *Eunomia* v *Italian Republic*, the Court expressly found that the prohibition contained in Article 16 produces direct effects in the national law of all Member States.

6 Since it is a question of a directly applicable Community rule, the argument that the infringement can be terminated only by the adoption of measures constitutionally appropriate to repeal the provision establishing the tax would amount to saying that the application of the Community rule is subject to the law of each Member State and more precisely that this application is impossible where it is contrary to a national law.

7 In the present case the effect of Community law, declared as *res judicata* in respect of the Italian Republic, is a prohibition having the full force of law on the competent national authorities against applying a national rule recognized as incompatible with the Treaty and, if the circumstances so require, an obligation on them to take all appropriate measures to enable Community law to be fully applied.

8 The attainment of the objectives of the Community requires that the rules of Community law established by the Treaty itself or arising from procedures which it has instituted are fully applicable at the same time and with identical effects over the whole territory of the Community without the Member States being able to place any obstacles in the way.

9 The grant made by Member States to the Community of rights and powers in accordance with the provisions of the Treaty involves a definitive limitation on their sovereign rights and no provisions whatsoever of national law may be invoked to override this limitation.

10 It is therefore necessary to find that in not complying with the judgment of the Court of 10 December 1968 in Case 7/68 the Italian Republic has failed to fulfil the obligations imposed on it by Article 171 of the Treaty.

11 In a communication of 4 July 1972 the defendant has informed the Court that the tax has ceased to be levied and that it has been effectively eliminated as from 1 January 1962, the date on which the levy should have ceased.

Costs

12 It follows from the above that the application by the Commission was well founded. The failure complained of ceased only after the conclusion of the written and oral procedure. In these circumstances it is right to order the defendant to bear the costs.

On those grounds,

Upon reading the pleadings;
Upon hearing the report of the Judge-Rapporteur;
Upon hearing the parties;
Upon hearing the opinion of the Advocate-General;
Having regard to the Treaty establishing the European Economic Community, especially Article 171;
Having regard to the Protocol on the Statute of the Court of Justice of the European Economic Community;
Having regard to the Rules of Procedures of the Court of Justice of the European Communities,

THE COURT

hereby:

1. **Takes note that the failure of the Italian Republic to fulfil the obligations imposed on it by Article 171 of the EEC Treaty has ceased with effect from 1 January 1962.**

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

Lecourt Mertens de Wilmars Kutscher

Donner Trabucchi Monaco Pescatore

Delivered in open court in Luxembourg on 13 July 1972.

A. Van Houtte
Registrar

R. Lecourt
President