In Case 28/81

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

applicant,

v

ITALIAN REPUBLIC, represented by its Agent, Arnaldo Squillante, Capo del Servizio Contenzioso Diplomatico, Trattati ed Affari Legislativi [Head of the Department of diplomatic legal affairs, treaties and legislative business] represented and assisted by Guido Fienga, 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 the EEC Treaty by failing to adopt within the prescribed period the provisions needed to comply with Council Directive No 74/561/EEC of 12 November 1974 on admission to the occupation of road haulage operator in national and international transport operations (Official Journal L 308, p. 18),

THE COURT

composed of: J. Mertens de Wilmars, President, G. Bosco and A. Touffait (Presidents of Chambers), Lord Mackenzie Stuart, A. O'Keeffe, T. Koopmans, U. Everling, A. Chloros and F. Grévisse, Judges,

Advocate General: Sir Gordon Slynn
Registrar: A. Van Houtte

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 written procedure

The purpose of Directive No 74/561 is to promote the organization of the transport market, which has an essential role to play in implementing the common transport policy provided for by Article 74 *et seq.* of the Treaty. Rules adopted at Community level and the resulting coordination of the conditions for admission to the occupation of road haulage operator also encourage proper exercise of the right of establishment. By improving operators', qualifications the directive also aims to improve conditions on the market and enhance the quality of service as well as to ensure road safety.

For the purpose of the directive "the occupation of road haulage operator" means the activity of persons transporting goods for hire or regard by means of either a self-contained motor vehicle or a combination of coupled vehicles (Article 1 (2)).

Article 2 allows for exemptions from the application of the directive in the case of transport operations which have only a minor impact on the market.

Article 3, the provisions of which are crucial to the directive, lays down the requirements for engaging in the occupation of road haulage operator. The requirements are:

(a) "good repute";

(b) "appropriate financial standing" which consists in having available sufficient financial resources to ensure the launching and proper administration of the undertaking;

(c) "professional competence".

While the adoption of detailed rules for applying the conditions referred to at (a) and (b) is left to the Member States for a transitional period pending subsequent coordination at the Community level, the condition concerning "professional competence" is governed directly by Article 3 (4) in conjunction with the annex to the directive.

As to the implementation of the directive Article 7 provides as follows:

"1. Member States shall, after consulting the Commission and before 1 January 1977, adopt the measures necessary for the implementation of this directive, in particular Article 3 (4) thereof.

2. Member States shall ensure that the procedure for official verification of the skills mentioned in Article 3 (4) shall become operative for the first time before 1 January 1978."

The Italian Republic did not adopt the measures necessary for implementing the directive by 1 January 1977 as required by Article 7.

By letter of 26 March 1979 the Italian Permanent Representative informed the Commission that while it hoped that the directive would shortly be given effect in national law there were delays owing to the difficulties caused by the need to restructure Law No 298 of 6 June 1974 on road haulage operations and by the many and divergent demands made by the operators concerned.

By letter of 7 June 1979 the Commission informed the Italian Government that in its opinion Italy had failed to fulfil its obligations under the Treaty, and gave it the opportunity of submitting its observations within a period of two months.

In the absence of any reply from the Italian Government, and having established the continued absence of national legal provisions on the adoption of the necessary measures, the Commission delivered to Italy on 15 April 1980 the reasoned opinion provided for in the first paragraph of Article 169 of the Treaty requesting that country to adopt within two months the measures necessary to fulfil its obligations. The Italian Government acknowledged receipt of the reasoned opinion but took no further action. At the present date it appears that the national measures to adapt the national law have not been taken.

This application, dated 12 February 1980, was received at the Court Registry on 18 February. The Italian Government stated by telephone that it did not intend to lodge a rejoinder.

On 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.

II — Conclusions of the parties

The *Commission* claims that the Court should:

— Declare that, by failing to adopt within the prescribed period the provisions needed to comply with Council Directive No 74/561/EEC of 12 November 1974 on admission to the occupation of road haulage operator in national and international transport operations, the Italian Republic has failed to fulfil one of its obligations under the Treaty;

— Order the defendant to pay the costs.

The *Italian Republic* did not submit any formal conclusions.

III — Submissions and arguments of the parties

In its application the *Commission* claims that since directives are binding in character Member States have an obligation to comply with the periods prescribed by them for the adoption of national implementing provisions.

An infringement of the Treaty by a Member State exists irrespective of the organ of the State whose act or omissions were the cause of the failure to implement a directive. The Member State in question may not plead provisions, practices or circumstances in its internal legal system in order to justify its conduct.

Those principles have been consistently confirmed by the Court in its decisions (see, *inter alia*, Case 52/75, *Commission* v *Italy* [1976] ECR 277; Case 10/76, *Commission* v *Italy* [1976] ECR 1359; Case 163/78, *Commission* v *Italy* [1979] ECR 771; Case 42/80, *Commission* v *Italy* [1980] ECR 3635; Case 43/80, *Commission* v *Italy* [1980] ECR 3643; Case 44/80, *Commission* v *Italy* [1981] ECR 343; and Case 45/80, *Commission* v *Italy* [1981] ECR 353).

In its defence the *Italian Government* states that the directive in question was included with a view to its implementation in a draft law which is now under consideration by the Tenth Committee of the Chamber of Deputies, which deals with matters relating to road haulage. The draft Law was not submitted to Parliament until 12 December 1980 owing to the detailed scrutiny to which it was first subjected by all the administrative authorities concerned, a scrutiny which was necessarily time-consuming in view of the complexity of the subject-matter.

The Italian Government has already asked the authorities concerned to expedite the procedure for approving the draft law. It therefore hopes to have it approved and the corresponding law adopted very shortly, so that the object of the action may be considered to have been eliminated in substance.

In its reply the *Commission* points out that the defence gives no details of the period required for the adoption of the draft law.

IV — Oral procedure

At the sitting on 8 October 1981 the parties submitted oral argument.

In particular, the Italian Republic requested that the Court grant it an extension of the period laid down by the Commission pursuant to Article 169 of the Treaty for complying with its obligations under the directive in question.

The Advocate General delivered his opinion at the same sitting.

Decision

1 By application lodged at the Court Registry on 18 February 1981 the Commission brought an action under Article 169 of the EEC Treaty for a declaration that the Italian Republic had failed to fulfil one of its obligations under the Treaty by failing to adopt within the prescribed period the provisions needed in order to comply with Council Directive No 74/561 of 12 November 1974 on admission to the occupation of road haulage operator in national and international transport operations (Official Journal L 308, p. 18).

2 By virtue of Article 7 of Council Directive No 74/561 Member States were required to adopt the measures necessary for implementation of the directive within a period expiring on 1 January 1977.

3 The Italian Government does not dispute the fact that it has not satisfied that obligation. It explains that the directive in question has been included for implementation in a draft law which is now under consideration by the Chamber of Deputies. The draft was not tabled until 12 December 1980 owing to the detailed scrutiny to which it was first subjected by all the administrative authorities concerned. The Italian Government states that it has asked the authorities concerned to expedite the procedure for approving the draft law and hopes to obtain approval within the shortest possible time. The Italian Government claims that in the circumstances it may be considered that the object of the action has been eliminated in substance so that this application has become devoid of purpose.

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

5 In the course of the hearing the Italian Government requested the Court to grant it an extension of the period allowed by the Commission pursuant to Article 169 of the Treaty for fulfilling the obligations under the directive in question.

6 The powers conferred on the Court in relation to applications under Article 169 of the Treaty do not include the power to substitute a different period for that laid down by the Commission pursuant to Article 169 in its reasoned opinion, although the legality of that opinion is subject to review by the Court. Subject to the same reservation, it is for the Commission to decide whether such a request from a Member State is to be granted.

7 It must therefore be held that by failing to adopt within the prescribed period the provisions needed in order to comply with Council Directive No 74/561

of 12 November 1974 the Italian Republic has failed to fulfil one of its obligations under the Treaty.

Costs

8 Under Article 69 (2) of the Rules of Procedure the unsuccessful party is to be ordered to pay the costs.

9 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 failing to adopt within the prescribed period the provisions needed in order to comply with Council Directive No 74/561 of 12 November 1974 on admission to the occupation of road haulage operator in national and international transport operations (Official Journal L 308, p. 18), the Italian Republic has failed to fulfil one of its obligations under the Treaty;**

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

Mertens de Wilmars Bosco Touffait Mackenzie Stuart O'Keeffe

Koopmans Everling Chloros Grévisse

Delivered in open court in Luxembourg on 10 November 1981.

J. A. Pompe
Deputy Registrar

J. Mertens de Wilmars
President