JUDGMENT OF THE COURT
8 JUNE 1982 [1]

Commission of the European Communities v Italian Republic

(Failure of a Member State to fulfil its obligations — Directive relating to collective redundancies)

Case 91/81

Social policy — Approximation of laws — Collective redundancies — Directive 75/129/EEC — Purpose — Powers of the Member States
(EEC Treaty, Art. 117; Council Directive 75/129/EEC)

Directive 75/129, which the Council considers corresponds to the need, stated in Article 117 of the Treaty, to promote improved working conditions and an improved standard of living for workers, is intended to approximate the provisions laid down in this field by the Member States by law, regulation or administrative action relating to collective redundancies. The provisions of the directive are thus intended to serve to establish a common body of rules applicable in all the Member States, whilst leaving to the Member States power to apply or introduce provisions which are more favourable to workers.

In Case 91/81

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

applicant,

v

ITALIAN REPUBLIC, in the person of its Agent, Arnaldo Squillante, head of the Department for Contentious Diplomatic Affairs, Treaties and Legislative Matters, represented by Pier Giorgio Ferri, Avvocato dello Stato, with an address for service in Luxembourg at the Italian Embassy,

defendant,

1 — Language of the Case: Italian.

APPLICATION for a declaration that the Italian Republic, by not adopting within the prescribed period the provisions needed to comply with Council Directive 75/129/EEC of 17 February 1975 on the approximation of the laws of the Member States relating to collective redundancies (Official Journal L 48, p. 29), has failed to fulfil its obligations under the EEC Treaty,

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 and U. Everling, Judges,

Advocate General: P. VerLoren van Themaat
Registrar: P. Heim

gives the following

JUDGMENT

Facts

The facts of the case, the course of the procedure, the conclusions, submissions and arguments of the parties may be summarized as follows:

I — Facts and written procedure

The provisions in force in the Member States of the Community concerning the practical arrangements and procedures for collective redundancies and the measures designed to alleviate the consequences of such redundancies for workers displayed differences capable of having a direct effect on the functioning of the common market.

The Council Resolution of 21 January 1974 concerning a social action programme (Official Journal C 13, p. 1)

made provision, in order to strengthen the protection of workers, for a directive for the approximation of the laws of the Member States relating to collective redundancies.

That directive was adopted on 17 February 1975 by the Council, as Directive 75/129/EEC, on the proposal of the Commission and after receipt of the opinion of the European Parliament and of the Economic and Social Committee.

The directive defined the concept of "collective redundancies", determined their scope and laid down a consultation procedure and a detailed procedure for such redundancies.

Article 6 (1) of the directive provides:

"Member States shall bring into force the laws, regulations and administrative provisions needed in order to comply with this directive within two years following its notification and shall forthwith inform the Commission thereof."

The directive was notified to Italy on 19 February 1975 and the period for complying with it expired on 19 February 1977, that is, almost five years ago.

The officers of the Commission drew the attention of the Italian authorities to the need to enact the prescribed measures in good time.

On 4 July 1978 the Commission requested the Italian Government to submit its observations within two months in accordance with Article 169 of the Treaty. That period expired without a reply being received.

On 25 September 1979 the Commission delivered the reasoned opinion provided for in the first paragraph of Article 169 of the Treaty and requested the Italian Republic to enact within the period of one month the measures needed to implement the decision in question. By a letter of 5 November 1979 the Italian authorities acknowledged receipt of the reasoned opinion.

Shortly afterwards, by a letter of 23 November 1979, the Italian authorities observed to the Commission "... it is not necessary in order to establish whether the various Member States have fulfilled their obligations arising from the directive to make a purely formal finding as to the transposition into the internal system of the State concerned of provisions in accordance with those of the directive but instead it should be determined whether the legal system of the Member State concerned provides a comprehensive framework of guarantees suited to the attainment of the practical objectives pursued by the directive in question" and concluded that they could "... show that the organization of industrial relations in Italy as a consequence of current practice and the means provided to that end by the legislature produces, albeit by means partially differing from those provided for by the directive, results similar to those referred to by the Community directive".

Subsequently the Italian authorities, by a communication of 25 March 1980, indicated that a bill (repeating the provisions of Decree-Law No 64 of 11 December 1979 which had expired as it

was not enacted as a law within the period prescribed) was being considered by the parliament and was drafted so as to implement the directive more precisely.

Thereafter the Italian authorities stated in a telex message of 10 December 1980 that the bill had been approved in principle by the Chamber of Deputies and that after a period of one year it ought to be approved at the legislative level.

The Commission received no further information regarding the approval of the said bill.

This application, which was dated 10 April 1981, was received at the Court Registry on 15 April 1981. The Italian Government stated by a telex message that it would refrain from submitting a rejoinder.

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. It nevertheless put a written question to the Commission concerning the factors missing in the provisions in force in Italy which were alleged to constitute an incomplete implementation of the Council directive.

II — Conclusions of the parties

The *Commission* claims that the Court should:

"Declare that by not adopting within the prescribed period the measures needed in order to comply with Council Directive 75/129/EEC on the approximation of the laws of the Member States relating to collective redundancies, the Italian Republic has failed to fulfil one of its obligations under the Treaty;

Order the Italian Republic to pay the costs."

The *Italian Republic* did not amplify its conclusions.

III — Submissions and arguments of the parties

In its judgment the *Commission* maintains that the case-law of the Court in this matter is clear, as is established in particular by the judgments in Case 79/72 *Commission* v *Italy* [1973] ECR 667; Case 52/75 *Commission* v *Italy* [1976] ECR 277; Case 10/76 *Commission* v *Italy* [1976] ECR 1359 and Joined Cases 42 and 43/80, *Commission* v *Italy* [1980] ECR 3635 and 3643.

In the second of those judgments the Court of Justice amplified the reasoning previously set out in the first judgment and stated:

"The correct application of a directive is particularly important since the implementing measures are left to the discretion of the Member States and would be ineffective if the desired aims are not achieved within the prescribed time-limits. Although the provisions of a directive are no less binding on the Member States to which they are addressed than the provisions of any other rule of Community law, such an

effect attaches *a fortiori* to the provisions relating to the periods allowed for implementing the measures prescribed, in particular since the existence of differences in the rules applied in the Member States after these periods have expired might result in discrimination."

The case-law of the Court of Justice furthermore makes clear that the Member States may not plead provisions or practices based on their internal legal system or circumstances of fact peculiar to a State in order to justify a failure to comply with the obligations and time-limits prescribed by Community directives.

Is does not appear to the *Italian Government* that the matter has been duly brought before the Court of Justice under Article 169 of the Treaty on the basis of appropriate and substantial complaints of failure to fulfil an obligation.

In fact its observations of 23 November 1979 following the communication of the opinion of the Commission show that, as the said directive prescribes, the provisions in force in Italy are of such a nature as to prevent all collective redundancies unless the employer has begun consultations with the workers' representatives in order to keep the redundancies within the limits of what is strictly indispensable and to mitigate the consequences thereof and without the ministry or competent agency being notified thereof beforehand by the employer in order to take appropriate measures to resolve the problem.

The Commission, however, took the view that there was no need for it to take into consideration the information provided in the above-mentioned observations, adding that the Italian authorities "have made absolutely no attempt to challenge the failure to fulfil their obligations which was alleged against them" in the subsequent communication of 25 March 1980.

The interpretation of the content of that communication is certainly mistaken. The existence of a bill intended to define more precisely the national rules in the field covered by the directive does not mean that the new legislative measures were considered necessary by the Italian Government in order to implement the Community directive.

As that is made clear by the content of the communication of 25 March 1980 it was simply considered appropriate to systematize and confirm a body of principles and rules concerning the conditions to be observed and the procedures to be followed in the case of collective redundancies without substantial innovations in a body of law which guarantees by itself that the criteria indicated in the Community directive will be applied in Italy.

The *Commission* replies that Article 41 of the new Italian bill, like the previous decree law which expired, in fact contains the measures necessary for the implementation of the directive. The failure to fulfil its obligations which is alleged against Italy consists, however, in not having adopted within the prescribed period the provisions for the implementation of the directive. The defendant's arguments concerning the "appropriateness" of these provisions are contradicted by the course of events.

They are furthermore incompatible with the letter and spirit of the third paragraph of Article 189 of the Treaty and with the consistent case-law of the Court which is cited above. Finally they fail to take into account the provisions of Article 5 of the Treaty.

In reply to a question from the Court concerning the lacunae in the provisions in force in Italy which constitute an incomplete implementation of the Council directive the *Commission's* answer did not provide any information in addition to that which it has already furnished in its written submissions.

IV — Oral procedure

The parties presented oral argument at the sitting on 2 March 1982.

The Advocate General delivered his opinion at the sitting on 28 April 1982.

Decision

1 By application lodged at the Court Registry on 15 April 1981 the Commission of the European Communities brought an action before the Court under Article 169 of the EEC Treaty for a declaration that the Italian Republic has failed to fulfil its obligations under the Treaty by not adopting within the prescribed period the measures needed to comply with Council Directive 75/129/EEC of 17 February 1975 on the approximation of the laws of the Member States relating to collective redundancies (Official Journal L 48, p. 29).

2 Directive 75/129/EEC was adopted by the Council on the basis of Article 100 of the Treaty concerning the approximation of such provisions laid down by law, regulation or administrative action in Member States as directly affect the establishment or functioning of the common market. The recitals in the preamble to the directive state that it is important that greater protection should be afforded to workers in the event of collective redundancies whilst taking into account the need for balanced economic and social development within the Community; that, despite increasing convergence, differences still remain between the provisions in force in the Member States of the Community concerning the practical arrangements and procedures for such redundancies and the measures designed to alleviate the consequences of redundancy for workers; that these differences may have a direct effect on the functioning of the common market; that the Council Resolution of 21 January 1974 makes provision for a directive on the approximation of Member States' legislation on collective redundancies, and that it is therefore

necessary to promote that approximation within the meaning of Article 117 of the Treaty which is intended to promote improved working conditions and an improved standard of living for workers, so as to make possible their harmonization while the improvement is being maintained.

3 With this in view the directive determines the scope of the concept of "collective redundancies" whilst leaving the Member States to choose between the two criteria which it lays down.

4 Article 2 of the directive provides that where an employer is contemplating collective redundancies, he must begin consultations with the workers' representatives with a view to reaching an agreement. He is required to supply them with all relevant information and in any event to give in writing the reasons for the redundancies, the number of workers to be made redundant, the number of workers normally employed and the period over which the redundancies are to be effected. He is required to forward to the competent public authority a copy of that written communication.

5 Articles 3 and 4 of the directive contain provisions concerning the measures to be taken by the competent public authority. The employer is required to notify that authority in writing of any projected collective redundancies. The notification must contain all relevant information on the matters specified in Article 2 and, in addition, on the consultations with the workers' representatives. A copy of that notification must be forwarded to the workers' representatives. As a general rule collective redundancies may not take effect earlier than 30 days after notification. The competent public authority must use this period to seek solutions to the problems raised by the collective redundancies and the above-mentioned period may be extended for that purpose.

6 Article 6 of the directive requires the Member States to bring into force, within a period of two years following notification of the directive, the laws, regulations and administrative provisions needed in order to comply therewith.

7 Article 5 states that the directive is not to affect the right of Member States to apply or introduce laws, regulations or administrative provisions which are more favourable to workers.

8 The Italian Government has observed that, having regard to the whole of the Italian system of protection in the case of dismissals which is provided both by the wide scope given by Italian legislation to the concept of individual redundancy, which is heavily weighted in favour of workers, to the specific provisions laid down by regulation relating to collective redundancies and by the provisions of collective agreements, that system creates conditions and establishes procedures making it possible to attain the objectives of the directive and indeed, in various respects, exceeding its requirements.

9 Nevertheless the Italian Government does not dispute that in certain sectors, especially in agriculture and commerce, Italian legislation is not as comprehensive as the provisions of the directive. It is furthermore common ground that Italian collective agreements do not require the notification in writing on the part of the employer which is provided for by the directive and that the Italian system does not provide, as is required by the directive, that the competent public authority must be notified of any collective redundancy and that the competent public authority is not compelled to intervene in order to seek solutions to the problems raised by the projected collective redundancies.

10 It is clear from the foregoing that the provisions in this field which are in force in Italy do not suffice to meet the totality of the requirements of the directive.

11 In this connection it should be emphasized that the directive, which the Council considers corresponds to the need, stated in Article 117 of the Treaty, to promote improved working conditions and an improved standard of living for workers, is intended to approximate the provisions laid down in this field by the Member States by law, regulation or administrative action. The provisions of the directive are thus intended to serve to establish a common body of rules applicable in all the Member States, whilst leaving to the Member States power to apply or introduce provisions which are more favourable to workers.

12 It is clear from these considerations that by not adopting within the prescribed period the measures needed in order fully to comply with the directive the Italian Republic has failed to fulfil its obligations under the Treaty.

Costs

13 Under Article 69 (2) of the Rules of Procedure the unsuccessful party must be ordered to bear the costs.

14 Since the defendant has been unsuccessful 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 measures needed in order to comply with Council Directive 75/129/EEC of 17 February 1975 on the approximation of the laws of the Member States relating to collective redundancies (Official Journal L 48, p. 29), the Italian Republic has failed to fulfil its obligations under the Treaty;**

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

Mertens de Wilmars Bosco Touffait

Mackenzie Stuart O'Keeffe Koopmans Everling

Delivered in open court in Luxembourg on 8 June 1982.

P. Heim
Registrar

J. Mertens de Wilmars
President