ORDER OF THE PRESIDENT OF THE COURT
30 May 2001 *

In Case C-334/97 R-EX,

Comune di Montorio al Vomano, acting through its legal representative for the time being, represented by G. Romano, avvocato,

applicant,

APPLICATION to suspend the enforcement of the judgment of the Court of Justice of the European Communities (Third Chamber) in Case C-334/97 *Commission* v *Montorio* [1999] ECR I-3387,

the other party to the proceedings being:

Commission of the European Communities, represented by P. Stancanelli, acting as Agent, with an address for service in Luxembourg,

* Language of the case: Italian.

THE PRESIDENT OF THE COURT

upon hearing Advocate General Tizzano,

makes the following

Order

1 By application lodged at the Court Registry on 3 April 2001, the municipality of Montorio al Vomano ('Montorio') asked the Court, pursuant to Articles 244 EC and 256 EC, to suspend the enforcement of its judgment in Case C-334/97 *Commission* v *Montorio* [1999] ECR I-3387 ('the judgment concerned'), to take any other appropriate protective measures and to order the Commission of the European Communities to pay the costs.

2 The Commission made its written submissions on the application on 4 May 2001.

3 Since the written submissions of the parties contain all the information necessary for the Court to adjudicate on the application, there is no need to hear oral argument.

4 By the judgment concerned, the Court accepted jurisdiction, under an arbitration clause drawn up pursuant to Article 181 of the EC Treaty (now Article 238 EC) in contracts Nos WE 147/85 and HY 149/85 between the Commission and Montorio, over the Commission's claim for reimbursement of payments made to

Montorio in connection with the performance of those contracts, together with interest at the rate stipulated in the contracts. The Court ordered Montorio to pay:

— the sum of ITL 246 000 000, together with interest at the rate of 14.2% calculated from 1 December 1986 until the day on which repayment is fully effected;

— the sum of ITL 49 200 000, together with interest at the rate of 14.2% calculated from 1 March 1988 until the day on which repayment is fully effected;

— the sum of ITL 110 800 000, together with interest at the rate of 14.2% calculated from 1 June 1988 until the day on which repayment is fully effected;

— the sum of ITL 49 200 000, together with interest at the rate of 14.2% calculated from 1 August 1988 until the day on which repayment is fully effected;

— the sum of ITL 158 400 000, together with interest at the rate of 14.2% calculated from 1 November 1986 until the day on which repayment is fully effected;

and the costs.

5 According to the applicant, the Commission requested it by letter of 16 September 1999 to organise the payment of the aforementioned sums.

6 On 24 July 2000, the Italian Minister for Foreign Affairs appended the order for its enforcement to the judgment concerned, pursuant to Article 256 EC.

7 By a formal notice to pay notified on 16 January 2001 at the same time as the enforcement order, the Commission summoned the applicant, on the basis of the judgment concerned, to pay within 10 days the global sum of ITL 1 800 629 453.31, excluding the costs of notifying the formal notice and any consequential costs.

8 By writ of 25 January 2001, notified on 31 January 2001 and registered on the same date on the General Roll of the Tribunale di Teramo, Italy, the applicant, in accordance with the provisions of the Italian Civil Code on objection to enforcement, challenged the formal notice to pay.

9 Article 244 EC states that the judgments of the Court of Justice are to be enforceable under the conditions laid down in Article 256 EC. The second paragraph of Article 256 EC provides that enforcement is to be governed by the rules of civil procedure in force in the State in the territory of which it is carried out. The last paragraph of Article 256 EC specifies that enforcement may be suspended only by a decision of the Court of Justice, but that the courts of the country concerned are to have jurisdiction over complaints that enforcement is being carried out in an irregular manner.

10 In support of its application to suspend enforcement, Montorio pleads non-compliance with, and accordingly infringement of, Article 228 EC by the Community.

11 Although the applicant acknowledges that, strictly speaking, the procedure established by Article 228 EC concerns the effects of a judgment of the Court of Justice delivered following infringement proceedings, it submits that that procedure must also be applied in the present case for a number of reasons. First, such an application follows from the principle of cooperation in good faith. Next, since Montorio forms part of the local administration of the State, it should be treated differently from an ordinary natural or legal person and be subject, by analogy, to the procedure under Article 228 EC.

12 Finally, the applicant states that payment all at once of the sum requested would cause it serious and irreparable harm by bringing about a financial disaster. That would not be in the Commission's interest, since such a disaster would be likely to result in delays in compliance with the judgment concerned.

13 In the applicant's submission, it should be possible to draw up an appropriate timetable of payments in order to enable Montorio, on the one hand, to be in a position to fulfil all of its obligations while at the same time avoiding insolvency and the Commission, on the other, easily to recover fully the sums payable to it.

14 On the basis of the first subparagraph of Article 83(1) and the first paragraph of Article 89 of the Rules of Procedure of the Court of Justice, the Commission contends that the application is manifestly inadmissible where no proceedings have been brought before the Court to challenge the judgment concerned on its substance.

15 On the substance, the Commission submits that the principle of cooperation in good faith laid down in Article 10 EC is not applicable in the context of relations of a contractual nature. Furthermore, the Commission has consistently observed the principles and rules of Italian law, which was the law governing contracts Nos WE 147/85 and HY 149/85. Finally, the procedure established in Article 228 EC is not applicable by analogy, on account of the radically different nature of the enforcement of a judgment which declares that obligations of a contractual nature have not been fulfilled.

16 Moreover, the Commission seriously doubts whether the payment of sums due by virtue of a judgment whose validity is not challenged may constitute harm and contends that Montorio will be able to continue its ordinary institutional and administrative activity by virtue of certain provisions of Italian law which seek to ensure the normal functioning of municipalities, in particular by restricting the confiscation of certain essential assets.

17 It should be noted that the applicant is not challenging its obligation to pay the amounts set in the judgment concerned, but is criticising the Commission for having followed an inappropriate procedure for the purpose of enforcing that judgment.

18 It is plain, however, that the judgment concerned was delivered under an arbitration clause and relates to the fulfilment of obligations of a contractual nature binding the Commission and a territorial unit in accordance with Italian law.

19 Consequently, contrary to Montorio's submission, the Commission was under no obligation, for the purpose of ensuring the enforcement of the judgment

concerned, to follow the procedure laid down in Article 228 EC which is applicable in the event of non-compliance with a judgment by which the Court of Justice has found that a Member State has failed to fulfil an obligation under the Treaty.

20 Neither the principle of cooperation in good faith, the relevance of which in this case is in any event doubtful, nor the alleged analogy pleaded by Montorio can authorise the Court to modify the system of legal remedies expressly provided for in the EC Treaty in relation to the enforcement of judgments delivered under an arbitration clause.

21 Accordingly, in the light of the characteristics of the present proceedings, the application must be dismissed in its entirety, without there being any need to adjudicate on the plea of inadmissibility raised by the Commission.

Costs

22 Under Article 69(2) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings. Since the Commission has applied for an order for costs and the applicant has been unsuccessful, it must be ordered to pay the costs.

On those grounds,

THE PRESIDENT OF THE COURT

hereby orders:

1. The application is dismissed.

2. The municipality of Montorio al Vomano shall pay the costs.

Luxembourg, 30 May 2001.

R. Grass
Registrar

G.C. Rodríguez Iglesias
President