Reports of Cases

ORDER OF THE COURT (Third Chamber)

11 July 2013 *

(Interpretation of a judgment — Inadmissibility)

In Case C-496/09 INT,

APPLICATION for an interpretation of the judgment of 17 November 2011 in Case C-496/09 *Commission* v *Italy*, made on 14 February 2013, under Articles 43 of the Statute of the Court of Justice of the European Union and 158 of the Rules of Procedure of the Court,

Italian Republic,

the other party to the proceedings being:

European Commission,

THE COURT (Third Chamber),

composed of K. Lenaerts, Vice-President of the Court, acting as President of the Third Chamber, T. von Danwitz, E. Juhász, G. Arestis and D. Šváby (Rapporteur), Judges,

Advocate General: N. Jääskinen,

Registrar: A. Calot Escobar,

after hearing the Advocate General,

makes the following

Order

1 By application lodged at the Court Registry on 14 February 2013, the Italian Republic lodged an application for the interpretation of paragraphs 52, 55 and 68 of the grounds of the judgment and of paragraph 2 of the operative part of the judgment in Case C-496/09 *Commission* v *Italy* [2011] ECR I-11483 (the 'judgment which the Court is asked to interpret').

2 The Italian Republic is asking the Court to interpret:

— the terms 'amount not yet recovered on the date of delivery of the present judgment', which appear at paragraphs 52, 55 and 68 of the grounds of the judgment and paragraph 2 of the operative part of the judgment, in that they refer to the amount not yet recovered on the date on which, during

* Language of the case: Italian.

the procedure, the collection of evidence stage came to an end, that is, the moment of the procedural crystallisation of the factual situation on the basis of which the Court settled the dispute, and

— the terms 'that has not yet been recovered, or not shown to have been recovered, at the end of the period concerned' used at paragraphs 52, 55 and 68 of the grounds of the judgment and paragraph 2 of the operative part of the same judgment in that they oblige the European Commission to take account, for the purposes of the six-monthly evaluation of progress made by the Italian Republic in the recovery of the aid concerned, not only of the documents relating to that six-month period communicated to the Commission before the expiry of that six-month period, but of any document relating to the relevant six-month period.

The judgment which the Court is asked to interpret

3 By the judgment which the Court is asked to interpret, the Court:

'1. Declare[d] that, by failing, by the date of expiry of the period prescribed in the reasoned opinion issued by the Commission of the European Communities on 1 February 2008 pursuant to Article 228 EC, to take all the measures needed to comply with the judgment of 1 April 2004 in Case C-99/02 *Commission* v *Italy* [[2004] ECR I-3353] concerning the recovery from the recipients of the aid which was found to be unlawful and incompatible with the common market by Commission Decision 2000/128/EC of 11 May 1999 concerning aid granted by Italy to promote employment [OJ 2000 L 42, p. 1], the Italian Republic has failed to fulfil its obligations under that decision and Article 228(1) EC;

2. Order[ed] the Italian Republic to pay to the European Commission, into the "European Union own resources" account, a penalty payment of an amount calculated by multiplying the basic amount of EUR 30 million by the percentage of the unlawful aid that has not yet been recovered, or not shown to have been recovered, at the end of the period concerned, compared to the total amount not yet recovered on the date of delivery of the present judgment, for every six months of delay in implementing the necessary measures to comply with the judgment of 1 April 2004 in Case C-99/02 *Commission* v *Italy*, from the present judgment until compliance with the judgment of 1 April 2004;

3. Order[ed] the Italian Republic to pay to the European Commission, into the "European Union own resources" account, a lump sum of EUR 30 million;

…'

Observations of the parties

4 First, the Italian Republic argues that to interpret the terms 'on the date of delivery of the present judgment' as referring to the situation on 17 November 2011, the date on which the judgment which the Court is asked to interpret was delivered, and not that existing at the date of the end of the inquiry stage of the procedure, exposes it to unreasonable consequences in that it increases the penalty payment imposed on it. That interpretation is also contrary to the scheme of the penalty payment mechanism laid down under Article 228(2) EC in that it makes the amount of the penalty payment subject to a matter which is beyond the control of that Member State and which disconnects it from the situation taken into consideration by the Court in assessing its amount.

5 Secondly, the Italian Republic maintains that to interpret the terms 'that has not yet been recovered, or not shown to have been recovered, at the end of the period concerned' as precluding evidence submitted by that Member State following the expiry of the six-month period concerned from being able to be taken into consideration by the Commission in determining the amount of the penalty payment relating thereto is not only unnecessary in order to ensure compliance with the judgment in *Commission* v *Italy*, but is also incompatible with the principle of cooperation in good faith as it may henceforth be seen in Article 4(3) TEU.

6 The Commission is of the opinion that the application for an interpretation made by the Italian Republic is inadmissible, in the absence of any difficulty on the meaning and scope of the judgment which the Court is asked to interpret and seeks essentially to affect the clear content of the judgment and to modify the scope thereof to its benefit.

The application

7 Article 158(1) of the Rules of Procedure of the Court provides that, in accordance with Article 43 of the Statute of the Court of Justice of the European Union, if the meaning or scope of a judgment or order is in doubt, the Court shall construe it on application by any party or any institution of the European Union establishing an interest therein.

8 It should be noted that, as the Court of Justice has consistently held, an application for interpretation must, in order to be admissible, concern the operative part of the judgment in question, and the essential grounds thereof, and seek to resolve an obscurity or ambiguity that may affect the meaning or scope of that judgment, in so far as the Court was required to decide the particular case before it. An application for interpretation is therefore not admissible where it refers to paragraphs which have not been decided by the judgment concerned (order of the President of the Court of 20 April 2010 in Case C-114/08 P(R)-INT *Pellegrini* v *Commission*, paragraph 6 and the case-law cited).

9 With regard to the first point of the present application, it must be noted that the operative part of the judgment which the Court is asked to interpret in accordance with the grounds stated at paragraphs 52, 55 and 68 expressly refers to the date on which that judgment was delivered as a date of reference for the determination of the total amount of aid not yet recovered, which should serve as a basis for the calculation of the gradually decreasing penalty payment which that Member state has been ordered to pay.

10 In the same way, with regard to the second point of the application, it is not disputed that a strictly literal reading of the operative part of the judgment which the Court is asked to interpret is capable of justifying the taking into account by the Commission, for the purposes of the calculation of the percentage of aid which must be considered as not recovered at the end of a specified six-monthly period, of only the documentary evidence which it receives before the expiry of the relevant period.

11 In that regard, it is sufficient to state that the Italian Republic's application is seeking, by its two heads of argument, to call into question the consequences of such a strict reading of the operative part of the judgment which the Court is asked to interpret. Such a calling into question cannot be reconciled either with Articles 43 of the Statute of the Court and 158(1) of the Rules of Procedure of the Court or with the force of *res judicata* which attaches to judgments of the Court.

12 Since it is not founded on any difficulty as to the meaning and scope of the judgment which the Court is asked to interpret, the present application must therefore be deemed inadmissible.

Costs

13 Under Article 138(1) 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 costs and the Italian Republic has been unsuccessful in its submissions, the latter must be ordered to pay the costs.

On those grounds, the Court (Third Chamber) hereby:

1. Dismisses the application for interpretation;

2. Orders the Italian Republic to pay the costs.

[Signatures]