ORDER OF THE COURT
9 FEBRUARY 1982 [1]

CO.DE.MI. SpA
v Commission of Euratom
(application by the President of the Tribunale, Varese, for the enforcement of an order previously made by him)

Case 229/81

In Case 229/81

APPLICATION by the President of the Tribunale, Varese, for the enforcement of an order previously made by him

THE COURT

composed of: J. Mertens de Wilmars, President, G. Bosco, A. Touffait and O. Due (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

Having heard the views of the Advocate General,

makes the following

1 — Language of the Case: Italian.

ORDER

Facts and Issues

On 14 and 20 December 1979 the Italian company CO.DE.MI., SpA, of Milan, signed two contracts with the Commission of the European Atomic Energy Community, represented by the Deputy Director of the Joint Research Centre at Ispra, for the construction at the Centre of a main entrance building and a building described as a "Management Building".

The performance of these contracts gave rise to disagreements between CO.DE.MI. and the Commission.

As a result of the difficulties, CO.DE.MI. requested the President of the Tribunale, Varese, to assign to a technical expert the task of establishing the state of the works and of ascertaining the decisions taken by the person who commissioned the building and the main contractor in relation to certain portions of the works.

By order of 12 May 1981 the President of the Tribunale recognized the necessity and urgency of a technical check on the works and commissioned an expert to carry out the measures requested by CO.DE.MI. and to try to bring about a reconciliation between the parties.

On three occasions the Commission refused to allow the expert appointed by the President of the Tribunale to enter upon the building sites.

On 30 June 1981 the Commission submitted to the President of the Tribunale an "application for the annulment" of the order of 12 May on the ground that he had no jurisdiction to order the measures in question by virtue, on the one hand, of Article 1 of the Protocol on the Privileges and Immunities of the European Communities, signed in Brussels on 8 April 1965, and, on the other hand, of the clauses conferring jurisdiction upon the Court of Justice of the European Communities inserted, in pursuance of Article 153 of the EAEC Treaty, in the contracts concluded between CO.DE.MI. and the Commission.

As a result of the Commission's application, the President of the Tribunale, by order of 20 July 1981 which was received at the Court Registry on 6 August 1981, requested the President of the Court to "enforce" his previous order of 12 May 1981.

This document was communicated by the Court Registry to CO.DE.MI. and to the Commission, and they were invited to submit their observations which were lodged at the Court Registry on 15 September 1981.

In its observations the Commission repeats the argument which it had submitted before the Tribunale and which seeks to demonstrate that the President of that court had no jurisdiction to prescribe the measures contained in his order of 12 June.

CO.DE.MI. maintains, on the other hand, that the President of the Tribunale had jurisdiction to make that order.

Decision

1 Article 92 (1) of the Rules of Procedure provides: "Where it is clear that the Court has no jurisdiction to take cognizance of an application lodged with it in pursuance of Article 38 (1), the Court may by reasoned order declare the application inadmissible."

2 That provision must be applied in the present case. It is clear from the very terms of the order made on 20 July 1981 by the President of the Tribunale, Varese, that he is requesting the President of the Court of Justice of the European Communities to "enforce, by his decision", the order which he had made on 12 May 1981 for the procurement of a technical expert's report. Neither the Treaties nor the measures adopted for the purpose of implementing them contain any provision empowering the Court of Justice or its President to order the enforcement of a decision of a national court.

3 Consequently, both the Court and its President plainly have no jurisdiction to take cognizance of the application made by the President of the Tribunale in his order of 20 June 1981, and the application must therefore, by virtue of the above-cited provisions of Article 92 of the Rules of Procedure, be declared inadmissible.

On those grounds,

THE COURT

hereby:

Declares the application to be inadmissible.

Luxembourg, 9 February 1982.

J. A. Pompe
Deputy Registrar

J. Mertens de Wilmars
President