JUDGMENT OF THE COURT
5 November 1986 *

In Case 160/85,

Commission of the European Communities, represented by Sergio Fabro, a member of its Legal Department, acting as Agent, with an address for service in Luxembourg at the office of Georges Kremlis, a member of its Legal Department, Jean Monnet Building, Kirchberg,

applicant,

v

Italian Republic, represented by Luigi Ferrari Bravo, Head of the Diplomatic Legal Department, acting as Agent, assisted by Oscar Fiumara, avvocato dello Stato, with an address for service at the Italian Embassy,

defendant,

APPLICATION for a declaration that by its continued failure, notwithstanding the judgments of the Court of Justice of 10 November 1981 in Cases 28/81 and 29/81 (*Commission* v *Italian Republic* [1981] ECR 2577 and 2585 respectively), to implement Council Directive 74/561/EEC of 12 November 1974 on admission to the occupation of road haulage operator in national and international transport operations and Council Directive 74/562/EEC of 12 November 1974 on admission to the occupation of road passenger transport operator in national and international transport operations (Official Journal 1974, L 308, pp. 18 and 23 respectively), the Italian Republic has failed to fulfil its obligations under Article 171 of the EEC Treaty,

THE COURT,

composed of: Lord Mackenzie Stuart, President, C. Kakouris, T. F. O'Higgins and F. Schockweiler (Presidents of Chambers), G. Bosco, T. Koopmans, K. Bahlmann, R. Joliet and G. C. Rodríguez Iglesias, Judges,

Advocate General: Sir Gordon Slynn
Registrar: P. Heim

* Language of the Case: Italian.

having regard to the Report for the Hearing and further to the hearing on 9 July 1986,

after hearing the Opinion of the Advocate General delivered at the sitting on 9 July 1986,

gives the following

JUDGMENT

1 By application lodged at the Court Registry on 23 May 1985 the Commission of the European Communities brought proceedings pursuant to Article 169 of the EEC Treaty for a declaration that by its continued failure, notwithstanding the judgments of the Court of Justice of 10 November 1981 in Cases 28/81 and 29/81 (*Commission* v *Italian Republic* [1981] ECR 2577 and 2585 respectively), to implement Council Directive 74/561/EEC of 12 November 1974 on admission to the occupation of road haulage operator in national and international transport operations and Council Directive 74/562/EEC of 12 November 1974 on admission to the occupation of road passenger transport operator in national and international transport operations (Official Journal 1974, L 308, pp. 18 and 23 respectively), the Italian Republic has failed to fulfil its obligations under Article 171 of the EEC Treaty.

2 In its judgment in Case 28/81, referred to above, the Court declared that:

'By failing to adopt within the prescribed period the provisions needed in order to comply with Council Directive 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.'

3 In its judment of the same date in Case 29/81, referred to above, the Court declared that:

'By failing to adopt within the prescribed period the provisions needed in order to comply with Council Directive 74/562 of 12 November 1974 on admission to the

occupation of road passenger transport operator in national and international transport operations (Official Journal L 308, p. 23), the Italian Republic has failed to fulfil one of its obligations under the Treaty.'

4 Reference is made to the Report for the Hearing for the background to the proceedings and the submissions and arguments of the parties, which are mentioned or discussed hereinafter only in so far as is necessary for the reasoning of the Court.

5 The Commission considered that the Italian Republic had failed to comply with the judgments of the Court of 10 November 1981; after an exchange of correspondence with the Italian Government, it initiated the procedure provided for in Article 169 of the EEC Treaty. It called upon the Italian Republic to submit its observations, and on 4 February 1985 issued a reasoned opinion. Since no action was taken to comply with the reasoned opinion, the Commission brought these proceedings.

6 The Commission states that under Article 171 of the EEC Treaty the Italian Republic should, following the judgments of the Court of 10 November 1981, have taken the measures necessary to put an end to its failure to comply with its obligations under the Treaty, by implementing the directives in question in national law. It is now several years since those judgments were delivered, and the Italian Republic has not adopted any measures to comply with the judgments of the Court.

7 The Italian Government states that a bill implementing Directive 74/561 was approved by the Chamber of Deputies in the course of the previous session but that session came to an end before the parliamentary procedure could be completed and the bill finally enacted. Provisions for the implementation of the two directives in national law have been included in bills which are now before the current session of Parliament.

8 It must be pointed out that, as the Court has consistently held, a Member State may not plead provisions, practices or circumstances in its internal legal system in

order to justify a failure to comply with its obligations under Community law. Under Directives 74/561 and 74/562, national measures should have been adopted by 1 January 1977. In its judgments of 10 November 1981, the Court held that by failing to implement the directives within the prescribed period the Italian Republic had failed to fulfil its obligations under the Treaty.

9 Under Article 171 of the Treaty the Italian Republic should have taken the necessary measures to comply with the judgments of the Court. That article does not prescribe the period within which such measures must be taken. However, measures to comply with a judgment must be initiated immediately and must be completed as soon as possible; that was not done in this case since several years have already passed since the delivery of the judgments in question.

10 It must therefore be declared that by its continued failure, notwithstanding the judgments of the Court of Justice of 10 November 1981 in Cases 28/81 and 29/81, to implement Council Directive 74/561/EEC of 12 November 1974 on admission to the occupation of road haulage operator in national and international transport operations and Council Directive 74/562/EEC of 12 November 1974 on admission to the occupation of road passenger transport operator in national and international transport operations, the Italian Republic has failed to fulfil its obligations under Article 171 of the EEC Treaty.

Costs

11 Under Article 69 (2) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs. Since the Italian Republic has failed in its submissions it must be ordered to pay the costs.

On those grounds,

THE COURT

hereby:

(1) Declares that by its continued failure, notwithstanding the judgments of the Court of 10 November 1981 in Cases 28/81 and 29/81 (Commission v Italian Republic [1981] ECR 2577 and 2585 respectively) to implement Council Directive 74/561/EEC of 12 November 1974 on admission to the occupation of road haulage operator in national and international transport operations and Council Directive 74/562/EEC of 12 November 1974 on admission to the occupation of road passenger transport operator in national and international transport operations (Official Journal 1974, L 308, pp. 18 and 23 respectively), the Italian Republic has failed to fulfil its obligations under Article 171 of the EEC Treaty.

(2) Orders the Italian Republic to pay the costs.

Mackenzie Stuart Kakouris O'Higgins Schockweiler

Bosco Koopmans Bahlmann Joliet Rodríguez Iglesias

Delivered in open court in Luxembourg on 5 November 1986.

P. Heim
Registrar

A. J. Mackenzie Stuart
President