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Judgment of the Court of 19 January 1993. - Commission of the European Communities v Italian Republic. - Failure to fulfil obligations - Failure to comply with a judgment of the Court of Justice finding a failure to fulfil obligations. - Case C-101/91.

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Keywords

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1. Actions against a Member State for failure to fulfil obligations ° Judgment of the Court of Justice finding a failure to fulfil obligations ° Period within which the judgment must be complied with

(EEC Treaty, Art. 171)

2. Actions against Member States for failure to fulfil obligations ° Judgment of the Court of Justice finding a failure to fulfil obligations ° Effects ° Obligations incumbent on the authorities of the Member State in default ° Obligation to ensure compliance with judgment ° Implications ° Adoption of measures designed to prolong that failure ° Not permissible

(EEC Treaty, Arts 5 and 171)

Summary

1. The immediate and uniform application of Community law requires that the process of compliance with a judgment must be initiated immediately and must be completed as soon as possible.

2. A finding by the Court that a Member State has failed to fulfil its obligations under Community law entails, first, an automatic prohibition on the application, by both the judicial and administrative authorities of that Member State, of the national legislation which is incompatible with Community law and, secondly, an obligation on the part of those authorities to take all appropriate measures to facilitate the full application of Community law.

A Member State which, instead of taking the necessary measures to comply with a judgment of the Court of Justice finding that it had failed to fulfil its obligations, actually adopts specific measures to extend the legislation constituting the failure to fulfil obligations, commits a serious and intolerable breach of the duty of Member States under the second paragraph of Article 5 of the Treaty to abstain from any measure which could jeopardize the attainment of the objectives of the Treaty and thereby goes to the very basis of the Community legal order.

Parties

In Case C-101/91,

Commission of the European Communities, represented by Daniel Calleja y Crespo and Lucio Gussetti, of its Legal Service, acting as Agents, with an address for service in Luxembourg at the office of Roberto Hayder, of its Legal Service, Wagner Centre, Kirchberg,

applicant,

v

Italian Republic, represented by Professor Luigi Ferrari Bravo, Head of the Department for Contentious Diplomatic Affairs at the Ministry of Foreign Affairs, acting as Agent, assisted by Pier Giorgio Ferri, Avvocato dello Stato, with an address for service in Luxembourg at the Italian Embassy, 5 rue Marie Adélaïde,

defendant,

APPLICATION for a declaration that, by failing to take the measures necessary to comply with the judgment of the Court of Justice of 21 February 1989 in Case 203/87 Commission v Italy [1989] ECR 371, the Italian Republic has failed to fulfil its obligations under Article 171 of the EEC Treaty,

THE COURT,

composed of: C.N. Kakouris, President of Chamber, acting for the President, M. Zuleeg and J.L. Murray (Presidents of Chambers), G.F. Mancini, F.A. Schockweiler, J.C. Moitinho de Almeida, F. Grévisse, M. Diez de Velasco and P.J.G. Kapteyn, Judges,

Advocate General: C. Gulmann,

Registrar: L. Hewlett, Administrator,

having regard to the Report for the Hearing,

after hearing oral argument from the parties at the hearing on 21 October 1992,

after hearing the Opinion of the Advocate General at the sitting on 28 October 1992,

gives the following

Judgment

Grounds

1 By application lodged at the Court Registry on 27 March 1991, the Commission of the European Communities brought an action under Article 169 of the EEC Treaty for a declaration that, by failing to take the measures necessary to comply with the judgment of the Court of Justice of 21 February 1989 in Case 203/87 Commission v Italy [1989] ECR 371, the Italian Republic has failed to fulfil its obligations under Article 171 of the EEC Treaty.

2 By way of derogation from the Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonization of the laws of the Member States relating to turnover taxes ° Common system of value added tax: uniform basis of assessment (OJ 1977 L 145, p. 1), the Council, by Decision 81/890/EEC of 3 November 1981 (OJ 1981 L 322, p. 40), authorized the Italian Republic, until 31 December 1981, to exempt, with refund of the tax paid at the preceding stage, certain transactions from value added tax in the context of aid to earthquake victims in southern Italy.

3 The Council subsequently extended that authorization until 31 December 1983. By annual decree-laws and by Law No 12 of 21 January 1988, the Italian Republic in the meantime maintained the exemption in question until 31 December 1988.

4 In proceedings for a declaration of a failure to fulfil obligations under the Treaty, the Court, in the judgement in the abovementioned Case 203/87, declared that, by granting, for the period between 1 January 1984 and 31 December 1988, an exemption from value-added tax with reimbursement of the tax paid at the preceding stage in respect of certain transactions carried out for earthquake victims in Campania and Basilicata, the Italian Republic had infringed the provisions of Article 2 of the abovementioned Sixth Directive.

5 The Italian authorities, however, extended the exemption scheme at issue on several occasions, at first until 31 December 1989, then until 31 December 1992.

6 As early as May 1989, the Commission drew to the attention of the Italian Republic its failure to comply with the judgment in Case 203/87, a failure which it considered to be contrary to Article 171 of the Treaty.

7 After noting that the Italian Government had not informed it of any provisions adopted in order to bring the Italian legislation into conformity with Community law, the Commission, by letter of formal notice of 4 December 1989, requested the Italian Government, in pursuance of Article 169 of the EEC Treaty, to communicate its observations on the Commission's point of view.

8 By letter of 7 June 1990, the Italian Republic confirmed to the Commission that it was maintaining the exemption scheme at issue, and put forward certain arguments which were not such as to persuade the Commission to alter its view.

9 The Commission therefore communicated to the Italian Republic on 2 July 1990 a reasoned opinion under Article 169 of the Treaty, in which it concluded that the Italian Republic had failed to fulfil its obligations under Article 171 of the EEC Treaty and requested it to take the necessary measures within one month from the date of communication of the reasoned opinion.

10 Since the Italian Republic did not comply with the reasoned opinion, the Commission brought this action.

11 Reference is made to the Report for the Hearing for a fuller account of the facts of the case, the procedure and the pleas and arguments of the parties, which are mentioned or discussed hereinafter only in so far as is necessary for the reasoning of the Court.

12 The Commission maintains that not only has the period allowed for the Italian Republic to comply with the judgment in Case 203/87 long since expired, but also that the Member State concerned has adopted specific measures to extend the duration of the infringement, instead of eliminating it in accordance with the judgment. Such an action is contrary to the provisions of Article 171 of the Treaty and at the same time constitutes a serious breach of the general duty of cooperation incumbent on that Member State under Article 5 of the Treaty.

13 The Italian Government accepts that the tax exemption scheme which continued until 31 December 1992 is the same as that on which the Court of Justice ruled in the judgment in Case 203/87. It contends, however, that the operative part of the judgment limits its effects to the application of the tax exemption scheme at issue during the period between 1 January 1984 and 31 December 1988. Consequently, the application of the scheme at issue during a subsequent period cannot be regarded as a breach of the obligation to comply with that judgment for the purposes of Article 171 of the Treaty.

14 The arguments of the Italian Republic cannot be accepted. The operative part of the judgment in Case 203/87 must be interpreted in the light of the reasons which provide the necessary support for it. Paragraph 10 of the judgment in no way limited in time the finding of a failure to fulfil an obligation, but on the contrary clearly stated that the Italian Republic had infringed Article 2 of the abovementioned directive by prolonging the tax exemption scheme at issue, without being authorized by the Council to do so, beyond the expiry on 31 December 1983 of the temporary derogation allowed by the Council.

15 The maintenance in force of the tax exemption at issue after 31 December 1988 constitutes, therefore, an extension of the initial infringement of Article 2 of the abovementioned directive which the Italian Republic committed from 1 January 1984 onwards, and which the Court has already declared to exist in its judgment in Case 203/87.

16 In the second place, the Italian Government contends that the exemption scheme at issue, which was provided for reconstruction work in the disaster areas, cannot infringe Community law since it is capable of falling under Article 92(2)(b) of the Treaty which declares that aid to make good the damage caused by natural disasters is compatible with the common market and which covers the exemption scheme in question.

17 The Commission's reply is that such an argument constitutes an impermissible attempt to reopen an issue which has already been settled by the judgment in Case 203/87, which has the force of *res judicata* and which took no account of that argument which had been put forward out of time by the Italian Republic.

18 In that connection, it is significant to note that the legal argument in this case is effectively circumscribed by the abovementioned judgment in Case 203/87, and that this action may not be used to call into question again what has been finally decided.

19 The arguments put forward by the Italian Government must therefore be rejected.

20 It must furthermore be borne in mind that the Court has consistently held (see in particular the judgment in Case C-328/90 *Commission v Greece* [1992] ECR I-425, paragraph 6) that, even

though Article 171 of the EEC Treaty does not specify the period within which a judgment finding a failure by a Member State to fulfil its obligations must be complied with, the interest attaching to the immediate and uniform application of Community law requires that the process of compliance with a judgment must be initiated immediately and must be completed as soon as possible.

21 In the light of the foregoing considerations, it must be held that, by failing to take the measures necessary to comply with the aforesaid judgment in Case 203/87, the Italian Republic has failed to fulfil its obligations under Article 171 of the EEC Treaty.

22 The Court points out moreover that that failure to fulfil obligations does not consist only of failure to take certain measures to comply with a judgment of the Court of Justice, but also of actually adopting specific measures to prolong a tax exemption scheme which had been declared to be contrary to Community law by a judgment of the Court having the force of res judicata.

23 As the Commission rightly maintains, such conduct constitutes a serious and intolerable breach of the duty of Member States under the second paragraph of Article 5 of the Treaty to abstain from any measure which could jeopardize the attainment of the objectives of the Treaty and thereby goes to the very basis of the Community legal order.

24 Finally, it must be noted that, in any case, the finding that a Member State has failed to fulfil its obligations under Community law entails, first, an automatic prohibition, on the application, by both the judicial and administrative authorities of that Member State, of the incompatible tax exemption scheme and, secondly, an obligation on the part of those authorities to take all appropriate measures to facilitate the full application of Community law (judgment in Case 48/71 Commission v Italy [1972] ECR 527, paragraph 7, and judgment in Case 103/88 Fratelli Costanzo v Comune di Milano [1989] ECR 1839, paragraph 33).

Decision on costs

Costs

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 Italian Republic has been unsuccessful, it must be ordered to pay the costs.

Operative part

On those grounds,

THE COURT

hereby:

1. Declares that, by failing to take the measures necessary to comply with the judgment of the Court of Justice of 21 February 1989 in Case 203/87 Commission v Italy, 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.