

Judgement of the Court, Commission/Italy, Case 101/84 (11 July 1985)

Caption: In its judgment of 11 July, in case 101/84, Commission v Italy, the Court of Justice declares that although it is true that a bomb attack on the data processing centre of the Italian Ministry for Transport, which took place before 18 January 1979, may have constituted a case of force majeure and created insurmountable difficulties, its effect could only have lasted a certain time, namely the time which would in fact be necessary for an administration showing a normal degree of diligence to replace the equipment destroyed and to collect and prepare the data. The Italian Government cannot therefore rely on that event to justify its continuing failure to comply with its obligations years later.

Source: Reports of Cases before the Court. 1985. [s.l.].

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Judgment of the Court 11 July 1985 (1)
Commission of the European Communities v Italian Republic

'Failure of a Member State to fulfil its obligations — Statistical returns in respect of carriage of goods by road'

Case 101/84

Summary

Member States — Obligations — Implementation of directives — Failure to fulfil obligations — Justification — Force majeure — Conditions
(EEC Treaty, Art. 169)

Although a Member State which has encountered momentarily insurmountable difficulties may plead *force majeure* to justify its failure to comply with its obligations imposed by a Community directive, this applies only to the period needed by an administration showing a normal degree of diligence to overcome those difficulties.

In Case 101/84

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

applicant,

Italian Republic, represented by Arnaldo Squillante, President of Section of the State Council, Head of the Department for Contentious Diplomatic Affairs, acting as Agent, assisted by I. M. Braggulia, Avvocato dello Stato, with an address for service in Luxembourg at the Italian Embassy,

defendant,

Application for a declaration that, by failing to compile statistical returns in respect of the carriage of goods by road in accordance with the rules laid down in Council Directive No. 78/546/EEC, the Government of the Italian Republic has failed to fulfil its obligations under that directive,

THE COURT

composed of: Lord Mackenzie Stuart, President, G. Bosco and C. Kakouris (Presidents of Chambers), T. Koopmans, U. Everling, Y. Galmot and R. Joliet, Judges,

Advocate General: M. Darmon

Registrar: H. A. Rühl, Principal Administrator

after hearing the Opinion of the Advocate General delivered at the sitting on 21 May 1985,

gives the following

JUDGMENT

(The account of the facts and issues which is contained in the complete judgment is not reproduced)

Decision

1 By application lodged at the Court Registry on 9 April 1984 the Commission of the European

Communities brought an action before the Court under Article 169 of the EEC Treaty for a declaration that, by failing to compile statistical returns in respect of the carriage of goods by road in accordance with the rules laid down in Council Directive No 78/546 of 12 June 1978 on statistical returns in respect of carriage of goods by road, as part of regional statistics (Official Journal 1978, L 168, p. 29), the Italian Republic has failed to fulfil its obligations under that directive.

2 Directive No 78/546 provides for annual statistical returns in respect of the carriage of goods by road by means of vehicles registered in a Member State (a) in the territory of that Member State ('national transport') and (b) between that Member State and another Member State or a non-member country ('international transport'). The statistical returns referred to in the directive had to be made by the Member State for the first time in 1979 and thereafter annually and forwarded to the Commission in accordance with the rules laid down in the directive. Article 6 of the directive provides that when determining the method to be used for compiling the data Member States should take the steps necessary to obtain sufficient results regarding the total tonnage carried.

3 By letter No 148 of 18 January 1979 the Italian Ministry for Transport informed the Commission that following a bomb attack on its data processing centre and the consequent destruction of the vehicle register it was not possible to observe the time-limits laid down in the directive for the making of returns in respect of national transport. By letter No 3054 of 12 September 1979 the Ministry stated that statistical returns for national transport could not be made until January 1980. By letter No 3628 of 8 November 1979 it explained that it had been possible to make returns in respect of international transport from 1979, but only partially.

4 By letter No 71 of 9 September 1980 the Ministry stated that it was unable to make the return in respect of national transport for 1980 for the reason given the previous year, that is to say the destruction of vehicle records as a result of a bomb attack. By letter No 43/S of 3 April 1981 it informed the Commission that because of unforeseeable practical difficulties, namely lack of staff and the overloading of the computer centre, it was impossible for it to apply the directive. Finally, by letter No 84/S of 26 February 1982 the Director General for Civil Motor Vehicles of the Ministry of Transport stated that he was unable to give the slightest indication of the date from which complete returns for national transport could be made.

5 The Commission, finding that in relation to returns of international transport it had only incomplete data for 1979 and 1980 and no data for national transport, commenced the procedure set out in Article 169 of the EEC Treaty. By notice of 8 June 1982 the Commission, whilst recognizing that the bomb attack was an event of *force majeure*, invited the Italian Government to submit its observations. The Government of the Italian Republic did not reply.

6 In a reasoned opinion of 2 August 1983 the Commission found that in not making statistical returns for the carriage of goods by road in accordance with the rules laid down in Council Directive No. 78/546, the Italian Government had failed to fulfil its obligations under the directive and invited it to take the steps needed to comply with the reasoned opinion within a period of two months. The Italian Government did not reply to that opinion whereupon the Commission brought the present action.

7 The Commission claims that the Court should declare that by failing to compile statistical returns in respect of carriage of goods by road in accordance with the rules laid down in Council Directive No. 78/546, the Government of the Italian Republic has failed to fulfil its obligations under the provisions of that directive and that it should be ordered to pay the costs.

8 The Government of the Italian Republic makes no formal contentions. It maintains that the failure to fulfil its obligations with which it is charged is essentially due to practical difficulties and above all to *force majeure* resulting from a bomb attack which at the end of 1979 caused the destruction of the statistical data bank at the Ministry of Transport's data processing centre which completely upset all forecasts concerning the periods laid down by the directive and allowed only incomplete statistical data on international transport and none on national transport to be sent.

9 The Italian Government explains that it has hastened to collect and prepare the data to which the statistics

referred to in the directive relate by using specialist private undertakings with which it has entered into contracts for that purpose and has produced extracts from those contracts.

10 In answer to a question from the Court the Italian Government explained that much of the data collected on national transport of goods by road on own account and for hire or reward still had to be corrected so that it was not possible confidently to forecast when the statistical data could be forwarded to the Commission. As regards international transport for hire or reward, the data which the Italian Government expected to be able to make available to the Commission by the end of March 1985 would be available only as regards traffic sectors for which there had been returns. Finally, as regards international transport on own account, the Italian Government stated that the competent administration was studying the most appropriate means for collecting data in that sector but there were still serious difficulties.

11 The Commission observes that the difficulties to which the Italian Government refers do not correspond to reality. In this regard it states that, according to the letter from the Italian Ministry for Transport dated 3 April 1981 and thus subsequent to the bomb attack on which the Italian Government relies, the difficulties of the Italian administration were due to 'lack of staff' and the overloading of the computer centre entrusted with the work⁵. In the Commission's view, those facts reveal conduct by a public administration which, after the occurrence of an event which was indeed unforeseen and unforeseeable, has not shown the normal degree of diligence to be expected of any administration.

12 The Commission maintains that, even if the facts as presented by the Italian Government are accepted, the practical difficulties on which it relies cannot continue to prevent the national administration from applying the directive. It considers that whatever may be the need to correct errors or omissions in the statistical data collected by the specialist undertakings which the national administration says it has used, it is inconceivable that several years after the bomb attack it has still not been possible to re-establish the data needed to comply with the requirements of the directive.

13 The Commission observes that the information supplied by the Italian Government concerning national transport on own account and for hire or reward is inadequate and supplied subject to future corrections; the information concerning international transport for hire or reward is supplied subject to the reservation that it is valid 'only for the sectors of traffic for which there have been returns', which limits its practical usefulness. Finally, as regards international transport on own account, the Commission considers that the investigation carried out by the Italian administration does not in fact go further than looking into the appropriate means for collecting data in that sector.

14 It appears from both the documents filed and the oral argument before the Court that the Italian Government has not effectively contested the accuracy of the Commission's statements. In those circumstances it must be held that the Italian Government has not complied with its obligations under Directive No 78/546.

15 The Italian Government maintains, however, that the reason for its non-compliance was the bomb attack which destroyed the plant of the statistical data bank at the Information Centre of the Ministry for Transport's data processing centre. It argues that the bomb attack constitutes a case of *force majeure*, which made it impossible to collect and prepare the necessary data.

16 That argument cannot be accepted. Although it is true that the bomb attack, which took place before 18 January 1979, may have constituted a case of *force majeure* and created insurmountable difficulties, its effect could only have lasted a certain time, namely the time which would in fact be necessary for an administration showing a normal degree of diligence to replace the equipment destroyed and to collect and prepare the data. The Italian Government cannot therefore rely on that event to justify its continuing failure to comply with its obligations years later.

17 In those circumstances, the Court has no alternative but to grant the declaration requested by the Commission.

Costs

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

On those grounds,

THE COURT

hereby:

(1) Declares that by failing to compile statistical returns in respect of carriage of goods by road in accordance with the rules laid down in Council Directive No 78/546 of 12 June 1978 on statistical returns in respect of carriage of goods by road, as part of regional statistics (Official Journal 1978, L 168, p. 29), the Italian Republic has failed to fulfil its obligations under that directive;

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

Mackenzie Stuart
Bosco
Kakouris
Koopmans
Everling
Galmot
Joliet

Delivered in open court in Luxembourg on 11 July 1985.

P. Heim
Registrar

A. J. Mackenzie Stuart
President

(1) Language of the case: Italian