

JUDGMENT OF THE COURT  
10 DECEMBER 1968<sup>1</sup>

**Commission of the European Communities  
v Italian Republic<sup>2</sup>**

Case 7/68

Summary

1. *Obligations of Member States — Failure to fulfil — Action by the Commission before the Court of Justice — Bringing the action — Timing — Discretion of the Commission (EEC Treaty, Article 169)*
2. *Free movement of goods — Goods — Concept — Article possessing artistic or historic value (EEC Treaty, Article 9)*
3. *Free movement of goods — Articles possessing artistic or historic value — Charges on exports — Charge having an effect equivalent to a customs duty (EEC Treaty, Article 16)*
4. *Free movement of goods — Customs duties and quantitative restrictions — Nature of each — Difference — Prohibitions and restrictions for the protection of national treasures — Special nature — Strict construction (EEC Treaty, Articles 16 and 36)*
5. *Free movement of goods — Prohibitions and restrictions for the protection of national treasures — Limits to be observed by Member States regarding the object and nature of the means adopted — Incompatibility with the Treaty of a charge on the export of articles of artistic or historic value (EEC Treaty, Article 36)*

1. It is for the Commission, under Article 169 of the Treaty, to judge at what time it shall bring an action before the Court; and the considerations which determine its choice of time cannot affect the admissibility of the action, which follows only objective rules.

2. By goods, within the meaning of Article 9 of the EEC Treaty, there must be understood products which can be valued in money and which are capable, as such, of forming the subject of commercial transactions.

The rules of the Common Market apply

to articles possessing artistic or historic value subject only to the exceptions expressly provided by the Treaty.

3. Any charge which, by altering the price of an article exported, has the same restrictive effect on the free circulation of that article as a customs duty is deemed to be a charge having an effect equivalent to a customs duty within the meaning of Article 16 of the EEC Treaty. A tax levied on the exportation of articles possessing artistic or historic value falls within the prohibition contained in Article 16 by reason of the fact that export

<sup>1</sup> — Language of the Case: Italian.

<sup>2</sup> — CMLR.

trade in the goods in question is hindered by the pecuniary burden which it imposes on the price of the exported articles.

4. The prohibitions or restrictions on imports and exports referred to in Article 36 of the EEC Treaty are by nature clearly distinguished from customs duties and assimilated charges whereby the economic conditions of importation or exportation are affected without restricting the freedom of decision of those involved in commercial transactions. Because such measures constitute an exception to the fundamental principle of the elimination of all obstacles to the free movement of goods between Member States, they must be strictly construed.

5. The prohibitions and restrictions referred to in Article 36 of the EEC Treaty cannot justify the retention of measures, such as customs duties or charges having equivalent effect, which fall outside the scope of the prohibitions referred to in the chapter relating to the elimination of quantitative restrictions between Member States.

In order to avail themselves of Article 36, Member States must observe the limitations imposed by that provision both as regards the objective to be obtained and as regards the nature of the means used to attain it. The levy of a tax on the exportation of goods possessing artistic or historic value is incompatible with the provisions of the Treaty.

In Case 7/68

COMMISSION OF THE EUROPEAN COMMUNITIES, represented by its Legal Adviser, Armando Toledano, acting as Agent, with an address for service in Luxembourg at the offices of its Legal Adviser, Émile Reuter, 4 boulevard Royal,

applicant,

and

ITALIAN REPUBLIC, represented by Adolfo Maresca, Minister plenipotentiary, acting as Agent, assisted by Pietro Peronaci, Deputy State Advocate-General, with an address for service in Luxembourg at the Italian Embassy,

defendant,

Application for a declaration that the Italian Republic has failed to fulfil the obligations imposed on it by Article 16 of the Treaty establishing the European Economic Community by continuing to levy, after 1 January 1962, the progressive tax provided for by Law No 1089 of 1 January 1939 on exports to other Member States of the Community of objects of artistic, historic, archaeological or ethnographic interest;

THE COURT

composed of: R. Lecourt, President, A. Trabucchi and J. Mertens de Wilmars,