

Joined Cases C-6/90 and C-9/90

Andrea Francovich and Others

v

Italian Republic

(References for a preliminary ruling
from the Preture of Vicenza and Bassano del Grappa)

(Failure to implement a directive — Liability of the Member State)

Report for the hearing	I - 5359
Opinion of Mr Advocate General Mischo delivered on 28 May 1991	I - 5370
Judgment of the Court, 19 November 1991	I - 5403

Summary of the Judgment

- 1. Measures adopted by the institutions — Directives — Direct effect — Conditions — Variety of means by which prescribed result can be achieved — Irrelevant
(EEC Treaty, Art. 189, third para.)*
- 2. Social policy — Approximation of laws — Protection of employees in the event of the insolvency of the employer — Directive 80/987 — Articles 1 to 5 — Effects on relations between the State and individuals
(Council Directive 80/987, Arts 1 to 5)*
- 3. Community law — Rights conferred on individuals — Infringement by a Member State — Obligation to make reparation for the loss and damage caused to individuals
(EEC Treaty, Art. 5)*

4. *Community law — Rights conferred on individuals — Breach by a Member State of the obligation to implement a directive — Obligation to make reparation for the loss and damage caused to individuals — Conditions — Detailed rules governing reparation — Application of national law — Limits (EEC Treaty, Art. 189, third para.)*

1. The right of a Member State to which a directive is addressed to choose among several possible means of achieving the result required by it does not preclude the possibility for individuals of enforcing before the national courts rights whose content can be determined sufficiently precisely on the basis of the provisions of the directive alone.

2. Although the provisions of Directive 80/987 on the protection of employees in the event of the insolvency of the employer are sufficiently precise and unconditional as regards the determination of the persons entitled to the guarantee and as regards the content of that guarantee, where no implementing measures are adopted by the Member State within the prescribed period the persons concerned cannot enforce those rights before the national courts, since the provisions of the directive do not identify the person liable to provide the guarantee and the State cannot be considered liable on the sole ground that it has failed to take transposition measures within the prescribed period.

3. The full effectiveness of Community rules would be impaired and the protection of the rights which they grant would be weakened if individuals were unable to obtain reparation when their rights are infringed by a breach of

Community law for which a Member State can be held responsible. Such a possibility of reparation by the Member State is particularly indispensable where the full effectiveness of Community rules is subject to prior action on the part of the State and where, consequently, in the absence of such action, individuals cannot enforce before the national courts the rights conferred upon them by Community law.

It follows that the principle whereby a State must be liable for loss and damage caused to individuals by breaches of Community law for which the State can be held responsible is inherent in the system of the Treaty.

A further basis for the obligation of Member States to make good such loss and damage is to be found in Article 5 of the Treaty, under which they are required to take all appropriate measures, whether general or particular, to ensure the implementation of Community law, and consequently to nullify the unlawful consequences of a breach of Community law.

4. Although the liability of the Member State to make good loss and damage caused to individuals by breaches of Community law for which it can be held

responsible is required by Community law, the conditions under which there is a right to reparation depend on the nature of the breach of Community law giving rise to the loss and damage which have been caused.

In the case of a Member State which fails to fulfil its obligation under the third paragraph of Article 189 of the Treaty to take all the measures necessary to achieve the result prescribed by a directive the full effectiveness of that rule of Community law requires that there should be a right to reparation where three conditions are met, that is to say, first, that the result prescribed by the directive should entail the grant of rights to individuals; secondly, that it should be possible to identify the content of those

rights on the basis of the provisions of the directive; and thirdly, that there should be a causal link between the breach of the State's obligation and the loss and damage suffered by the injured parties.

In the absence of any Community legislation, it is in accordance with the rules of national law on liability that the State must make reparation for the consequences of the loss and damage caused. Nevertheless, the relevant substantive and procedural conditions laid down by the national law of the Member States must not be less favourable than those relating to similar domestic claims and must not be so framed as to make it virtually impossible or excessively difficult to obtain reparation.

REPORT FOR THE HEARING in Joined Cases C-6/90 and C-9/90*

I — Facts and procedure

1. Council Directive 80/987/EEC of 20 October 1980 on the approximation of the laws of the Member States relating to the protection of employees in the event of the insolvency of their employer (Official Journal 1980 L 283, p. 23) states in Article 1 that it is applicable to employees' claims against employers who are in a state of insolvency (a situation which is clearly

defined in Article 2). By way of exception and under certain conditions, the Member States may exclude from the scope of the directive claims by certain categories of employee listed in an annex to the directive.

Under Article 3, employees must be able to obtain payment of their outstanding claims resulting from contracts of employment or employment relationships and relating to pay for the period prior to a date

* Language of the case: Italian.