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Judgment of the Court of 26 October 1983. - Commission of the European Communities v Italian Republic. - Failure of a State to fulfil its obligations - Equal treatment for men and women. - Case 163/82.

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Keywords

1 . MEASURES ADOPTED BY THE INSTITUTIONS - DIRECTIVES - IMPLEMENTATION BY MEMBER STATES - POWER OF MEMBER STATES - FORM AND METHOD OF IMPLEMENTATION - SCOPE

(EEC TREATY , ART . 189 , THIRD PARA .)

SOCIAL POLICY - MEN AND WOMEN WORKERS - ACCESS TO EMPLOYMENT AND WORKING CONDITIONS - EQUALITY OF TREATMENT - IMPLEMENTATION BY THE MEMBER STATES - OBLIGATION - SCOPE

(COUNCIL DIRECTIVE 76/207 , ART . 5)

2.SOCIAL POLICY - MEN AND WOMEN WORKERS - ACCESS TO EMPLOYMENT AND TO WORKING CONDITIONS - EQUALITY OF TREATMENT - DIFFERENCE IN TREATMENT BETWEEN AN ADOPTIVE FATHER AND ADOPTIVE MOTHER WITH REGARD TO MATERNITY LEAVE - DISCRIMINATION - ABSENCE

(COUNCIL DIRECTIVE 76/207 , ART . 5)

3.SOCIAL POLICY - MEN AND WOMEN WORKERS - ACCESS TO EMPLOYMENT AND WORKING CONDITIONS - EQUALITY OF TREATMENT - REMEDIES FOR BREACH OF THE PRINCIPLE - APPLICATION OF THE GENERAL PROCEDURAL RULES OF NATIONAL LAW - PERMISSIBILITY

(COUNCIL DIRECTIVE 76/207 , ART . 6)

Summary

1 . ACCORDING TO THE THIRD PARAGRAPH OF ARTICLE 189 OF THE TREATY A DIRECTIVE IS BINDING AS TO THE RESULT TO BE ACHIEVED UPON EACH MEMBER STATE TO WHICH IT IS ADDRESSED , BUT LEAVES TO THE NATIONAL AUTHORITIES THE CHOICE OF FORM AND METHODS . IN TRANSLATING INTO THE NATIONAL LEGAL SYSTEM THE PRINCIPLE OF EQUALITY OF TREATMENT IN ARTICLE 5 OF DIRECTIVE 76/207 THE LEGISLATURE OF A MEMBER STATE CANNOT BE CRITICIZED FOR HAVING ADOPTED A NUMBER OF SPECIFIC PROVISIONS IN RELATION TO THE MOST IMPORTANT WORKING CONDITIONS WHILST CONFINING ITSELF IN RELATION TO OTHER WORKING CONDITIONS TO A GENERAL PROVISION COVERING ALL OTHER WORKING CONDITIONS NOT SPECIFICALLY MENTIONED , UNLESS IT IS SHOWN THAT THE RESULT SOUGHT BY THE DIRECTIVE HAS NOT IN FACT BEEN ATTAINED .

2.IT IS NOT POSSIBLE TO REGARD AS DISCRIMINATION WITHIN THE MEANING OF DIRECTIVE 76/207 THE DIFFERENCE IN TREATMENT RESULTING FROM THE APPLICATION OF A PROVISION OF NATIONAL LAW TO THE EFFECT THAT THE ADOPTIVE FATHER DOES NOT HAVE THE RIGHT GIVEN TO THE ADOPTIVE MOTHER OF MATERNITY LEAVE FOR THE FIRST THREE MONTHS FOLLOWING THE ACTUAL ENTRY OF THE CHILD INTO THE ADOPTIVE FAMILY . THAT DISTINCTION IS JUSTIFIED BY THE LEGITIMATE CONCERN TO ASSIMILATE AS FAR AS POSSIBLE THE CONDITIONS OF ENTRY OF THE CHILD INTO THE ADOPTIVE FAMILY TO THOSE OF THE ARRIVAL OF A NEW-BORN CHILD IN THE FAMILY DURING THE VERY DELICATE INITIAL PERIOD .

3.THERE IS NO INFRINGEMENT OF ARTICLE 6 OF DIRECTIVE 76/207 WHEN THE NATIONAL LAW IMPLEMENTING THE DIRECTIVE LIMITS THE REMEDIES PROVIDED THEREBY TO INFRINGEMENT OF CERTAIN PROVISIONS OF THE DIRECTIVE PROVIDED THAT THE GENERAL PROCEDURAL RULES OF THE NATIONAL LAW ALLOW ANY PERSON TO BRING ANY OF THE MATTERS COVERED BY THE DIRECTIVE BEFORE THE COURTS .

Parties

IN CASE 163/82

*COMMISSION OF THE EUROPEAN COMMUNITIES , REPRESENTED BY ITS LEGAL ADVISER ,
ARMANDO TOLEDANO LAREDO , ACTING AS AGENT , WITH AN ADDRESS FOR SERVICE IN
LUXEMBOURG AT THE OFFICE OF ORESTE MONTALTO , A MEMBER OF THE LEGAL
DEPARTMENT OF THE COMMISSION , JEAN MONNET BUILDING , KIRCHBERG ,*

APPLICANT ,

V

*ITALIAN REPUBLIC , REPRESENTED BY PIER GIORGIO FERRI , AVVOCATO DELLO STATO ,
WITH AN ADDRESS FOR SERVICE IN LUXEMBOURG AT THE ITALIAN EMBASSY ,*

DEFENDANT ,

Subject of the case

*APPLICATION FOR A DECLARATION THAT BY NOT ADOPTING WITHIN THE PRESCRIBED
PERIOD THE PROVISIONS NEEDED TO ENSURE COMPLIANCE WITH COUNCIL DIRECTIVE
76/207/EEC OF 9 FEBRUARY 1976 ON THE IMPLEMENTATION OF THE PRINCIPLE OF EQUAL
TREATMENT FOR MEN AND WOMEN AS REGARDS ACCESS TO EMPLOYMENT , VOCATIONAL
TRAINING AND PROMOTION , AND WORKING CONDITIONS (OFFICIAL JOURNAL , L 39 , P .
40) , THE ITALIAN REPUBLIC HAS FAILED TO FULFIL ITS OBLIGATIONS UNDER THE EEC
TREATY ,*

Grounds

*1 BY APPLICATION RECEIVED AT THE COURT REGISTRY ON 1 JUNE 1982 THE COM-
MISSION OF THE EUROPEAN COMMUNITIES BROUGHT AN ACTION UNDER ARTICLE 169 OF
THE EEC TREATY FOR A DECLARATION THAT THE ITALIAN REPUBLIC , BY FAILING TO
ADOPT WITHIN THE PRESCRIBED PERIOD THE PROVISIONS NECESSARY TO COMPLY WITH
COUNCIL DIRECTIVE 76/207 OF 9 FEBRUARY 1976 ON THE IMPLEMENTATION OF THE
PRINCIPLE OF EQUAL TREATMENT FOR MEN AND WOMEN AS REGARDS ACCESS TO
EMPLOYMENT , VOCATIONAL TRAINING AND PROMOTION , AND WORKING CONDITIONS
(OFFICIAL JOURNAL , L 39 , P . 40) , HAD FAILED TO FULFIL ITS OBLIGATIONS UNDER THE
TREATY .*

2 ARTICLES 5 AND 6 OF THE DIRECTIVE , WHICH THE COMMISSION CONSIDERS HAVE NOT

BEEN ADEQUATELY OR CORRECTLY TRANSPOSED INTO ITALIAN LAW , PROVIDE AS FOLLOWS :

' ' 1 . APPLICATION OF THE PRINCIPLE OF EQUAL TREATMENT WITH REGARD TO WORKING CONDITIONS , INCLUDING THE CONDITIONS REGARDING DISMISSAL , MEANS THAT MEN AND WOMEN SHALL BE GUARANTEED THE SAME CONDITIONS WITHOUT DISCRIMINATION ON GROUNDS OF SEX .

2. TO THIS END , MEMBER STATES SHALL TAKE THE MEASURES NECESSARY TO ENSURE THAT :

(A) ANY LAWS , REGULATIONS AND ADMINISTRATIVE PROVISIONS CONTRARY TO THE PRINCIPLE OF EQUAL TREATMENT SHALL BE ABOLISHED ;

(B) ANY PROVISIONS CONTRARY TO THE PRINCIPLE OF EQUAL TREATMENT WHICH ARE INCLUDED IN COLLECTIVE AGREEMENTS , INDIVIDUAL CONTRACTS OF EMPLOYMENT , INTERNAL RULES OF UNDERTAKINGS OR IN RULES GOVERNING THE INDEPENDENT OCCUPATIONS AND PROFESSIONS SHALL BE , OR MAY BE DECLARED , NULL AND VOID OR MAY BE AMENDED ;

(C) THOSE LAWS , REGULATIONS AND ADMINISTRATIVE PROVISIONS CONTRARY TO THE PRINCIPLE OF EQUAL TREATMENT WHEN THE CONCERN FOR PROTECTION WHICH ORIGINALLY INSPIRED THEM IS NO LONGER WELL FOUNDED SHALL BE REVISED ; AND THAT WHERE SIMILAR PROVISIONS ARE INCLUDED IN COLLECTIVE AGREEMENTS LABOUR AND MANAGEMENT SHALL BE REQUESTED TO UNDERTAKE THE DESIRED REVISION . ' '

ARTICLE 6 PROVIDES THAT :

' ' MEMBER STATES SHALL INTRODUCE INTO THEIR NATIONAL LEGAL SYSTEMS SUCH MEASURES AS ARE NECESSARY TO ENABLE ALL PERSONS WHO CONSIDER THEMSELVES WRONGED BY FAILURE TO APPLY TO THEM THE PRINCIPLE OF EQUAL TREATMENT WITHIN THE MEANING OF ARTICLES 3 , 4 AND 5 TO PURSUE THEIR CLAIMS BY JUDICIAL PROCESS AFTER POSSIBLE RECOURSE TO OTHER COMPETENT AUTHORITIES . ' '

3 THE ITALIAN REPUBLIC ADOPTED LAW NO 903 OF 9 DECEMBER 1977 CONCERNING EQUAL TREATMENT BETWEEN MEN AND WOMEN IN RELATION TO EMPLOYMENT . ARTICLE 1 THEREOF PROVIDES THAT ANY DISCRIMINATION ON GROUNDS OF SEX AS REGARDS ACCESS TO EMPLOYMENT , REGARDLESS OF METHODS OF SELECTION AND IN ANY SECTOR OR BRANCH OF ACTIVITY WHATSOEVER , AT ALL LEVELS OF OCCUPATIONAL HIERARCHY , IS PROHIBITED . SUCH DISCRIMINATION IS LIKEWISE PROHIBITED IF IT IS APPLIED ON THE BASIS OF MARITAL OR FAMILY STATUS OR PREGNANCY , OR INDIRECTLY THROUGH SELECTION PROCEDURES OR THE PRESS OR THROUGH ANY OTHER FORM OF PUBLICITY

INDICATING AS A REQUIREMENT OF RECRUITMENT THAT A PERSON SHALL BE OF A PARTICULAR SEX . THE PROHIBITION APPLIES EQUALLY TO ACTIVITIES UNDERTAKEN IN CONNECTION WITH VOCATIONAL GUIDANCE , VOCATIONAL TRAINING , ADVANCED VOCATIONAL TRAINING AND RETRAINING AS REGARDS BOTH ACCESS TO AND THE CONTENT OF SUCH ACTIVITIES .

4 ARTICLE 2 PROVIDES THAT WOMEN ARE TO BE ENTITLED TO THE SAME REMUNERATION AS MEN FOR WORK WHICH IS THE SAME OR OF THE SAME VALUE . JOB CLASSIFICATION SYSTEMS FOR DETERMINING REMUNERATION MUST APPLY THE SAME CRITERIA FOR MEN AND FOR WOMEN .

5 ARTICLE 3 PROHIBITS ANY DISCRIMINATION BETWEEN MEN AND WOMEN AS REGARDS THE ASSIGNMENT OF GRADING , DUTIES AND CAREER DEVELOPMENT . THE LEAVE PROVIDED FOR IN ARTICLES 4 AND 5 OF LAW NO 1204 OF 30 DECEMBER 1971 IS TREATED FOR THE PURPOSES OF CAREER DEVELOPMENT AS DAYS WORKED WHEN COLLECTIVE AGREEMENTS DO NOT SPECIFY ANY SPECIAL CONDITIONS IN THAT RESPECT .

6 THE FIRST PARAGRAPH OF ARTICLE 4 PROVIDES THAT EVEN IF THEY ARE ELIGIBLE FOR RETIREMENT WOMEN MAY ELECT TO CONTINUE WORKING UP TO THE RETIREMENT AGE-LIMIT APPLICABLE FOR MEN . THE OTHER PARAGRAPHS THEREOF CONTAIN FURTHER PROVISIONS TO WHICH IT IS NOT NECESSARY TO REFER FOR THE PURPOSES OF THE PRESENT JUDGMENT .

7 THE COMMISSION CONSIDERS IN THE FIRST PLACE THAT THE PROVISIONS OF LAW NO 903 DO NOT TRANSPOSE THE PROVISIONS OF ARTICLE 5 OF THE DIRECTIVE INTO ITALIAN LAW TO AN EXTENT AND IN A MANNER IN CONFORMITY WITH THE SPIRIT AND LETTER OF THE DIRECTIVE . THE LAW COVERS CERTAIN WORKING CONDITIONS SUCH AS REMUNERATION , RETIREMENT AGE AND THE RIGHT TO TAKE LEAVE FROM WORK IN THE CASE OF ADOPTION , BUT IT DOES NOT COVER ALL WORKING CONDITIONS IN SPITE OF THE WIDER NATURE OF THE PROVISIONS OF ARTICLE 5 OF THE DIRECTIVE .

8 THE GOVERNMENT OF THE ITALIAN REPUBLIC REPLIES THAT CONSIDERATION OF THE PROVISIONS OF THE AFORESAID LAW NO 903 SHOWS THAT DISCRIMINATION BASED ON SEX IS PROHIBITED IN RELATION TO ACCESS TO EMPLOYMENT , VOCATIONAL GUIDANCE , VOCATIONAL TRAINING , ADVANCED VOCATIONAL TRAINING AND RETRAINING (ARTICLE 1), REMUNERATION AND JOB CLASSIFICATION SYSTEMS FOR DETERMINING REMUNERATION (ARTICLE 2), ASSIGNMENT OF GRADING , DUTIES AND CAREER DEVELOPMENT (ARTICLE 3), RETIREMENT AGE (ARTICLE 4) AND ENTITLEMENT TO LEAVE IN CERTAIN CIRCUMSTANCES (ARTICLE 6). THE GOVERNMENT OF THE ITALIAN REPUBLIC ADDS THAT ARTICLE 15 OF LAW NO 300 OF 20 MAY 1970 WAS AMENDED BY ARTICLE 13 OF LAW NO 903 OF 1977 SO AS TO RENDER VOID ANY AGREEMENT OR MEASURE BASED ON SEX AIMED AT DISMISSING A WORKER OR ADVERSELY AFFECTING HIM .

9 IT MUST BE REMEMBERED THAT ACCORDING TO ARTICLE 189 OF THE TREATY A DIRECTIVE IS BINDING AS TO THE RESULT TO BE ACHIEVED UPON EACH MEMBER STATE TO WHICH IT IS ADDRESSED , BUT LEAVES TO THE NATIONAL AUTHORITIES THE CHOICE OF FORM AND METHODS . THE ITALIAN LEGISLATURE CANNOT THEREFORE BE CRITICIZED FOR HAVING ADOPTED A NUMBER OF SPECIFIC PROVISIONS IN RELATION TO THE MOST IMPORTANT WORKING CONDITIONS AND WHILST CONFINING ITSELF IN RELATION TO OTHER WORKING CONDITIONS TO A GENERAL PROVISION COVERING , AS DOES ARTICLE 15 OF THE LAW OF 1970 AS AMENDED BY ARTICLE 13 OF THE LAW OF 1977 , ALL OTHER WORKING CONDITIONS NOT SPECIFICALLY MENTIONED , UNLESS IT IS SHOWN THAT THE RESULT SOUGHT BY THE DIRECTIVE HAS NOT IN FACT BEEN ATTAINED .

10 SINCE THE COMMISSION HAS NOT SHOWN THAT THOSE SPECIFIC PROVISIONS COMBINED WITH A GENERAL SUPPLEMENTING PROVISION HAVE LEFT SOME AREAS OF THE SCOPE OF THE DIRECTIVE UNPROVIDED FOR , THE COMMISSION ' S FIRST COMPLAINT CANNOT BE UPHELD .

11 THE COMMISSION ALLEGES IN THE SECOND PLACE THAT THE LAW OF 1977 GIVES A MOTHER WHO ADOPTS A CHILD OF LESS THAN SIX YEARS OF AGE AT THE TIME OF ADOPTION THE RIGHT TO COMPULSORY LEAVE AND THE CORRESPONDING FINANCIAL ALLOWANCE DURING THE FIRST THREE MONTHS AFTER THE CHILD ENTERS THE ADOPTIVE FAMILY AND THE RIGHT TO LEAVE FOR A CERTAIN PERIOD , WITHOUT ACCORDING THE ADOPTIVE FATHER SIMILAR RIGHTS . IT IS SAID THAT SUCH DIFFERENT TREATMENT AMOUNTS TO DISCRIMINATION IN WORKING CONDITIONS WITHIN THE MEANING OF THE DIRECTIVE .

12 ARTICLE 6 OF LAW NO 903 OF 1977 PROVIDES THAT WOMEN WHO HAVE ADOPTED CHILDREN OR WHO HAVE OBTAINED CUSTODY THEREOF PRIOR TO ADOPTION MAY CLAIM THE MATERNITY LEAVE REFERRED TO IN ARTICLE 4 OF LAW NO 1204 OF 1971 AND THE FINANCIAL BENEFITS RELATING THERETO FOR THE FIRST THREE MONTHS AFTER THE CHILD ENTERS THE ADOPTIVE FAMILY OR THE FAMILY WHICH HAS BEEN GIVEN CUSTODY OF IT , PROVIDED THE CHILD IS NOT MORE THAN SIX YEARS OF AGE AT THE TIME OF THE ADOPTION OR AWARD OF CUSTODY . THE SECOND PARAGRAPH OF ARTICLE 6 ADDS THAT SUCH WOMEN MAY ALSO CLAIM THE LEAVE PROVIDED FOR IN THE FIRST PARAGRAPH OF ARTICLE 7 OF THE LAW OF 1971 FOR A PERIOD OF ONE YEAR FROM THE ACTUAL ENTRY OF THE CHILD INTO THE FAMILY PROVIDED THAT THE CHILD IS NOT MORE THAN THREE YEARS OF AGE , AND THE RIGHT TO THE LEAVE PROVIDED FOR IN THE SECOND PARAGRAPH OF ARTICLE 7 .

13 ARTICLE 4 OF LAW NO 1204 OF 30 DECEMBER 1971 PROVIDES THAT WOMEN MAY NOT BE EMPLOYED :

(A) DURING THE TWO MONTHS IMMEDIATELY PRECEDING THE EXPECTED DATE OF

CONFINEMENT ;

(B)IF CONFINEMENT TAKES PLACE AFTER THAT DATE , DURING THE PERIOD BETWEEN THE EXPECTED DATE AND THE ACTUAL DATE OF CONFINEMENT ;

(C)DURING THE THREE MONTHS FOLLOWING CONFINEMENT .

14 ARTICLE 7 OF THE SAME LAW PROVIDES THAT DURING THE CHILD ' S FIRST YEAR THE WOMAN IS ENTITLED , AFTER THE ABOVE-MENTIONED MATERNITY LEAVE , TO LEAVE FROM WORK DURING A PERIOD OF SIX MONTHS DURING WHICH HER JOB IS TO BE KEPT FOR HER (FIRST PARAGRAPH). SHE IS ALSO ENTITLED TO LEAVE WHEN A CHILD OF LESS THAN THREE YEARS OF AGE IS SICK , UPON SUBMISSION OF A MEDICAL CERTIFICATE (SECOND PARAGRAPH).

15 ARTICLE 7 OF LAW NO 903 OF 1977 GIVES A WORKING FATHER THE RIGHT TO LEAVE ALLOWED BY ARTICLE 7 OF LAW NO 1204 OF 1971 , EVEN IF HE IS A FATHER BY ADOPTION OR A GUARDIAN WITHIN THE MEANING OF ARTICLE 314/20 OF THE CIVIL CODE , IN LIEU OF THE WORKING MOTHER OR WHERE THE CARE AND CUSTODY OF THE CHILDREN ARE GIVEN TO THE FATHER .

16 HOWEVER , THE ADOPTIVE FATHER DOES NOT HAVE THE RIGHT GIVEN THE ADOPTIVE MOTHER OF MATERNITY LEAVE FOR THE FIRST THREE MONTHS FOLLOWING THE ACTUAL ENTRY OF THE CHILD INTO THE ADOPTIVE FAMILY . THAT DISTINCTION IS JUSTIFIED , AS THE GOVERNMENT OF THE ITALIAN REPUBLIC RIGHTLY CONTENDS , BY THE LEGITIMATE CONCERN TO ASSIMILATE AS FAR AS POSSIBLE THE CONDITIONS OF ENTRY OF THE CHILD INTO THE ADOPTIVE FAMILY TO THOSE OF THE ARRIVAL OF A NEWBORN CHILD IN THE FAMILY DURING THE VERY DELICATE INITIAL PERIOD . AS REGARDS LEAVE FROM WORK AFTER THE INITIAL PERIOD OF THREE MONTHS THE ADOPTIVE FATHER HAS THE SAME RIGHTS AS THE ADOPTIVE MOTHER .

17 IN THOSE CIRCUMSTANCES THE DIFFERENCE IN TREATMENT CRITICIZED BY THE COMMISSION CANNOT BE REGARDED AS DISCRIMINATION WITHIN THE MEANING OF THE DIRECTIVE .

18 THE COMMISSION ' S LAST COMPLAINT RELATES TO THE ALLEGED FAILURE BY THE ITALIAN REPUBLIC TO COMPLY WITH ARTICLE 6 OF THE DIRECTIVE . THE COMMISSION STATES THAT ARTICLE 15 OF LAW NO 903 OF 1977 RESTRICTS THE LEGAL REMEDIES IT PROVIDES FOR TO CASES OF BREACH OF THE PROVISIONS OF ARTICLES 1 AND 5 OF THAT LAW , BY NOT GIVING A LEGAL REMEDY TO A WORKER WHO CONSIDERS HIMSELF ADVERSELY AFFECTED BY FAILURE TO COMPLY WITH THE OTHER PROVISIONS OF THE DIRECTIVE .

19 THE GOVERNMENT OF THE ITALIAN REPUBLIC CONTENDS THAT THE PROCEDURE REFERRED TO IN ARTICLE 15 OF LAW NO 903 IS AN EMERGENCY ONE BUT EMPHAZISES THAT THERE IS NOTHING IN THE DIRECTIVE WHICH REQUIRES SUCH A PROCEDURE FOR ALL CASES OF DISCRIMINATION . ARTICLE 700 OF THE ITALIAN CODE OF CIVIL PROCEDURE , WHICH IS AN ENTIRELY GENERAL RULE OF PROCEDURE , ALLOWS THE MEASURES REQUIRED TO AVOID IRREMEDEABLE DAMAGE TO BE OBTAINED URGENTLY . THAT PROVISION MAY BE RELIED UPON IN ALL AREAS WHERE THE DIRECTIVE APPLIES AND WHICH ARE NOT COVERED BY ARTICLE 15 OF LAW NO 903 .

20 ARTICLE 24 OF THE ITALIAN CONSTITUTION , MOREOVER , PROVIDES THAT ANY PERSON MAY BRING PROCEEDINGS TO PROTECT HIS RIGHTS AND LAWFUL INTERESTS . THAT IS A CONSTITUTIONAL PRINCIPLE OF DIRECT APPLICATION , UNCHANGING AND WELL ESTABLISHED IN THE SENSE THAT ONCE THE EXISTENCE OF A BASIC RULE PROTECTING AN INDIVIDUAL INTEREST IS ESTABLISHED NO SPECIFIC LEGISLATIVE MEASURE IS NEEDED TO ENSURE PROTECTION THEREOF SINCE SUCH PROTECTION IS UNIVERSALLY AND UNCONDITIONALLY AFFORDED BY ARTICLE 24 OF THE CONSTITUTION . WORKERS SUFFERING DISCRIMINATION MAY THEREFORE RELY ON THAT CONSTITUTIONAL PROVISION TO ENSURE OBSERVANCE OF THE PROVISIONS OF LAW NO 903 BY MEANS OF A COURT ACTION .

21 THE COMMISSION HAS NOT CONTESTED THE EXPLANATIONS GIVEN BY THE GOVERNMENT OF THE ITALIAN REPUBLIC . IN THOSE CIRCUMSTANCES THE COMPLAINT CANNOT BE UPHELD .

22 SINCE NONE OF THE COMPLAINTS MADE BY THE COMMISSION HAS BEEN UPHELD THE APPLICATION MUST BE DISMISSED IN ITS ENTIRETY .

Decision on costs

COSTS

23 UNDER ARTICLE 69 (2) OF THE RULES OF PROCEDURE THE UNSUCCESSFUL PARTY IS TO BE ORDERED TO PAY THE COSTS IF A REQUEST HAS BEEN MADE TO THAT EFFECT .

24 SINCE THE COMMISSION HAS BEEN UNSUCCESSFUL IT MUST BE ORDERED TO PAY THE COSTS .

Operative part

ON THOSE GROUNDS

THE COURT

HEREBY :

1 . DISMISSES THE APPLICATION ;

2 . ORDERS THE COMMISSION TO PAY THE COSTS .