

Case C-7/68 Commission v Italy (Art Treasures) [1968]

Facts: An Italian Law on the protection of articles of artistic or historic interest contained a progressive tax on their exportation to other Member States. The requests of the Commission to abolish this tax by the end of the first stage of the transitional period (1 January 1962), were disregarded, and the Commission brought an application under Article 169 of the Treaty for a declaration that Italy had failed to fulfil its obligations under Article 16 of the Treaty.

Held: The action was admissible even though the Italian Parliament was dissolved when it had before it a draft law to amend the relevant provision, because the exchange of views in this regard had begun long before. Under article 9 of the Treaty the Community is based on a customs union which shall cover all trade in goods, that is, products which can be valued in money and capable of forming the subject of commercial transactions. The articles covered by the Italian law complied with these requirements, therefore they could not be excluded from the application of Article 16 of the Treaty. Article 16 prohibits the collection in dealings between Member States of any customs on exports and of any charge having an equivalent effect, without making distinction based on the purpose of the duties and charges and without distinguishing between whether these are or not of a fiscal nature. Therefore, it was not relevant that the aim of the tax was the protection of the national heritage and its contribution to the budget was insignificant. The exemption laid down in Article 36 of the Treaty, which allows prohibitions or restrictions on exports justified on grounds of the protection of national treasures possessing artistic, historic or archaeological value, was not applicable in the case. As such, Article 36 refers to quantitative restrictions, while Article 16 refers to 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. The levy of the disputed tax was incompatible with the provisions of the Treaty.