

## COURT OF FIRST INSTANCE

## JUDGMENT OF THE COURT OF FIRST INSTANCE

of 21 June 2000

**in Case T-429/93: successors of Edmond Ropars v Council of the European Union<sup>(1)</sup>**

**(Action for damages — Non-contractual liability — Milk — Additional levy — Reference quantity — Producer having entered into an undertaking to convert — Transfer of a holding)**

(2000/C 285/12)

(Language of the case: French)

In Case T-429/93: Madeleine Amélie Le Goff, residing in Plounevezel, France, Liliane Ropars, residing in Rouziers-de-Touraine, France, Jacqueline Ropars, residing in Gleize, France, Marie-Christine Ropars, residing in Guerlesquin, France, Gisèle Ropars, residing in Morlaix, France, Madeleine Ropars, residing in Glomel, France, Louise Ropars, residing in Saint Laurent-du-Maroni, French Guiana, Joseph Ropars, residing in Laniscat, France, as successors of Edmond Ropars, represented by C. Larzul and F. Buffet, and subsequently by A. Delanoé, of the Rennes Bar, with an address for service in Luxembourg at the Chambers of A. May, 398 Route d'Esch v Council of the European Union (Agent: A.M. Colaert) — application for compensation under Article 178 and the second paragraph of Article 215 of the EC Treaty (now Article 235 EC and the second paragraph of Article 288 EC) for damage suffered by Edmond Ropars as a result of his having been prevented from marketing milk by virtue of Council Regulation (EEC) No 857/84 of 31 March 1984 adopting general rules for the application of the levy referred to in Article 5c of Regulation (EEC) No 804/68 in the milk and milk products sector (OJ 1984 L 90, p. 13), as supplemented by Commission Regulation (EEC) No 1371/84 of 16 May 1984 laying down detailed rules for the application of the additional levy referred to in Article 5c of Regulation (EEC) No 804/68 (OJ 1984 L 132, p. 11) — the Court (Single Judge: R.M. Moura Ramos); J. Palacio González, Administrator, for the Registrar, has given a judgment on 21 June 2000, in which it:

1. Refuses the application for a stay of proceedings;
2. Dismisses the application;
3. Orders the applicants to pay the costs.

<sup>(1)</sup> OJ C 217 of 20.8.91.

## JUDGMENT OF THE COURT OF FIRST INSTANCE

of 10 May 2000

**in Case T-177/97: Odette Simon v Commission of the European Communities<sup>(1)</sup>**

**(Officials — Claim to entitlement to the status of a member of the temporary staff)**

(2000/C 285/13)

(Language of the case: French)

In Case T-177/97: Odette Simon, residing in Luxembourg, represented by J.-N. Louis, T. Demaseure and F. Parmentier, of the Brussels Bar, with an address for service in Luxembourg at the offices of the Société de Gestion Fiduciaire, 2-4 Rue Beck, v Commission of the European Communities (Agents: G. Valsesia and J. Currall) — application for annulment of the Commission's decision rejecting the application made by the applicant for the regularisation of her administrative situation and for the award of one euro as token compensation for the non-material damage caused to the applicant — the Court of First Instance (Single Judge), composed of: M. Vilaras, sitting as a single judge; J. Palacio González, Administrator, for the Registrar, has given a judgment on 10 May 2000, in which it:

1. Dismisses the application;
2. Orders the parties to bear their own costs.

<sup>(1)</sup> OJ C 252 of 16.8.1997.

## JUDGMENT OF THE COURT OF FIRST INSTANCE

of 20 June 2000

**in Case T-597/97: Euromin SA v Council of the European Union<sup>(1)</sup>**

**(Action for annulment — Dumping — Inadmissibility)**

(2000/C 285/14)

(Language of the case: English)

In Case T-597/97: Euromin SA, established in Geneva, Switzerland, represented initially by D. Horovitz, J. Bäverbrant, G. Vandersanden and N. Stockwell, of the Brussels Bar, and by N. Robson, Solicitor, and subsequently by D. Horovitz, G. Vandersanden, N. Stockwell, M.E. Pitt and S. Sheppard, Solicitors, with an address for service in Luxembourg at the

2000 by the Commission of the European Communities, represented by Enrico Traversa, Legal Adviser, and Christophe Giolito, of its Legal Service, acting as Agents, with an address for service in Luxembourg at the office of Carlos Gómez de la Cruz, of its Legal Service, Wagner Centre, Kirchberg.

The Commission of the European Communities claims that the Court should:

— declare that:

by maintaining in force a system imposing a minimum reference price for all cigarettes, the French Republic has failed to fulfil its obligations under Article 9 (1) of Council Directive 95/59/EC of 27 November 1995 on taxes other than turnover taxes which affect the consumption of manufactured tobacco<sup>(1)</sup>;

and that:

by maintaining in force a system imposing different tax rates on dark-tobacco and light-tobacco cigarettes, to the disadvantage of the latter, the French Republic has failed to fulfil its obligations under Articles 8 (2) and 16 (5) of Directive 95/59/EC, under Article 2 of Council Directive 92/79/EEC of 19 October 1992 on the approximation of taxes on cigarettes<sup>(2)</sup> and under the first paragraph of Article 90 EC, alternatively under the second paragraph of Article 90 EC;

— order the French Republic to pay the costs.

#### *Pleas in law and main arguments*

##### *(Minimum reference price)*

— Infringement of Article 9 (1) of Council Directive 95/59/EC:

Article 572 of the French Code Général des Impôts (General Tax Code) provides that the price per 1 000 units of products of a given category sold under the same brand may not be lower, regardless of the style or unit of packaging used, than that applied to the best-selling product of that brand; this is tantamount to the imposition of a minimum reference price. The imposition of such a minimum reference price precludes any price variation within the same brand of cigarettes reflecting the number (10, 20, 30, etc.) or length of the cigarettes concerned (normal length, 'king size', 'super long'). Moreover, it restricts the manufacturer's right to apply different prices within one and the same brand according to the quality or intrinsic characteristics of the products in question, such as cigarettes with or without filter-tips, medium-strength or mild cigarettes, menthol cigarettes, etc. The French Government is incorrect in its apparent view that Article 9 of the directive permits a Member State to intervene in the event of any price reduction which is freely accepted by the manufacturer and which,

according to the State, may adversely affect both the exercise of sound competition on the cigarette market and the pursuit of a public health policy aimed at combatting addiction to tobacco.

##### *(Different rates of tax for dark-tobacco and light-tobacco cigarettes)*

— Infringement of Articles 8 (2) and 16 (5) of Directive 95/59/EC:

Article 575a of the French Code Général des Impôts (General Tax Code) provides for the imposition of a consumption duty fixed, for units of 1 000, at FRF 500 in 1999 and FRF 530 in 2000 as regards light-tobacco cigarettes and at FRF 400 in 1999 and FRF 470 in 2000 as regard dark-tobacco cigarettes. The Commission is pleased to note that the French authorities acknowledge that Community legislation permits only a single minimum excise duty to be levied in respect of all categories and sorts of cigarettes. However, in the absence of any modification of Article 575a of the French Code Général des Impôts, the infringement of Community law subsists.

— Infringement of Article 90 EC:

The imposition of different rates of tax on light-tobacco and dark-tobacco cigarettes constitutes a discriminatory fiscal practice protecting national products, inasmuch as 99 % of the dark-tobacco cigarettes distributed in France are manufactured in that country.

The products concerned are 'similar' products within the meaning of the first paragraph of Article 90 EC, having the same fiscal classification (Article 2 (1) of Directive 95/59/EC applies no distinction in that regard) and the same customs classification. The fact that, according to the French authorities, dark tobaccos are sold at the lowest prices, that the market in those products is not attracting any more customers and that consumption of those products is continuing to fall may explain the reasons for the adoption of the French measures but does not justify them, since they constitute discriminatory taxation contrary to the first paragraph of Article 90 EC.

However, even if (*quod non*) it were accepted that light-tobacco and dark-tobacco cigarettes are not similar products within the meaning of the first paragraph of Article 90 EC and that a separate market therefore exists for dark-tobacco cigarettes, the latter would clearly find themselves competing with light-tobacco cigarettes.

<sup>(1)</sup> OJ 1995 L 291, p. 40.

<sup>(2)</sup> OJ 1992 L 316, p. 8.