

Third Chamber

- Mr Schintgen
- Ms Colneric
- Sir Konrad Schiemann

JUDGMENT OF THE COURT

of 9 December 2003

in Case C-129/00: Commission of the European Communities v Italian Republic⁽¹⁾

(Failure of a Member State to fulfil obligations — Construction contrary to Community law of national legislation by case-law and administrative practice — Conditions for the recovery of sums paid though not due)

(2004/C 21/04)

(Language of the case: Italian)

(Provisional translation; the definitive translation will be published in the European Court Reports)

In Case C-129/00, Commission of the European Communities (Agent: E. Traversa, assisted by P. Biavati) v Italian Republic (Agent: I. M. Braguglia): Application for a declaration that, by maintaining in force Article 29(2) of Law No 428 of 29 December 1990 entitled 'Disposizioni per l'adempimento di obblighi derivanti dall'appartenenza dell'Italia alle Comunità europee (legge comunitaria per il 1990)' (Provisions for the fulfilment of obligations deriving from Italy's membership of the European Communities (Community law for 1990) (GURI, Ordinary Supplement No 10 of 12 January 1991, p. 5) which, as construed and applied by the administrative authorities and the courts, allows rules of evidence in relation to the passing on to third parties of the amount of charges levied in breach of Community rules which make exercise of the right to repayment of such charges virtually impossible or, at least, excessively difficult for the taxpayer, the Italian Republic has failed to fulfil its obligations under the EC Treaty, the Court, composed of: V. Skouris, President, P. Jann, C. W. A. Timmermans, C. Gulmann, J. N. Cunha Rodrigues and A. Rosas, (Presidents of Chambers), D. A. O. Edward, A. La Pergola, J.-P. Puissechet (Rapporteur), R. Schintgen, F. Macken, N. Colneric and S. von Bahr, Judges; L.A. Geelhoed, Advocate General; L. Hewlett, Principal Administrator, for the Registrar, has given a judgment on 9 December 2003, in which it:

1. Declares that, by failing to amend Article 29(2) of Law No 428 of 29 December 1990 entitled 'Disposizioni per l'adempimento di obblighi derivanti dall'appartenenza dell'Italia alle Comunità europee (legge comunitaria per il 1990)' (Provisions for the fulfilment of obligations deriving from Italy's

membership of the European Communities (Community law for 1990), which is construed and applied by the administrative authorities and a substantial proportion of the courts, including the Corte suprema di cassazione (Italy), in such a way that the exercise of the right to repayment of charges levied in breach of Community rules is made excessively difficult for the taxpayer, the Italian Republic has failed to fulfil its obligations under the EC Treaty;

2. Orders the Italian Republic to pay the costs.

⁽¹⁾ OJ C 163 of 10.6.2000.

JUDGMENT OF THE COURT

(Sixth Chamber)

of 27 November 2003

in Case C-185/00: Commission of the European Communities v Republic of Finland⁽¹⁾

(Failure of a Member State to fulfil its obligations — Directives 92/81/EEC and 92/82/EEC — Rates of excise duties on mineral oils — Fiscal control — Use of gas oil as motor fuel)

(2004/C 21/05)

(Language of the case: Finnish)

(Provisional translation; the definitive translation will be published in the European Court Reports)

In Case C-185/00, Commission of the European Communities (Agents: E. Traversa and I. Koskinen) with an address for service in Luxembourg, supported by Kingdom of Sweden (Agents: I. Simfors and A. Kruse) v Republic of Finland (Agents: T. Pynnä and E. Bygglin) with an address for service in Luxembourg: Application for a declaration that, by maintaining in force the laws and regulations on the use of gas oil as a motor fuel, as they are applied in practice, the Republic of Finland has failed to fulfil its obligations under Article 8(2) and (3) of Council Directive 92/81/EEC of 19 October 1992 on the harmonisation of the structures of excise duties on mineral oils (OJ 1992 L 316, p. 12) and Article 5(1) of Council Directive 92/82/EEC of 19 October 1992 on the approximation of the rates of excise duties on mineral oils (OJ 1992 L 316, p. 19), the Court (Sixth Chamber), composed of: V. Skouris (Rapporteur), President, C. Gulmann, J.-P. Puissechet, F. Macken and N. Colneric, Judges; L.A. Geelhoed, Advocate General; H. von Holstein, Deputy Registrar, has given a judgment on 27 November 2003, in which it:

1. Declares that by maintaining in force the laws and regulations on the use of gas oil as a fuel, as they are applied in practice, the Republic of Finland has failed to fulfil its obligations under