

JUDGMENT OF THE COURT

of 7 July 1987

in Case 420/85: Commission of the European Communities v. Italian Republic ⁽¹⁾*(Implementation of a directive — Combined road and rail transport of goods)*

(87/C 200/05)

*(Language of the case: Italian)**(Provisional translation; the definitive translation will be published in the Reports of Cases before the Court)*

In Case 420/85: Commission of the European Communities (Agent: G. Marengo) v. Italian Republic (Agent: L. Ferrari Bravo, assisted by O. Fiumara, Avvocato dello Stato) — application for a declaration that the Italian Republic has failed to fulfil its obligations under the EEC Treaty primarily by failing to implement Council Directive 82/603/EEC of 28 July 1982 amending Directive 75/130/EEC on the establishment of common rules for certain types of combined road/rail carriage of goods between Member States (Official Journal No L 247, 1982 p. 6) and alternatively by failing to inform the Commission of the measures adopted to comply with the said directive — the Court, composed of Lord Mackenzie Stuart, President, F. A. Schockweiler (President of Chamber), G. Bosco, O. Due, K. Bahlmann, R. Joliet and G. C. Rodríguez Iglesias, Judges; M. Darmon, Advocate-General; P. Heim, Registrar, gave a judgment on 7 July 1987, the operative part of which is as follows:

1. *By failing to provide, within the period prescribed by Council Directive 82/603/EEC of 28 July 1982 amending Directive 75/130/EEC on the establishment of common rules for certain types of combined road/rail carriage of goods between Member States, for the reduction or reimbursement of taxes imposed in respect of tractor units used in combined road and rail transport where not only the trailer but also the tractor unit itself is loaded onto the train, the Italian Republic has failed to fulfil its obligations under the EEC Treaty.*

2. *The Italian Republic is ordered to pay the costs.*

⁽¹⁾ OJ No C 359, 31. 12. 1985.

ORDER

of the President of the Second Chamber

of 3 June 1987

in Case 161/87 R: Gert Muysers and Walter Tülp v. Court of Auditors of the European Communities ⁽¹⁾*(Officials — Suspension of the operation of a procedure)*

(87/C 200/06)

*(Language of the case: German)**(Provisional translation; the definitive translation will be published in the Reports of Cases before the Court)*

In Case 161/87 R: Gert Muysers and Walter Tülp, officials of the Court of Auditors of the European Communities, represented by Victor Biel, of the Luxembourg Bar, 18a rue des Glacis, against Court of Auditors of the European Communities (Agent M. Becker) for a suspension of the operation of the procedure relating to Competition No CC/A/8/85 — the President of the Second Chamber of the Court of Justice of the European Communities made an order on 3 June 1987, the operative part of which is as follows:

1. *The application for interim measures is dismissed.*
2. *Costs are reserved.*

⁽¹⁾ See page 5 of this Official Journal.

Action brought on 1 June 1987 by Gert Muysers and Walter Tülp against the Court of Auditors of the European Communities

(Case 161/87)

(87/C 200/07)

An action against the Court of Auditors of the European Communities was brought before the Court of Justice of the European Communities on 1 June 1987 by Gert Muysers and Walter Tülp, represented by Victor Biel, of the Luxembourg Bar, with an address for service in Luxembourg at his Chambers, 18a rue des Glacis, L-1628 Luxembourg.

The applicant claims that the Court should:

1. Declare the application admissible;
2. In addition, declare the application well founded;
3. Consequently, annul the rejection of the applicants' candidatures;
4. Order the Court of Auditors to pay the costs.

Contentions and main arguments adduced in support:

The application is directed against the refusal to allow the applicants to take part in Open Competition No CC/A/8/85. That competition, to which they were refused admission, in common with all other candidates, by the

Selection Board, has now been resumed, but only with the four candidates who were successful in Cases 321 (¹), 322 (²), 323 (³) and 417/85 (³). The applicants contend that the Court of Auditors has infringed Article 176 of the EEC Treaty, the principle of *bona fides*, the principle of the legality of administrative acts and the duty to have regard to the welfare of employees and that it has failed to act in the interests of the service. They contend that they were in the same position as the applicants in the aforementioned cases and that one of the reasons why they refrained from bringing a similar action was that it appeared from the information given by the appointing authority that the procedure would be held in abeyance and would be resumed at a subsequent date if the applications to the Court were successful. They had never been informed that their candidatures had been rejected and a list of suitable candidates stating 'none' had never been published. In Joined Cases 322/85 and 323/85 the Court of Justice had given to understand that the procedure had to be resumed in its entirety. The only reason for the defendant's present conduct appears to be its fear of further actions by the candidates who were successful in the aforementioned cases.

(¹) OJ No C 294, 20. 11. 1986, p. 4.

(²) OJ No C 294, 20. 11. 1986, p. 5.

(³) OJ No C 53, 28. 2. 1987, p. 6.

Action brought on 5 June 1987 by the Commission of the European Communities against the French Republic

(Case 169/87)

(87/C 200/08)

An action against the French Republic was brought before the Court of Justice of the European Communities on 5 June 1987 by the Commission of the European Communities, represented by Henri Etienne, Legal Adviser, and by Daniel Calleja, a member of its Legal Department, acting as Agents, with an address for service in Luxembourg at the offices of Georgios Kremis, Jean Monnet Building, Kirchberg.

The applicant claims that the Court should:

1. (a) Declare that, by not fixing the retail price of manufactured tobacco at the level set by manufacturers or importers, subject only to the application of general legislation intended to curb the rise in prices, the French Republic has failed to fulfil its obligations under Article 5 (1) of Council Directive 72/464/EEC and Article 30 of the EEC Treaty;
- (b) Declare that, by not implementing the measures necessary in order to comply with the judgment of the Court of Justice of 21 June 1983, the French Republic has also failed to fulfil its obligations under Article 171 of the EEC Treaty;

2. Order the defendant to pay the costs.

Contentions and main arguments adduced in support:

Infringement of Article 5 of Directive 72/464/EEC

That Article provides that manufacturers and importers must be free to determine the retail price of manufactured tobacco. The only restriction on that freedom to determine prices is the right of the Member States to apply national price control provisions.

It has been established that producers or importers of manufactured tobacco in France have not been able freely to determine their maximum retail prices and that the French public authorities relied on existing distribution or price quotation mechanisms in refusing to authorize the prices determined by producers or importers.

The Commission does not accept that the obstacles put in the way of producers' or importers' price declarations were justified by a general price control policy. As such the continuance of price controls for tobacco products is no longer justified as the application of a general policy when price controls were abolished in a general fashion by Order No 86-1243 of 1 December 1986 on the freedom of prices and competition.

Infringement of Article 30 of the EEC Treaty

The Commission takes the view that the French system disadvantages the sale of imported products because it only takes account of the situation in the French market and does not enable manufacturers in other Member States to pass on the rise in production costs to delivery prices in France. It is therefore incompatible with Article 30 of the EEC Treaty. The Commission adds that the way in which the system of price restrictions in question disadvantages the sale of imported products is particularly serious because the losses of the sole French manufacturer (SEITA) which are considerable, are automatically borne by the budget of the French State.

Failure to comply with Article 171 of the EEC Treaty

It has been established that even after the Court's judgment of 21 June 1986 the French authorities fixed retail prices at a level different from those of producers or importers.

It is true that the notice published on 24 January 1985 constituted a legal instrument enabling the authorities responsible for implementing the judgment to comply with the provisions of the Treaty as interpreted by the Court.