

JUDGMENT OF THE COURT

27 September 1988 *

In Case 18/87

Commission of the European Communities, represented by Jörn Sack, a member of its Legal Department, acting as Agent, with an address for service in Luxembourg at the office of Georgios Kremliis, also a member of its Legal Department, Jean Monnet Building, Kirchberg,

applicant,

v

Federal Republic of Germany, represented by Martin Seidel, Ministerialrat at the Ministry of Economic Affairs, and by Jochim Sedemund and Dietmar Knopp, of the Cologne Bar, acting as Agents, with an address for service in Luxembourg at the German Embassy,

defendant,

APPLICATION for a declaration that the Federal Republic of Germany has failed to fulfil its obligations under Articles 9 and 12 of the EEC Treaty in so far as some *Länder* charge a fee on the importation of live animals from other Member States of the Community to cover the costs of veterinary inspections carried out under Council Directive 81/389/EEC of 12 May 1981,

THE COURT

composed of: Lord Mackenzie Stuart, President, O. Due, J. C. Moitinho de Almeida and G. C. Rodríguez Iglesias, Presidents of Chambers, T. Koopmans, U. Everling, Y. Galmot, C. N. Kakouris and T. F. O'Higgins, Judges,

Advocate General: G. F. Mancini
Registrar: B. Pastor, Administrator

* Language of the Case: German.

having regard to the Report for the Hearing and further to the hearing on 23 March 1988,

after hearing the Opinion of the Advocate General delivered at the sitting on 21 June 1988,

gives the following

Judgment

- 1 By an application lodged at the Court Registry on 26 January 1987, the Commission of the European Communities brought an action under Article 169 of the EEC Treaty for a declaration that the Federal Republic of Germany had failed to fulfil its obligations under Articles 9 and 12 of the EEC Treaty in so far as some *Länder* charge a fee on the importation of live animals from other Member States to cover the costs of veterinary inspections carried out under Council Directive 81/389/EEC of 12 May 1981 (Official Journal 1981, L 150, p. 1).
- 2 In the Federal Republic of Germany, the authorities in the *Länder* Bremen, Hessen, Niedersachsen, Nordrhein-Westfalen and Rheinland-Pfalz charge a fee, payable on the importation and transit, even in the course of intra-Community trade, of live animals, to cover the costs of official veterinary inspections carried out only once on the territory of the Federal Republic of Germany in accordance with Article 2 (1) of Council Directive 81/389/EEC of 12 May 1981 establishing measures necessary for the implementation of Directive 77/489/EEC on the protection of animals during international transport (Official Journal 1981, L 150, p. 1).
- 3 According to the Commission, this fee is a charge having an effect equivalent to a customs duty and as such prohibited under Articles 9 and 12 of the Treaty. The Federal Republic of Germany disputes this.

- 4 Reference is made to the Report for the Hearing for the facts of the case, the course of the procedure and the arguments of the parties which are mentioned or discussed hereinafter only in so far as is necessary for the reasoning of the Court.
- 5 It should be observed in the first place that, as the Court has held on a number of occasions, the justification for the prohibition of customs duties and any charges having an equivalent effect lies in the fact that any pecuniary charge, however small, imposed on goods by reason of the fact that they cross a frontier, constitutes an obstacle to the movement of goods which is aggravated by the resulting administrative formalities. It follows that any pecuniary charge, whatever its designation and mode of application, which is imposed unilaterally on goods by reason of the fact that they cross a frontier and is not a customs duty in the strict sense constitutes a charge having an equivalent effect to a customs duty within the meaning of Articles 9, 12, 13 and 16 of the Treaty.
- 6 However, the Court has held that such a charge escapes that classification if it relates to a general system of internal dues applied systematically and in accordance with the same criteria to domestic products and imported products alike (judgment of 31 May 1979 in Case 132/78 *Denkavit v France* [1979] ECR 1923), if it constitutes payment for a service in fact rendered to the economic operator of a sum in proportion to the service (judgment of 9 November 1983 in Case 158/82 *Commission v Denmark* [1983] ECR 3573), or again, subject to certain conditions, if it attaches to inspections carried out to fulfil obligations imposed by Community law (judgment of 25 January 1977 in Case 46/76 *Baubuis v Netherlands* [1977] ECR 5).
- 7 The contested fee, which is payable on importation and transit, cannot be regarded as relating to a general system of internal dues. Nor does it constitute payment for a service rendered to the operator, because this condition is satisfied only if the operator in question obtains a definite specific benefit (see judgment of 1 July 1969 in Case 24/68 *Commission v Italy* [1969] ECR 193), which is not the case if the inspection serves to guarantee, in the public interest, the health and life of animals in international transport (see judgment of 20 March 1984 in Case 314/82 *Commission v Belgium* [1984] ECR 1543).

- 8 Since the contested fee was charged in connection with inspections carried out pursuant to a Community provision, it should be noted that according to the case-law of the Court (judgment of 25 January 1977 in *Baubuis*, cited above; judgment of 12 July 1977 *Commission v Netherlands* [1977] ECR 1355; judgment of 31 January 1984 in Case 1/83 *IFG v Freistaat Bayern* [1984] ECR 349) such fees may not be classified as charges having an effect equivalent to a customs duty if the following conditions are satisfied:
- (a) they do not exceed the actual costs of the inspections in connection with which they are charged;
 - (b) the inspections in question are obligatory and uniform for all the products concerned in the Community;
 - (c) they are prescribed by Community law in the general interest of the Community;
 - (d) they promote the free movement of goods, in particular by neutralizing obstacles which could arise from unilateral measures of inspection adopted in accordance with Article 36 of the Treaty.
- 9 In this instance these conditions are satisfied by the contested fee. In the first place it has not been contested that it does not exceed the real cost of the inspections in connection with which it is charged.
- 10 Moreover, all the Member States of transit and destination are required, under, *inter alia*, Article 2 (1) of Directive 81/389/EEC, cited above, to carry out the veterinary inspections in question when the animals are brought into their territories, and therefore the inspections are obligatory and uniform for all the animals concerned in the Community.
- 11 Those inspections are prescribed by Directive 81/389/EEC, which establishes the measures necessary for the implementation of Council Directive 77/489/EEC of 18 July 1977 on the protection of animals during international transport, with a view to the protection of live animals, an objective which is pursued in the general interest of the Community and not a specific interest of individual States.

- 12 Finally, it appears from the preambles to the two abovementioned directives that they are intended to harmonize the laws of the Member States regarding the protection of animals in international transport in order to eliminate technical barriers resulting from disparities in the national laws (see third, fourth and fifth recitals in the preamble to Directive 77/489/EEC and third recital in the preamble to Directive 81/389/EEC). In addition, failing such harmonization, each Member State was entitled to maintain or introduce, under the conditions laid down in Article 36 of the Treaty, measures restricting trade which were justified on grounds of the protection of the health and life of animals. It follows that the standardization of the inspections in question is such as to promote the free movement of goods.
- 13 The Commission has claimed, however, that the contested fee is to be regarded as a charge having equivalent effect to a customs duty because, in so far as fees of this type have not been harmonized, such harmonization, moreover, being unattainable in practice — their negative effect on the free movement of goods could not be compensated or, consequently, justified by the positive effects of the Community standardization of inspections.
- 14 In this respect, it should be noted that since the fee in question is intended solely as the financially and economically justified compensation for an obligation imposed in equal measure on all the Member States by Community law, it cannot be regarded as equivalent to a customs duty; nor, consequently, can it fall within the ambit of the prohibition laid down in Articles 9 and 12 of the Treaty.
- 15 The negative effects which such a fee may have on the free movement of goods in the Community can be eliminated only by virtue of Community provisions providing for the harmonization of fees, or imposing the obligation on the Member States to bear the costs entailed in the inspections or, finally, establishing that the costs in question are to be paid out of the Community budget.
- 16 It follows from the foregoing that the Commission's application must be dismissed.

Costs

- 17 Under Article 69 (2) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs. Since the Commission has failed in its submissions, it must be ordered to pay the costs.

On those grounds,

THE COURT

hereby:

- (1) Dismisses the application;**
- (2) Orders the Commission to pay the costs.**

Mackenzie Stuart Due Moitinho de Almeida Rodríguez Iglesias
Koopmans Everling Galmot Kakouris O'Higgins

Delivered in open court in Luxembourg on 27 September 1988.

J.-G. Giraud
Registrar

A. J. Mackenzie Stuart
President