
COURT OF JUSTICE

Reference for a preliminary ruling by the Tribunal des Affaires de Sécurité Sociale [Social Security Court], Nanterre, by judgment of that court of 11 March 1986 in the case of *Maria Frascogna v. Caisse des Dépôts et Consignations*

(Case 256/86)

(86/C 285/05)

Reference has been made to the Court of Justice of the European Communities by a judgment of the Tribunal des Affaires de Sécurité Sociale of 11 March 1986, which was received at the Court Registry on 9 October 1986, for a preliminary ruling in the case of *Maria Frascogna v. Caisse des Dépôts et Consignations* on the following question:

Does the special old-age allowance come within the substantive and personal scope of Regulation (EEC) No 1612/68 of 15 October 1968 on freedom of movement for workers within the Community (Official Journal, English Special Edition 1968 (II), p. 475)?

Action brought on 15 October 1986 by the Commission of the European Communities against the Italian Republic

(Case 257/86)

(86/C 285/06)

An action against the Italian Republic was brought before the Court of Justice of the European Communities on 15 October 1986 by the Commission of the European Communities, represented by Giuliano Marengo, a member of its Legal Department, acting as Agent, having an address for service in Luxembourg at the office of G. Kremlis, Jean Monnet Building, Kirchberg.

The applicant claims that the Court should:

1. Declare that, by providing that value added tax is payable on free samples of low value that are

imported although such tax is not payable on similar free samples produced in Italy, the Italian Republic has failed to fulfil its obligations under Article 14 (1) (a) of the Sixth Council Directive, of 17 May 1977, on value added tax and under Article 95 of the Treaty;

2. Order the Italian Republic to pay the costs.

Contentions and main arguments adduced in support:

The discrimination resulting from Presidential Decree No 24 of 29 January 1979 constitutes an infringement of Article 14 (1) (a) of the Sixth Council Directive, of 17 May 1977, on the harmonization of the laws of the Member States relating to turnover taxes — Common system of value added tax: uniform basis of assessment. As far as trade between Member States is concerned, Article 14 of the Directive is a provision implementing the rule set out in Article 95 of the Treaty. Accordingly, Article 95 is infringed as well in so far as value added tax is charged on imports from other Member States.

However, the Sixth Council Directive goes further than Article 95 in so far as it is applicable to all imports, including imports from non-member countries.

Following action taken by the Commission, the Italian authorities, which initially interpreted the rules as entailing a difference in treatment between domestic transactions, on the one hand, and imports, irrespective of their provenance, on the other (cf. Annexes I and II to the application), had their attention drawn to the Geneva Convention of 7 November 1952 and accordingly thought fit to exempt from VAT imports from countries which were parties to the Convention, which include all the Member States of the Community.

However, that does not signify that there is no longer an infringement. On the one hand, the Italian authorities admit that there is still discrimination against imports from countries which are not parties to the Geneva Convention. On the other, even in the case of countries which are parties to that Convention, the present solution is a *de facto* one which does not guarantee the rights of importers, which, in the event that they are charged value added tax, might have difficulty in enforcing their rights before the courts.
