# JUDGMENT OF THE COURT
9 December 1997 *

In Case C-265/95,

**Commission of the European Communities,** represented by Hendrik van Lier, Legal Adviser, and Jean-Francis Pasquier, a national civil servant on secondment to 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,

applicant,

supported by

**Kingdom of Spain,** represented by Alberto José Navarro González, Director General of Community, Legal and Institutional Affairs, and Rosario Silva de Lapuerta, Abogado del Estado, of the Community Litigation Service, acting as Agents, with an address for service in Luxembourg at the Spanish Embassy, 4-6 Boulevard E. Servais,

**United Kingdom of Great Britain and Northern Ireland,** represented by John E. Collins, of the Treasury Solicitor's Department, acting as Agent, and by Stephen Richards and Mark Hoskins, Barristers, with an address for service in Luxembourg at the British Embassy, 14 Boulevard Roosevelt,

interveners,

* Language of the case: French.

**French Republic,** represented by Jean-François Dobelle, Assistant Director in the Legal Affairs Directorate of the Ministry of Foreign Affairs, Catherine de Salins, Deputy Director in the same directorate, Anne de Bourgoing, Chargé de Mission in the same directorate, and Philippe Martinet, Foreign Affairs Secretary in the same Ministry, acting as Agents, with an address for service in Luxembourg at the French Embassy, 8 B, Boulevard Joseph II,

defendant,

APPLICATION for a declaration that, by failing to take all necessary and proportionate measures in order to prevent the free movement of fruit and vegetables from being obstructed by actions by private individuals, the French Republic has failed to fulfil its obligations under the common organization of the markets in agricultural products and Article 30 of the EC Treaty, in conjunction with Article 5 of that Treaty,

THE COURT,

composed of: G. C. Rodríguez Iglesias, President, C. Gulmann, H. Ragnemalm, M. Wathelet and R. Schintgen (Rapporteur) (Presidents of Chambers), G. F. Mancini, J. C. Moitinho de Almeida, P. J. G. Kapteyn, J. L. Murray, D. A. O. Edward, J.-P. Puissochet, G. Hirsch and P. Jann, Judges,

Advocate General: C. O. Lenz,
Registrar: H. A. Rühl, Principal Administrator,

having regard to the Report for the Hearing,

after hearing oral argument from the parties at the hearing on 10 June 1997, at which the Commission was represented by Hendrik van Lier and Jean-Francis Pasquier, the Kingdom of Spain by Rosario Silva de Lapuerta and the French

Republic by Jean-François Dobelle and Kareen Rispal-Bellanger, Deputy Director in the Legal Affairs Directorate of the Ministry of Foreign Affairs, acting as Agent,

after hearing the Opinion of the Advocate General at the sitting on 9 July 1997,

gives the following

## Judgment

1 By application lodged at the Court Registry on 4 August 1995, the Commission of the European Communities brought an action under Article 169 of the EC Treaty for a declaration that, by failing to take all necessary and proportionate measures in order to prevent the free movement of fruit and vegetables from being obstructed by actions by private individuals, the French Republic has failed to fulfil its obligations under the common organization of the markets in agricultural products and Article 30 of the EC Treaty, in conjunction with Article 5 of that Treaty.

2 The Commission states that for more than a decade it has regularly received complaints concerning the passivity of the French authorities in face of violent acts committed by private individuals and by protest movements of French farmers directed against agricultural products from other Member States. Those acts consist, *inter alia*, in the interception of lorries transporting such products in France and the destruction of their loads, violence against lorry drivers, threats against French supermarkets selling agricultural products originating in other Member States, and the damaging of those goods when on display in shops in France.

3 The Commission has noted that as from 1993 certain groupings of French farmers, including an organization known as 'Coordination Rurale', launched a systematic campaign to restrict the supply of agricultural products from other Member States, which takes the form in particular of threats to wholesalers and retailers in order to induce them to stock exclusively French products, the imposition of a minimum selling price for the products concerned, and the organization of checks to verify whether those traders are complying with the instructions given.

4 Thus, from April to July 1993 that campaign was directed particularly at strawberries originating in Spain. In August and September 1993 tomatoes from Belgium were treated in the same way.

5 In 1994 the same type of action, involving threats against shopping centres and destruction of goods and means of transport, was directed against Spanish strawberries in particular. Violent incidents took place on two occasions at the same place within a period of two weeks but the police who were present took no action to provide effective protection for the lorries and their loads.

6 The Commission also refers to other cases of vandalism which have hindered the free movement in France of agricultural products originating in Italy and Denmark.

7 After the Commission had raised the matter on several occasions with the French authorities, it took the view that, by failing to take all necessary and proportionate measures in order to prevent the free movement of agricultural products from being obstructed by criminal acts of private individuals, the French Republic had failed to fulfil its obligations under the common organizations of the markets in agricultural products and Article 30 of the EC Treaty, in conjunction with Article 5 of that Treaty. Consequently, by letter of 19 July 1994, the Commission gave the French Government formal notice under Article 169 of the Treaty to submit its observations within a period of two months on the failure to fulfil obligations with which it was charged.

8 In a letter dated 10 October 1994 the French Government replied that it had always strongly condemned the acts of vandalism committed by French farmers. It stated that the preventive measures which it had taken by way of surveillance, protection and the gathering of information had brought about a notable reduction in incidents between 1993 and 1994. Moreover, the fact that public prosecutors had systematically conducted criminal investigations showed the French authorities' determination to bring prosecutions in respect of all criminal conduct aimed at obstructing imports of agricultural products from other Member States. However, unpredictable commando-type operations conducted by small, highly mobile groups made it extremely difficult for the police to intervene and explained the often unsuccessful nature of the criminal proceedings initiated. Lastly, the practices of 'Coordination Rurale' that aimed to regulate the market for agricultural products through threats and destruction were the subject of proceedings before the Conseil de la Concurrence (Competition Council).

9 None the less, on 20 April 1995 further serious incidents occurred in the south west of France, in the course of which agricultural products from Spain were destroyed.

10 On 5 May 1995 the Commission therefore delivered a reasoned opinion under the first paragraph of Article 169 of the Treaty. In that opinion it stated that, by failing to take all necessary and proportionate measures in order to prevent the free movement of fruit and vegetables from being obstructed by actions by private individuals, the French Republic had failed to fulfil its obligations under the common organizations of the markets in agricultural products and Article 30 of the EC Treaty, in conjunction with Article 5 of that Treaty. Pursuant to the second paragraph of Article 169 of the Treaty, the Commission called upon the French Republic to adopt the measures necessary in order to comply with that opinion within a period of one month from the date thereof.

11 On 16 June 1995 the French Government stressed that it had adopted all the measures open to it in order to ensure the free movement of goods on its territory and that the means of deterrence introduced had substantially contained the number of acts of violence committed in 1995. At national level, joint action to combat the recurrence of acts of vandalism had been agreed between the ministries concerned.

This included, in particular, increased surveillance and instructions to prefects and the police to take firm action. Moreover, at the local level, an early-warning scheme consisting of a system of close surveillance of premises at risk had enabled a number of incidents to be prevented. Although it was impossible to prevent all risk of destruction, since the actions concerned were unforeseeable, isolated acts, whose perpetrators were very difficult to identify, in 1994 the Tribunal Correctionnel de Nîmes (Criminal Court, Nîmes) had convicted 24 farmers on charges of damage to property. Since the entry into force on 1 March 1994 of Article 322-13 of the new Criminal Code, prosecution and punishment for threats of damage to property had been made more effective. Finally, responsibility for the damage caused was assumed by the State and instructions had been given to expedite settlement of compensation for the loss or damage sustained by the economic operators concerned.

12 According to the Commission, however, in 1995 the French Minister for Agriculture stated that, although he disapproved of and condemned the violence by the farmers, he in no way contemplated any intervention by the police in order to put a stop to it.

13 On 3 June 1995 three lorries transporting fruit and vegetables from Spain were the subject of acts of violence in the south of France, without any intervention by the police. At the beginning of July 1995 Italian and Spanish fruit were once again destroyed by French farmers.

14 The Commission therefore brought the present action.

15 By orders of 14 and 27 February 1996 respectively, the Court granted the United Kingdom of Great Britain and Northern Ireland and the Kingdom of Spain leave to intervene in support of the form of order sought by the Commission.

16 In support of its application the Commission claims that Article 30 of the Treaty and the common organizations of the markets in fruit and vegetables, which are based on the same principle of the elimination of obstacles to trade, prohibit quantitative restrictions on imports between the Member States and any measures having equivalent effect. Furthermore, in accordance with Article 5 of the Treaty, the Member States are required to take all appropriate measures to ensure fulfilment of their obligations arising out of that Treaty.

17 Consequently, the interception of means of transport and the damaging of agricultural products originating in other Member States, and also the climate of insecurity caused by the threats made by various farmers' organizations against distributors of fruit and vegetables from those States, which have been found to have taken place in France, constitute an obstacle to intra-Community trade in those products, which the Member States are required to prevent by adopting appropriate measures, including measures against private individuals who imperil the free movement of goods.

18 In the present case, the fact that, year after year, serious incidents continued to hinder the importation and transit in France of fruit and vegetables originating in other Member States shows that the preventive and penal measures to which the French Government refers in defence are in practice neither adequate nor proportionate for the purpose of deterring the perpetrators of such offences from committing and repeating them. Moreover, it is clear from the factual evidence before the Commission that the French authorities have persistently abstained from taking effective action to prevent violent acts by farmers in France or to prosecute and punish them for the commission of such acts.

19 The United Kingdom Government and the Spanish Government support the form of order sought by the Commission.

20 On the other hand, the French Government contends that there is no foundation for the Commission's action.

21 Thus, it claims that it put into effect, under conditions similar to those applicable to comparable breaches of domestic law, all necessary and appropriate means to prevent actions by private individuals that impeded the free movement of agricultural products and to prosecute and punish them for such actions. The surveillance measures implemented in 1993 enabled the number of acts of violence committed during subsequent years to be contained to a substantial degree.

22 However, in view of the large number of lorries transporting agricultural products in France and the wide variety of their destinations, on the one hand, and the unforeseeable nature of actions by farmers acting in small, commando-type groups, on the other, it is not possible to eliminate all risk of destruction. The latter reason also explains why it is very difficult to identify the perpetrators and to prove their individual participation in the acts of violence so as systematically to prosecute and punish such persons. Six more persons have, however, been convicted or placed under investigation since 1994. Moreover, the police must be allowed a discretion in deciding whether they should intervene in order to safeguard public order. In any event, the State compensates the victims of the offences on the basis of liability without fault on the part of the public authorities. Thus, a sum in excess of FF 17 million was paid by way of damages in respect of the years 1993, 1994 and 1995.

23 The French Government adds that the dissatisfaction of French farmers is due to the considerable increase in exports of Spanish products since the accession of the Kingdom of Spain, which has led to a substantial fall in prices magnified by the competitive devaluation of the peseta and the dumping prices charged by Spanish producers. The French market for fruit and vegetables was seriously disrupted by the fact that the transitional period provided for on that accession had not been accompanied by any mechanism for monitoring the export prices charged by Spanish producers. The French Government also states that, far from having adopted a protectionist attitude, in this case it had demonstrated its constructive approach by taking steps in the Council to resolve the difficulties on the market for fruit and vegetables and in conferring with the Spanish authorities.

24 In order to determine whether the Commission's action is well founded, it should be stressed from the outset that the free movement of goods is one of the fundamental principles of the Treaty.

25 Article 3(c) of the EC Treaty provides that, for the purposes set out in Article 2, the activities of the Community are to include an internal market characterized by the abolition, as between Member States, of, *inter alia*, obstacles to the free movement of goods.

26 Pursuant to the second paragraph of Article 7a of the EC Treaty, the internal market is to comprise an area without internal frontiers in which the free movement of goods is ensured in accordance with the provisions of the Treaty.

27 That fundamental principle is implemented by Article 30 et seq. of the Treaty.

28 In particular, Article 30 provides that quantitative restrictions on imports and all measures having equivalent effect are prohibited between Member States.

29 That provision, taken in its context, must be understood as being intended to eliminate all barriers, whether direct or indirect, actual or potential, to flows of imports in intra-Community trade.

30 As an indispensable instrument for the realization of a market without internal frontiers, Article 30 therefore does not prohibit solely measures emanating from the State which, in themselves, create restrictions on trade between Member States. It also applies where a Member State abstains from adopting the measures required

in order to deal with obstacles to the free movement of goods which are not caused by the State.

31 The fact that a Member State abstains from taking action or, as the case may be, fails to adopt adequate measures to prevent obstacles to the free movement of goods that are created, in particular, by actions by private individuals on its territory aimed at products originating in other Member States is just as likely to obstruct intra-Community trade as is a positive act.

32 Article 30 therefore requires the Member States not merely themselves to abstain from adopting measures or engaging in conduct liable to constitute an obstacle to trade but also, when read with Article 5 of the Treaty, to take all necessary and appropriate measures to ensure that that fundamental freedom is respected on their territory.

33 In the latter context, the Member States, which retain exclusive competence as regards the maintenance of public order and the safeguarding of internal security, unquestionably enjoy a margin of discretion in determining what measures are most appropriate to eliminate barriers to the importation of products in a given situation.

34 It is therefore not for the Community institutions to act in place of the Member States and to prescribe for them the measures which they must adopt and effectively apply in order to safeguard the free movement of goods on their territories.

35 However, it falls to the Court, taking due account of the discretion referred to above, to verify, in cases brought before it, whether the Member State concerned has adopted appropriate measures for ensuring the free movement of goods.

36 It should be added that, by virtue of the combined provisions of Articles 38 to 46 and Article 7(7) of the EC Treaty, the foregoing considerations apply also to Council regulations on the common organization of the markets for the various agricultural products (see Joined Cases 3/76, 4/76 and 6/76 *Kramer and Others* [1976] ECR 1279, paragraphs 53 and 54, and Case C-228/91 *Commission* v *Italy* [1993] ECR I-2701, paragraph 11, relating to regulations on the common organization of the markets in fishery products).

37 As regards more specifically the present case, the facts which gave rise to the action brought by the Commission against the French Republic for failure to fulfil obligations are not in dispute.

38 The acts of violence committed in France and directed against agricultural products originating in other Member States, such as the interception of lorries transporting those products, the destruction of their loads and violence towards drivers, as well as threats to wholesalers and retailers and the damaging of goods on display, unquestionably create obstacles to intra-Community trade in those products.

39 It is therefore necessary to consider whether in the present case the French Government complied with its obligations under Article 30, in conjunction with Article 5, of the Treaty, by adopting adequate and appropriate measures to deal with actions by private individuals which create obstacles to the free movement of certain agricultural products.

40 It should be stressed that the Commission's written pleadings show that the incidents to which it objects in the present proceedings have taken place regularly for more than 10 years.

41 It was as long ago as 8 May 1985 that the Commission first sent a formal letter to the French Republic calling on it to adopt the preventive and penal measures necessary to put an end to acts of that kind.

42 Moreover, in the present case the Commission reminded the French Government on numerous occasions that Community law imposes an obligation to ensure *de facto* compliance with the principle of the free movement of goods by eliminating all restrictions on the freedom to trade in agricultural products from other Member States.

43 In the present case the French authorities therefore had ample time to adopt the measures necessary to ensure compliance with their obligations under Community law.

44 Moreover, notwithstanding the explanations given by the French Government, which claims that all possible measures were adopted in order to prevent the continuation of the violence and to prosecute and punish those responsible, it is a fact that, year after year, serious incidents have gravely jeopardized trade in agricultural products in France.

45 According to the summary of the facts submitted by the Commission, which is not contested by the French Government, there are particular periods of the year which are primarily concerned and there are places which are particularly vulnerable where incidents have occurred on several occasions during one and the same year.

46 Since 1993 acts of violence and vandalism have not been directed solely at the means of transport of agricultural products but have extended to the wholesale and retail sector for those products.

47 Further serious incidents of the same type also occurred in 1996 and 1997.

48 Moreover, it is not denied that when such incidents occurred the French police were either not present on the spot, despite the fact that in certain cases the competent authorities had been warned of the imminence of demonstrations by farmers, or did not intervene, even where they far outnumbered the perpetrators of the disturbances. Furthermore, the actions in question were not always rapid, surprise actions by demonstrators who then immediately took flight, since in certain cases the disruption continued for several hours.

49 Furthermore, it is undisputed that a number of acts of vandalism were filmed by television cameras, that the demonstrators' faces were often not covered and that the groups of farmers responsible for the violent demonstrations are known to the police.

50 Notwithstanding this, it is common ground that only a very small number of the persons who participated in those serious breaches of public order has been identified and prosecuted.

51 Thus, as regards the numerous acts of vandalism committed between April and August 1993, the French authorities have been able to cite only a single case of criminal prosecution.

52 In the light of all the foregoing factors, the Court, while not discounting the difficulties faced by the competent authorities in dealing with situations of the type in question in this case, cannot but find that, having regard to the frequency and seriousness of the incidents cited by the Commission, the measures adopted by the French Government were manifestly inadequate to ensure freedom of

intra-Community trade in agricultural products on its territory by preventing and effectively dissuading the perpetrators of the offences in question from committing and repeating them.

53 That finding is all the more compelling since the damage and threats to which the Commission refers not only affect the importation into or transit in France of the products directly affected by the violent acts, but are also such as to create a climate of insecurity which has a deterrent effect on trade flows as a whole.

54 The above finding is in no way affected by the French Government's argument that the situation of French farmers was so difficult that there were reasonable grounds for fearing that more determined action by the competent authorities might provoke violent reactions by those concerned, which would lead to still more serious breaches of public order or even to social conflict.

55 Apprehension of internal difficulties cannot justify a failure by a Member State to apply Community law correctly (see, to that effect, Case C-52/95 *Commission* v *France* [1995] ECR I-4443, paragraph 38).

56 It is for the Member State concerned, unless it can show that action on its part would have consequences for public order with which it could not cope by using the means at its disposal, to adopt all appropriate measures to guarantee the full scope and effect of Community law so as to ensure its proper implementation in the interests of all economic operators.

57 In the present case the French Government has adduced no concrete evidence proving the existence of a danger to public order with which it could not cope.

58 Moreover, although it is not impossible that the threat of serious disruption to public order may, in appropriate cases, justify non-intervention by the police, that argument can, on any view, be put forward only with respect to a specific incident and not, as in this case, in a general way covering all the incidents cited by the Commission.

59 As regards the fact that the French Republic has assumed responsibility for the losses caused to the victims, this cannot be put forward as an argument by the French Government in order to escape its obligations under Community law.

60 Even though compensation can provide reparation for at least part of the loss or damage sustained by the economic operators concerned, the provision of such compensation does not mean that the Member State has fulfilled its obligations.

61 Nor is it possible to accept the arguments based on the very difficult socio-economic context of the French market in fruit and vegetables after the accession of the Kingdom of Spain.

62 It is settled case-law that economic grounds can never serve as justification for barriers prohibited by Article 30 of the Treaty (see, *inter alia*, Case 288/83 *Commission* v *Ireland* [1985] ECR 1761, paragraph 28).

63 As regards the suggestion by the French Government, in support of those arguments, that the destabilization of the French market for fruit and vegetables was brought about by unfair practices, and even infringements of Community law, by Spanish producers, it must be remembered that a Member State may not unilaterally adopt protective measures or conduct itself in such a way as to obviate any breach by another Member State of rules of Community law (see, to that effect, Case C-5/94 *R* v *MAFF, ex parte Hedley Lomas* [1996] ECR I-2553, paragraph 20).

64 This must be so *a fortiori* in the sphere of the common agricultural policy, where it is for the Community alone to adopt, if necessary, the measures required in order to deal with difficulties which some economic operators may be experiencing, in particular following a new accession.

65 Having regard to all the foregoing considerations, it must be concluded that in the present case the French Government has manifestly and persistently abstained from adopting appropriate and adequate measures to put an end to the acts of vandalism which jeopardize the free movement on its territory of certain agricultural products originating in other Member States and to prevent the recurrence of such acts.

66 Consequently, it must be held that, by failing to adopt all necessary and proportionate measures in order to prevent the free movement of fruit and vegetables from being obstructed by actions by private individuals, the French Government has failed to fulfil its obligations under Article 30, in conjunction with Article 5, of the Treaty and under the common organizations of the markets in agricultural products.

## Costs

67 Under Article 69(2) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings. Since the French Republic has been unsuccessful, it must be ordered to pay the costs. Under Article 69(4) of those rules the Member States and the institutions which have intervened in the case must bear their own costs.

On those grounds,

THE COURT

hereby:

1. **Declares that, by failing to adopt all necessary and proportionate measures in order to prevent the free movement of fruit and vegetables from being obstructed by actions by private individuals, the French Republic has failed to fulfil its obligations under Article 30 of the EC Treaty, in conjunction with Article 5 of that Treaty, and under the common organizations of the markets in agricultural products;**

2. **Orders the French Republic to pay the costs;**

3. **Orders the Kingdom of Spain and the United Kingdom of Great Britain and Northern Ireland to bear their own costs.**

Rodríguez Iglesias Gulmann Ragnemalm Wathelet

Schintgen Mancini Moitinho de Almeida Kapteyn

Murray Edward Puissochet Hirsch Jann

Delivered in open court in Luxembourg on 9 December 1997.

R. Grass G. C. Rodríguez Iglesias

Registrar President