JUDGMENT OF THE COURT
4 FEBRUARY 1965[1]

S.A R.L. Albatros
v Société des Petroles et des Combustibles liquides (Sopéco)[2]

Case 20/64

Summary

1. Procedure — Preliminary ruling — Jurisdiction of the Court — Interpretation (EEC Treaty, Article 177)

2. Procedure — Preliminary ruling — Jurisdiction of the Court — Limits (EEC Treaty, Article 177)

3. Elimination of quantitative restrictions — Process

1. Cf. para. 1 of summary in Case 6/64, Rec., 1964, p. 1146.

2. Cf. para. 2 of summary in Case 6/64, Rec., 1964, p. 1146.

3. The Treaty does not imply the immediate abrogation of measures for controlling imports existing when it entered into force, but does on the other hand involve the prohibition of any new restriction or discrimination, the obligation progressively to abolish existing restrictions and discriminations and the necessity that they should disappear totally at the latest by the end of the transitional period.

In Case 20/64

Reference to the Court under Article 177 of the EEC Treaty by the Tribunale Civile di Roma for a preliminary ruling in the action pending before that court between

S.A R.L. ALBATROS, having its registered office in Rome,

plaintiff,

and

SOCIÉTÉ DES PÉTROLES ET DES COMBUSTIBLES LIQUIDES (SOPÉCO), having its registered office in Paris,

defendant,

1 - Language of the Case: Italian.
2 - CMLR.

THE COURT

composed of: Ch. L. Hammes, President, A. M. Donner (Rapporteur) and R. Lecourt, Presidents of Chambers, L. Delvaux, A. Trabucchi, W. Strauß and R. Monaco, Judges,

Advocate-General: J. Gand
Registrar: A. Van Houtte

gives the following

JUDGMENT

Issues of fact and of law

By a contract made on 9 March 1959, the company Albatros undertook to supply to the company Sopéco an annual quantity of 6 000 metric tons of petrol to be imported into France. On 28 April next, Sopéco informed Albatros that it had not been able to obtain from the competent French authority the authorization necessary for the importation of the petrol, and that consequently it was not able to carry out the contract. It explained in subsequent notes of 20 May and of 29 November that the abovementioned refusal of authorization was based upon the French law of 30 March 1928 ('petroleum import system'), a law which, in its opinion, conflicted with the provisions of the Treaty establishing the European Economic Community and which should therefore be considered as abrogated by the latter. Albatros commenced proceedings against Sopéco before the Tribunale Civile of Rome for failure to perform the contract, claiming on the basis of the abovementioned facts that Sopéco's arguments invoking *force majeure* should be rejected. Albatros refused to admit that the decision of the French authorities, taken in violation of the EEC Treaty, was a factor which exonerated Sopéco from its obligation, and asked that the latter should be ordered to perform the contract or that the contract should be terminated, and in any event claimed damages for the loss suffered. Sopéco submitted that the contract should be annulled on the ground of a fundamental mistake of law, or else that its obligation should be declared extinguished by reason of *force majeure*, or, alternatively, that the claim made by Albatros should be declared unfounded in fact.

Before the Tribunale Civile of Rome, the parties requested that the proceedings be suspended, and the file sent to the Court of Justice of the European Communities, in so far as the dispute raised questions of interpretation of the EEC Treaty. The Tribunale Civile of Rome found that the following questions required a preliminary ruling:

A. Must Article 30 of the Treaty, read together with Article 3 and Articles 31, 32 and 35, be interpreted as having or not having the effect of abrogating the previous provisions of the French Regulations concerning the petroleum import system, and in particular the provisions of the law of 30 March 1928 (JO of 31 March 1928) and the Decree-Laws of 8 August and 1 February 1950, should

these conflict with the above-mentioned provisions of the Treaty?

B. Must Articles 31 and 32 of the Treaty, read together with Article 5, be interpreted as constituting or not a source of rules overriding Ordonnance No 58 892 of 24 September 1958, promulgated by the French Government after the entry into force of the same Treaty (1 January 1958), an ordonnance which supplemented and modified the above-mentioned law of 30 March 1928?

C. In the event of the Court's answering the above questions in the negative, must Article 33 of the Treaty, read together with Article 5, be so interpreted that the French rules derived from the whole of the said provisions of the national law are to be regarded as subsequently rendered void, or not, after the date of the entry into force of the said Treaty (1 January 1958)?

D. Must Article 37 of the Treaty, read together with Article 5, be interpreted as involving the progressive abolition of any public monopoly operating in compliance with the French legislation governing the importation of petroleum?

By an order of 18 January 1964, which was not received and entered in the Register of the Court of Justice until 19 May 1964, the Tribunale Civile of Rome ordered the file to be sent to the said Court and suspended the proceedings until a preliminary ruling has been given by the latter.

Under Article 20 of the Protocol on the Statute of the Court, the parties to the main action, the Governments of the Kingdom of Belgium, of the French Republic and of the Kingdom of the Netherlands and the Commission of the EEC submitted their observations.

The *Government of the Netherlands* observes that the provisions of Articles 30 to 37 inclusive of the EEC Treaty constitute a whole, the fundamental objective of which is the elimination of quantitative restrictions between Member States. They do not establish any clear distinction between (1) quantitative restrictions on importation, (2) measures having equivalent effect, and (3) measures relating to State trading. The three categories of measures are not governed by their own rules which are distinct from one another and mutually exclusive. There is thus no reason to consider to which of the types mentioned above the French system of importation of petroleum belongs. In any case this system is incompatible with the EEC Treaty to the extent that the measures which it includes:

(a) were taken after the entry into force of the Treaty and make the situation in respect of imports more restrictive than it had been previously;

(b) or, in comparison with the situation existing at the date when the Treaty entered into force, restrict the importation of petroleum products from other Member States to a smaller quantity than that envisaged by Article 33 of The Treaty.

Albatros claims that the Court should rule:

(a) on the interpretation of Articles 30, 31, 32, 33 and 37 in respect of the French legislation concerning petroleum, as applied, and according to which only organizations or persons already in possession of special authorizations in accordance with the law of 30 March 1928 can obtain a licence to import petroleum and its derivatives;

(b) on the question whether or not these Articles 30, 31, 32, 33 and 37 are calculated to produce direct effects in the legal systems of the various Member States and whether, in consequence, the nationals of the Member States may derive rights directly from these

Articles which courts are obliged to protect.

According to Albatros, Articles 30 et seq., although certainly envisaging the progressive elimination of quotas, require however the immediate abolition of all restrictive measures of a different character, such as the grant to a restricted circle of specific persons of special import permits. Articles 31 and 32 which impose concrete and unambiguous obligations on the Member States have a direct effect. The measures adopted by the French Government as from 1 January 1959 are no longer consonant with Article 33. Article 37, if it applies to the present case, does not prevent the simultaneous application of the preceding provisions.

The *Commission of the EEC* submits that:

— as to the first question, Article 30 of the Treaty is a provision of a general nature the application of which is achieved in accordance with the means provided for in Articles 31 to 37, in accordance with the conditions and the limits laid down by these Articles, and cannot therefore be regarded as self-executing;

— as to the second question, Articles 31 and 32, instituting a 'standstill' obligation, have a self-executing character, but Ordonnance No 58 892 of 4 September 1958 is not the basis of the refusal of authorization of which Sopéco complains; this refusal occurred in the application of regulations made prior to the entry into force of the Treaty and cannot fall within the field of application of Articles 31 and 32;

— as to the third question, since the French system of petroleum importation undoubtedly comes under Article 37, the application of this provision would include the effects which the application of Article 33 might have;

— as to the fourth question, it must be concluded from the power of discretion which the provisions of Article 37 (1) leave to the Member States concerning the choice of means to achieve the progressive abolition of the discriminations in question, that they are not self-executing before the expiration of the transitional period.

The *French Government* points out first of all that questions submitted by the Rome court, according to their actual wording, do not come within the framework of Article 177, since this provision allows the Court only to state the meaning and the scope of a provision of the Treaty, without empowering it to infer the concrete effects of such interpretation, or, particularly, to pronounce upon the abrogation or continuance of any given national legislation. The second question is irrelevant, since the Ordonnance of 24 September 1958 applies to the treatment of what is deemed to be national crude oil and was not therefore employed by the French administration against Sopéco. The position is the same with the last question, since the concept of 'progressive adjustment' contained in Article 37 of the Treaty clearly cannot have any bearing upon a dispute which originated at the beginning of 1959. Lastly, the questions put to the Court of Justice cannot in any way assist in the resolution of the dispute pending before the Rome court, since it is not for an Italian court to pronounce upon the legality of a measure taken by the French public authorities. The reference for a preliminary ruling from the Rome court is thus inadmissible in view of the provisions of Article 177.

On the substance of the case the French Government points out that the law of 30 March 1928 instituted a 'delegated monopoly' within the meaning of Community law as is shown by the working documents concerning Article 37 of the Treaty and the recommendation of the Commission sent to the French Republic on 24 July 1963. Consequently the answer to the first three questions

should be in the negative, since the provisions of Article 37 are special provisions which derogate from those of Articles 30, 31, 32 and 35, and which have not in consequence to be taken into consideration in respect of the system instituted by the Law of 1928, except to the extent to which Article 37 itself refers to them. The last question, in view of its irrelevance, must also be answered in the negative.

The *Belgian Government* after setting out the dangers of an exclusive application of Article 37 to the French system, maintains that the application of Article 37 should not be dissociated from that of the other provisions of the Treaty, especially those of Chapter 2. In particular it is necessary in any event to take account of (a) the general 'standstill' obligation provided for in Article 31 and repeated in Article 37; and (b) the progressive character of the developments set out in Articles 33 and 37 (3), since the progressive elimination of restrictions existing when the Treaty entered into force had to start at the beginning of 1959 and apply not only to crude oil from Member States but equally to refined products originating in the latter as well as products coming from third countries and admitted to free circulation within the Community.

Sopéco states that the expression 'abrogation' used by the Rome court in the first question must not be taken in its usual meaning, but that it is a matter of whether, in the relationships between the Member States or their nationals, Article 30 has made inapplicable, that is to say, 'incontestable', a national law which includes quantitative restrictions or measures having equivalent effect to those which at the present time result from the French legislation. The answer must be in the affirmative, since Article 30 forbids in a general manner, saving express exceptions, quantitative restrictions on importation, without granting any time-limit for the application of this prohibition. The second question must receive an affirmative answer, since Articles 1 and 2 of the Ordonnance of 24 September 1958 laid down that new undertakings could be allowed to import petroleum products only at the expiry of the maximum duration of the current authorizations, and in this way made importations into France of petroleum products more difficult, contrary to the 'standstill' principle of Articles 31 and 32 of the Treaty. Lastly it is not established at all that the system of rules arising from the whole of the provisions of the French legislation falls within the field of application of Article 37 of the Treaty. In any case Article 37 ought to be interpreted as not permitting the continuance of monopolies or similar situations after the expiry of the transitional period except to the extent to which they do not amount to obstacles to the interpenetration of the economies of the six Member States, since such obstacles are already the object of progressive elimination imposed by Article 37 (1) and must disappear by the end of the transitional period.

The procedure followed the normal course.

The Advocate-General delivered his opinion at the hearing on 2 December 1964.

Grounds of judgment

As to the jurisdiction of the Court

It is objected that the questions submitted to the Court are likely to lead, through the use of Article 177, to a decision on the conformity of laws and administrative measures of a Member State with the Treaty.

This Article provides that national courts or tribunals may make a reference to the Court for a preliminary ruling on the 'interpretation of the Treaty' when such a question is raised before them. However, on the basis of this provision the Court can neither apply the Treaty to a given case nor give judgment on the validity of a measure of national law with regard to it, as it is required to do under Articles 169 and 170. It may, nonetheless, extract from the wording of the reference submitted to it by a national court or tribunal the questions arising as a preliminary matter concerning the interpretation of the Treaty. In the present case it must therefore not give judgment on the validity with regard to the Treaty of the French legislation concerning the importation of petroleum, but only interpret the provisions of the said Treaty in the light of the legal particulars provided by the Rome court.

It is objected that the latter has requested, especially in questions B and D, an interpretation of the Treaty which was not necessary to the resolution of the proceedings before it.

However, Article 177, being based on a clear separation of functions between national courts or tribunals and the Court of Justice, does not permit the latter to take cognizance of the facts of the case or to find fault with the grounds for making the request for interpretation. The objections raised against the jurisdiction of the Court must therefore be dismissed.

On the substance of the case

It follows from the order of the Rome court making the reference that the questions were drafted as the result of an action for the execution of a contract or for compensation for the damage resulting from the termination of the said contract, an action against which two objections were raised, based first on the nullity of the contract on the ground of a fundamental mistake of law and secondly on the impossibility of performance by reason of the unforeseeable fact that the Treaty was disregarded by one of the Member States. On the other hand, the said order stated that the principal object of the reference for a preliminary ruling was to ascertain the effect which the liberalization rules of the Community, cited in the order, considered as rules of a 'supranational' legal order common to the parties to the action, had on the rules and the legal system governing the petroleum products mentioned in the contract.

The Court could not, as has already been observed, answer the questions asked in so far as they presuppose an examination of the rules governing the

importation of petroleum which derive from the provisions of the French Law of 30 March 1928 and the subsequent regulations. Consequently there is no ground for examining whether the aforementioned French rules constitute a national monopoly within the meaning of Article 37 of the Treaty.

For the purposes of this case, an answer must be sought to the question whether, during the transitional period, and especially in the year 1959, in which the alleged fundamental mistake of law and the impossibility of performance occurred, the Treaty brought about the abrogation *ipso jure* of the legislation of the Member States referred to in one or other of the provisions of the Chapter relating to the elimination of the quantitative restrictions between Member States, mentioned in the order making the reference. The said Chapter contains two groups of provisions relevant to this case.

One group, appearing not only in the first paragraph of both Article 31 and Article 32 but also in Article 37 (2) of the Treaty, and prohibiting any intensification of the restrictions, discriminations or measures having equivalent effect existing at the time when the Treaty entered into force, can, by their very nature, be applied only to national measures subsequent to that date.

Other provisions appear either in the second paragraph of Article 32 and in Article 33, which provide for the progressive abolition according to a certain timetable during the transitional period of the quantitative restrictions referred to by the said Articles, or in Article 37 (1) and (3), which prescribe the progressive adjustment of State monopolies according to a timetable harmonized with that for the same products provided for in Article 30 to 34.

On the one hand, the idea of progressive adjustment does not involve immediate abrogation *ipso jure* of the national legislative measures referred to in the said Articles. On the other hand, the timetable for the adjustment provided for does not permit of a forecast in the abstract of the dates during the transitional period by which the obstacles in question must have disappeared, but does reveal that the Member States were not obliged to abolish them completely by 1959. The Treaty thus does not imply the immediate abrogation of all the measures for controlling imports existing when it entered into force, but does on the other hand involve the prohibition of any new restriction or discrimination, the obligation progressively to abolish existing restrictions and discriminations and the necessity that they should disappear totally at the latest by the end of the transitional period.

It is, moreover, always possible for interested parties who consider themselves harmed by unlawful measures of a Member State to bring an action before the

courts or tribunals of that State which have jurisdiction to review and annul the said measures, so as to obtain the appropriate safeguards for their rights and interests, subject to the power or obligation, as the case may be, of these courts or tribunals to have recourse to the procedure of Article 177 in order to obtain an interpretation, uniform for the whole of the Community, of the complex provisions of the said Chapter 2 and their relationship *inter se*.

The above considerations apply without distinction to the questions put by the Rome court, without its being necessary to consider them separately. There is no need either to decide in this case the question whether the application of Article 37 to State monopolies does or does not exclude the application of any other provision of the Chapter relating to the elimination of quantitative restrictions between Member States, the effect of both interpretations being identical in the context of the legal information supplied by the Italian court.

Finally, there is no need to enquire in the present case which provisions mentioned by the court are directly applicable to interested parties in the Member States.

Consequently, it is necessary only to answer, in reply to the questions put, that none of the Articles of the Treaty mentioned in those questions implies the abrogation *ipso jure*, at the date of the entry into force of the Treaty, of the quantitative restrictions, discriminations or measures having equivalent effect which existed at that date, or requires the States to abolish them completely as from 1959.

Costs

The costs incurred by the Commission of the EEC and the Netherlands, French and Belgian Governments, which submitted their observations to the Court, are not recoverable. These proceedings are, in so far as the parties to the action pending before the Tribunale Civile of Rome are concerned, a step in the action pending before that court.

On those grounds,

Upon reading the pleadings;
Upon hearing the report of the Judge-Rapporteur;
Upon hearing the submissions of the parties to the main action and the observations of the Commission of the European Economic Community and the Netherlands, French and Belgian Governments;

Upon hearing the opinion of the Advocate-General;
Having regard to Articles 30, 31, 32, 33, 37 and 177 of the Treaty establishing the European Economic Community;
Having regard to the Protocol on the Statute of the Court of Justice of the said Community;
Having regard to the Rules of Procedure of the Court of Justice of the European Communities,

THE COURT

hereby rules:

1. **None of the provisions of the Treaty mentioned by the Tribunale Civile, Rome, implies the abrogation *ipso jure* on the date of the entry into force of the Treaty of the quantitative restrictions, discriminations or measures having equivalent effect which existed on that date, or requires the States to abolish them completely as from 1959;**
2. **The decision as to costs is a matter for the above-mentioned court.**

Hammes Donner Lecourt

Delvaux Trabucchi Strauß Monaco

Delivered in open court in Luxembourg on 4 February 1965.

A. Van Houtte — Registrar

Ch. L. Hammes — President

OPINION OF MR ADVOCATE-GENERAL GAND DELIVERED ON 2 DECEMBER 1964[1]

Mr President,

Members of the Court,

References for preliminary rulings made to you by courts of the Member States can be classified into two quite distinct categories. In some you are questioned on the scope of particular provisions of Community regulations which only appear of interest to a few specialists. In others on the contrary, and for the solution of a dispute which appears ordinary enough, you are asked to interpret certain fundamental Articles of the Treaty of Rome.

The present case certainly falls into the

1 – Translated from the French.