JUDGMENT OF THE COURT
12 July 2001 *

In Joined Cases C-302/99 P and C-308/99 P,

Commission of the European Communities, represented by G. Marenco and K. Wiedner, acting as Agents, with an address for service in Luxembourg,

French Republic, represented by K. Rispal-Bellanger and F. Million, acting as Agents, with an address for service in Luxembourg,

appellants,

supported by

Kingdom of Spain, represented by R. Silva de Lapuerta, acting as Agent, with an address for service in Luxembourg,

intervener in the appeals,

* Language of the case: French.

APPEAL against the judgment of the Court of First Instance of the European Communities (Third Chamber, Extended Composition) of 3 June 1999 in Case T-17/96 *TF1* v *Commission* [1999] ECR II-1757, seeking to have that judgment partially set aside,

the other party to the proceedings being:

Télévision Française 1 SA (TF1), established in Paris, France, represented by G. Vandersanden, J.-P. Hordies and A. Maqua, avocats, with an address for service in Luxembourg,

applicant at first instance,

THE COURT,

composed of: G.C. Rodríguez Iglesias, President, C. Gulmann, A. La Pergola, M. Wathelet, V. Skouris (Presidents of Chambers), D.A.O. Edward, J.-P. Puissochet, P. Jann, L. Sevón (Rapporteur), R. Schintgen, F. Macken, N. Colneric, S. von Bahr, J.N. Cunha Rodrigues and C.W.A. Timmermans, Judges,

Advocate General: J. Mischo,
Registrar: D. Louterman-Hubeau, Head of Division,

having regard to the Report for the Hearing,

after hearing oral argument from the parties at the hearing on 30 January 2001, at which the Commission was represented by G. Marenco and K. Wiedner; the French Republic by G. de Bergues, acting as Agent, and F. Million; the Kingdom of Spain by R. Silva de Lapuerta; and Télévision Française 1 SA (TF1) by G. Vandersanden and J.-P. Hordies,

after hearing the Opinion of the Advocate General at the sitting on 8 March 2001,

gives the following

Judgment

1 By application lodged at the Court Registry on 10 August 1999, the Commission of the European Communities brought an appeal (Case C-302/99 P) pursuant to Article 49 of the EC Statute of the Court of Justice against the judgment of 3 June 1999 of the Court of First Instance (Third Chamber, Extended Composition) in Case T-17/96 *TF1* v *Commission* [1999] ECR II-1757 (hereinafter 'the judgment under appeal').

2 By application lodged at the Court Registry on 13 August 1999, the French Republic brought an appeal (Case C-308/99 P) pursuant to Article 49 of the EC Statute of the Court of Justice against that same judgment.

The background to the action and the judgment under appeal

3 It is apparent from the judgment under appeal that, on 10 March 1993 the applicant at first instance, Télévision Française 1 SA (hereinafter 'TF1'), a private television broadcasting channel, submitted a complaint to the Commission concerning the methods used to finance and operate the France-Télévision public broadcasting channels. It is common ground that that complaint expressly referred to infringement of Article 85 (now Article 81 EC), Article 90(1) (now Article 86(1) EC) and Article 92 (now, after amendment, Article 87 EC) of the EC Treaty.

4 By letter of 3 October 1995, TF1 formally requested the Commission and, in so far as was necessary, gave it formal notice to 'define its position and act upon the submissions set out in the complaint' of 10 March 1993.

5 By letter of 11 December 1995, the Commission informed TF1 that its enquiries into TF1's complaint were still in progress.

6 On 2 February 1996, TF1 brought an action before the Court of First Instance pursuant to the third paragraph of Article 175 of the EC Treaty (now the third paragraph of Article 232 EC) seeking a declaration that, by not defining its position on the complaint which it had submitted to the Commission, the latter had failed to fulfil its obligations under the Treaty and, in the alternative, pursuant to the fourth paragraph of Article 173 of the EC Treaty (now, after amendment, the fourth paragraph of Article 230 EC) seeking annulment of the purported decision rejecting the applicant's complaint, set out in a letter from the Commission of 11 December 1995.

7 During the course of those proceedings, the Commission placed before the Court a copy of its letter of 15 May 1997 sent to TF1 pursuant to Article 6 of Commission Regulation No 99/63/EEC of 25 July 1963 on the hearings provided for in Article 19(1) and (2) of Council Regulation No 17 (OJ, English Special Edition 1963-1964, p. 47), in which it informed TF1 that, on the basis of the information in its possession, it was unable to uphold TF1's complaint in so far as it alleged infringement of Articles 85 and 86 (now Article 82 EC) of the EC Treaty. The Commission invited TF1 to submit its comments within two months of 15 May 1997, adding that, having considered the allegation of infringement of Article 90 of the Treaty, it had been unable to establish that the matters complained of amounted to an infringement.

8 The Court of First Instance held, at paragraph 57 of the judgment under appeal, that TF1's action, in so far as it was directed against the Commission's failure to act pursuant to Article 90 of the Treaty, was admissible.

9 The Court also considered, at paragraphs 99 to 103 of the judgment under appeal, to what extent the Commission's letter of 15 May 1997 constituted the definition of a position, within the meaning of the second paragraph of Article 175 of the Treaty, putting an end to the Commission's inaction and rendering the action devoid of purpose in so far as it concerned the Commission's alleged failure to act pursuant to Article 90 of the Treaty.

10 At paragraph 103 of the judgment under appeal, the Court concluded that the letter did constitute the definition of a position and that there was therefore no longer any need to adjudicate the claim for a declaration of failure to act in so far as a declaration was sought that the Commission had unlawfully failed to act pursuant to Article 90 of the Treaty.

11 Furthermore, at paragraph 110 of the judgment under appeal, the Court held that, pursuant to Article 87(4) of the Rules of Procedure of the Court of First

Instance, the French Republic would bear its own costs. It also ordered the French Republic to bear the costs incurred by TF1 as a result of its intervention.

12 By the judgment under appeal, the Court of First Instance:

'1. [Declared] that the Commission [had] failed to fulfil its obligations under the EC Treaty by failing to adopt a decision concerning the part of the complaint lodged by Télévision Française 1 SA on 10 March 1993 concerning State aid;

2. [Held] that there [was] no need to adjudicate on the allegation that the Commission [had] failed to act pursuant to Articles 85 (now Article 81 EC) and 90 (now Article 86 EC) of the EC Treaty;

3. [Declared] the action inadmissible in so far as it [was] directed against the Commission's failure to act under Article 86 of the EC Treaty (now Article 82 EC);

4. [Held] that there [was] no need to adjudicate on the alternative claim for annulment;

5. [Ordered] the Commission to bear its own costs together with those incurred by the applicant, with the exception of the costs incurred by the applicant as a result of the intervention of the French Republic;

6. [Ordered] the French Republic to bear its own costs, together with the costs incurred by the applicant as a result of its intervention.'

Procedure before the Court of Justice

13 By its appeal, the Commission challenges the judgment under appeal in so far as it was held therein that TF1's action was admissible to the extent that it was directed against the Commission's failure to act pursuant to Article 90 of the EC Treaty. It thus asks the Court:

— to set aside the judgment under appeal in so far as it was held therein that TF1's action was admissible to the extent that it was directed against the Commission's failure to act pursuant to Article 90 of the Treaty;

— to declare TF1's action inadmissible in so far as it is directed against the Commission's failure to act pursuant to Article 90 of the Treaty;

— to order TF1 to pay the costs of the proceedings before the Court of Justice and to give a new ruling on the costs of the proceedings before the Court of First Instance, limiting the order against the Commission so that it is commensurate with the outcome of the present appeal.

14 By order of the President of the Court of Justice of 8 November 1999, the Kingdom of Spain was granted leave to intervene in support of the form of order

sought by the Commission. In its statement in intervention, Spain asks the Court to uphold the Commission's appeal and to annul the second paragraph of the operative part of the judgment under appeal in so far as the action directed against the Commission's failure to act pursuant to Article 90 of the Treaty was therein held to be admissible.

15 In Case C-302/99 P, TF1 contends that the Court should:

— dismiss the Commission's appeal;

— confirm that TF1's action directed against the Commission's failure to act pursuant to Article 90(3) of the Treaty is admissible;

— order the Commission to pay the costs of the proceedings before the Court of Justice and let the costs of the proceedings before the Court of First Instance remain the liability of the Commission.

16 By its appeal, the French Republic seeks annulment of the judgment under appeal to the extent that, in the second paragraph of the operative part, TF1's action is held to be admissible in so far as it is directed against the Commission's failure to act pursuant to Article 90 of the Treaty and, in the sixth paragraph of the operative part, it is ordered, as intervener, to pay the costs incurred by TF1 as a result of its intervention. The French Republic also asks the Court to order TF1 to pay the costs before the Court of Justice and to give a new ruling on the costs of the proceedings before the Court of First Instance.

17 By order of the President of the Court of Justice of 8 November 1999, the Kingdom of Spain was granted leave to intervene in support of the form of order sought by the French Republic. It asks that the second and sixth paragraphs of the operative part of the judgment under appeal be set aside.

18 In Case C-308/99 P, TF1 contends that the Court should:

— dismiss the appeal brought by the French Republic;

— confirm the judgment under appeal;

— order the French Republic to pay the costs.

19 In Case C-308/99 P, the Commission asks the Court:

— to set aside the judgment under appeal in so far as it was held therein that TF1's action was admissible to the extent that it was directed against the Commission's failure to act pursuant to Article 90 of the Treaty;

— to declare TF1's action inadmissible in so far as it is directed against the Commission's failure to act pursuant to Article 90 of the Treaty;

— to set aside the judgment under appeal in so far as the French Republic is ordered thereby to pay the costs incurred by TF1 as a result of its intervention;

— to order TF1 to pay the costs of the proceedings before the Court of Justice and to give a new ruling on the costs of the proceedings before the Court of First Instance:

— limiting the order against the Commission so that it is commensurate with the outcome of the present appeal, and

— sharing between the Commission and TF1 in a manner which is commensurate with the outcome of the present appeal liability for the costs incurred by them as a result of the intervention of the French Republic.

20 By order of the President of the Court of Justice of 17 November 2000, Cases C-302/99 P and C-308/99 P were joined for the purposes of the oral procedure and the judgment.

The appeals against the finding that TF1's action, in so far as it is directed against the Commission's failure to act pursuant to Article 90 of the Treaty, is admissible

21 In support of its appeal against the second paragraph of the operative part of the judgment under appeal, by which the Court of First Instance necessarily, albeit implicitly, acknowledged the admissibility of TF1's action in so far as it was

directed against the Commission's failure to act pursuant to Article 90 of the Treaty, the French Government submits that that paragraph must be read in the light of the grounds of the judgment, which are indispensable to understanding the precise meaning of the ruling in the operative part.

22 According to the French Government, both the second paragraph of the operative part and, in so far as may be necessary, paragraphs 48 to 57 of the grounds of the judgment under appeal confirm that it wholly failed in its submissions on the point, within the meaning of Article 49 of the EC Statute of the Court of Justice, and that, consequently, it ought to be allowed to contest that part of the judgment at first instance by means of an appeal.

23 The Commission also asks for the judgment under appeal to be set aside to the extent that TF1's action for failure to act pursuant to the third paragraph of Article 175 of the Treaty was thereby held to be admissible.

24 On this point, it should be observed that, pursuant to the first paragraph of Article 49 of the EC Statute of the Court of Justice, an appeal may be brought before the Court of Justice 'against final decisions of the Court of First Instance and decisions of that Court disposing of the substantive issues in part only or disposing of a procedural issue concerning a plea of lack of competence or inadmissibility'.

25 In the present case, the final decision for the purposes of the provision of the EC Statute of the Court of Justice just mentioned, and the one to which the French Government explicitly refers in its appeal, namely the second paragraph of the operative part of the judgment under appeal, is the Court of First Instance's ruling that there was no need to adjudicate on the allegation that the Commission had failed to act pursuant to Article 90 of the Treaty

26 The grounds on which that ruling is based are set out in paragraphs 99 to 103 of the judgment under appeal, which explain that the claim of failure to act ceased to have any purpose once the Commission expressed its position.

27 Those grounds alone provide a sufficient legal basis for the decision of the Court of First Instance and thus, in any event, any errors in the grounds of the judgment under appeal concerning the admissibility of TF1's claim of failure to act, as alleged by the Commission and the French Republic, have no effect on the operative part of that judgment.

28 Indeed, it is clear from the consistent case-law of the Court of Justice that, where the Court decides that there is no need to give judgment in an action which has ceased to have any purpose, it is not necessary for it to examine the admissibility of that action (see, in particular, the judgment in Joined Cases C-15/91 and C-108/91 *Buckl and Others* v *Commission* [1992] ECR I-6061, paragraphs 14 to 17, and the order of 10 June 1993 in Case C-41/92 *Liberal Democrats* v *Parliament* [1993] ECR I-3153, paragraph 4).

29 It follows from this that the plea whereby the Commission and the French Republic challenge the second paragraph of the operative part of the judgment under appeal is inoperative, and in this regard their appeals must be dismissed.

The plea raised by the French Republic challenging the sixth paragraph of the operative part of the judgment under appeal

30 The French Republic asks for the sixth paragraph of the operative part of the judgment under appeal whereby the Court of First Instance ordered it to bear its own costs together with those incurred by TF1 as a result of its intervention to be set aside.

31 In this connection, suffice it to say that, according to settled case-law, where all the other pleas put forward in an appeal have been rejected, any plea challenging the decision of the Court of First Instance on costs must be rejected as inadmissible by virtue of the second paragraph of Article 51 of the EC Statute of the Court of Justice, which provides that no appeal shall lie regarding only the amount of the costs or the party ordered to pay them (see, in particular, the judgment in Case C-396/93 P *Henrichs* v *Commission* [1995] ECR I-2611, paragraph 66, and the order of 13 December 2000 in Case C-44/00 P *Sodima* v *Commission* [2000] ECR I-11231, paragraph 93).

Costs

32 Under Article 69(2) of the Rules of Procedure, which is applicable to the appeal procedure by virtue of Article 118, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings. Since TF1 has requested that the Commission be ordered to pay the costs and the Commission has been unsuccessful in Case C-302/99 P, it must be ordered to pay the costs of that action.

33 Given that it too was unsuccessful in its action, in accordance with Article 69(2), the French Republic must be ordered to pay the costs of Case C-308/99 P.

34 Under the first subparagraph of Article 69(4) of the Rules of Procedure, Member States and institutions which intervene in proceedings are to bear their own costs. Accordingly, the Kingdom of Spain must be ordered to bear its own costs.

On those grounds,

THE COURT

hereby:

1. Dismisses the appeals;

2. Orders the Commission of the European Communities to pay the costs of Case C-302/99 P;

3. Orders the French Republic to pay the costs of Case C-308/99 P;

4. Orders the Kingdom of Spain to bear its own costs in both actions.

Rodríguez Iglesias	Gulmann	La Pergola
Wathelet	Skouris	Edward
Puissochet	Jann	Sevón
Schintgen	Macken	Colneric
von Bahr	Cunha Rodrigues	Timmermans

Delivered in open court in Luxembourg on 12 July 2001.

R. Grass

Registrar

G.C. Rodríguez Iglesias

President