JUDGMENT OF THE COURT
9 June 1988 *

In Case 56/87

Commission of the European Communities, represented by Giuliano Marenco, a member of its Legal Department, acting as Agent, with an address for service in Luxembourg at the office of G. Kremlis, a member of its Legal Department, Jean Monnet Building, Kirchberg,

applicant,

v

Italian Republic, represented by Luigi Ferrari Bravo, Head of the Department for Contentious Diplomatic Affairs, acting as Agent, assisted by Ivo Braguglia, Avvocato dello Stato, with an address for service in Luxembourg at the Italian Embassy, 5 rue Marie-Adelaïde,

defendant,

APPLICATION for a declaration that by adopting and applying a new method for fixing the prices of pharmaceutical products, the Italian Republic has failed to fulfil its obligations under Article 30 of the EEC Treaty,

THE COURT,

composed of: Lord Mackenzie Stuart, President, G. Bosco and O. Due (Presidents of Chambers), T. Koopmans, C. Kakouris, R. Joliet and T. F. O'Higgins, Judges,

Advocate General: M. Darmon
Registrar: D. Louterman, Administrator

having regard to the Report for the Hearing and further to the hearing on 16 March 1988,

* Language of the Case: Italian.

having heard the Opinion of the Advocate General delivered at the sitting on the same day,

gives the following

Judgment

1 By an application lodged at the Court Registry on 24 February 1987, the Commission of the European Communities brought an action before the Court under Article 169 of the Treaty for a declaration that by adopting and applying the new method for fixing the prices of pharmaceutical products provided for in the decision of the Interministerial Committee for Prices (hereinafter referred to as 'the Prices Committee') of 24 October 1984 (*Gazzetta Ufficiale della Repubblica Italiana* No 298 of 29.10.1984) and by the Interministerial Committee for Economic Planning (hereinafter referred to as 'the Economic Planning Committee') of 11 October 1984 (published as an annex to the aforesaid decision), the Italian Republic had failed to fulfil its obligations under Article 30 of the Treaty.

2 The Commission points out that, according to paragraph A.1. of the Economic Planning Committee's decision, the said method must not merely permit the entire population to enjoy the benefit of pharmaceutical products at prices within their means, it must also be orientated towards the objectives of promoting the national pharmaceutical industry. As far as the latter objectives are concerned, the two decisions contain certain criteria of a discriminatory character. Thus, according to paragraph B.4. of the Economic Planning Committee's decision, the costs of research to be taken into account which, normally, must not exceed 10% of the industrial product net of VAT, may be increased to 12% if the research leads to considerable investment in the national territory. Similarly, in the case of proprietory medicinal products considered to be particularly original and innovative, the sales product net of VAT may be increased to 20% in ordinary cases and to 40% in the case of products which are the result of research carried out entirely on the national territory. With regard to the cost of raw materials, paragraph 1.1. of the decision of the Prices Committee also provides that attention must be given to the pursuit of the objectives of promoting productive investment on the national territory.

3 The Commission also emphasizes that the decisions do not mention, among the cost components to be taken into account, the supplementary costs and charges inherent in importation. The Commission concludes that the new method contravenes Article 30 of the Treaty in so far as it is designed to favour domestic production and consequently makes the marketing of imported products more difficult than that of domestic products.

4 The Italian Government does not dispute the Commission's complaints and indicates its intention to modify the method as soon as possible in order to eliminate any suspicion of discrimination against imported products.

5 Reference is made to the Report for the Hearing for a fuller account of the national rules, the course of the procedure and the submissions and arguments of the parties, which are mentioned or discussed hereinafter only in so far as is necessary for the reasoning of the Court.

6 As is indicated in Article 2 (3) (c) to (e) of Commission Directive 70/50/EEC of 22 December 1969, based on the provisions of Article 33 (7), on the abolition of measures which have an effect equivalent to quantitative restrictions on imports and are not covered by other provisions adopted in pursuance of the EEC Treaty (Official Journal, English Special Edition 1970 (I), p. 17), Article 30 of the Treaty precludes national price control schemes in so far as such schemes fix price components differently for domestic and imported products, to the detriment of the latter, preclude any increase in the price of the imported product corresponding to the supplementary costs and charges inherent in importation or fix the prices of products solely on the basis of the cost price or the quality of domestic products at such a level as to create a hinderance to importation.

7 That interpretation of Article 30 has been confirmed in a consistent line of decided cases, in particular, by the judgment of 29 November 1983 in Case 181/82 *Roussel Laboratoria BV and Others* v *Netherlands* [1983] ECR 3849 and the judgment of 29 January 1985 in Case 231/83 *Cullet* v *Leclerc* [1985] ECR 305.

8 In the present case, the two contested decisions expressly provide that, in the fixing of prices for pharmaceutical products, the development of the national industry and research pursued on the national territory should be promoted. They indicate that the cost components related thereto may be taken into consideration to a greater extent than the corresponding cost components for imported products. Furthermore, the decisions do not mention the supplementary costs and charges inherent in importation among the factors to be taken into consideration in the fixing of prices. It must therefore be recognized that the new method introduced by those decisions is likely to promote domestic products to the detriment of imported products and, therefore, that it constitutes a measure having an effect equivalent to quantitative restrictions on imports within the meaning of Article 30 of the Treaty.

9 Although the Italian Republic has thus infringed Article 30 by adopting the method described above, the Commission has not indicated any particular case in which the method was applied in such a way as actually to favour domestic products over imported products. Under those circumstances, the application of the new method cannot be regarded as constituting a separate infringement.

10 It follows from all the foregoing considerations that it must be declared that by adopting the new method for fixing the prices of pharmaceutical products laid down in the decision of the Interministerial Committee for Prices of 24 October 1984 and in the decision of the Interministerial Committee for Economic Planning of 11 October 1984, the Italian Republic has failed to fulfil its obligations under Article 30 of the EEC Treaty.

Costs

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

On those grounds,

THE COURT

hereby:

(1) Declares that by adopting the new method for fixing the prices of pharmaceutical prices laid down in the decision of the Interministerial Committee for Prices of 24 October 1984 and in the decision of the Interministerial Committee for Economic Planning of 11 October 1984, the Italian Republic has failed to fulfil its obligations under Article 30 of the EEC Treaty;

(2) Orders the Italian Republic to pay the costs.

Mackenzie Stuart Bosco Due

Koopmans Kakouris Joliet O'Higgins

Delivered in open court in Luxembourg on 9 June 1988.

J.-G. Giraud
Registrar

A. J. Mackenzie Stuart
President