JUDGMENT OF THE COURT (Sixth Chamber)
30 November 1995 *

In Case C-134/94,

REFERENCE to the Court under Article 177 of the EC Treaty by the Tribunal Superior de Justicia de Canarias (Spain) for a preliminary ruling in the proceedings pending before that court between

Esso Española SA

and

Comunidad Autónoma de Canarias,

on the interpretation of Articles 3(c), 5, 6, 30, 36, 52, 53, 56, 85 and 102(1) of the EC Treaty,

THE COURT (Sixth Chamber),

composed of: G. Hirsch, acting as President of the Chamber, G. F. Mancini, F. A. Schockweiler, P. J. G. Kapteyn (Rapporteur), and H. Ragnemalm, Judges,

* Language of the case: Spanish.

Advocate General: G. Cosmas,
Registrar: R. Grass,

after considering the written observations submitted on behalf of:

— the Comunidad Autónoma de Canarias, by Manuel Aznar Vallejo, Letrado,

— the United Kingdom, by J. E. Collins, Assistant Treasury Solicitor, acting as Agent, and P. Duffy, Barrister

— the Commission of the European Communities, by Blanca Rodríguez Galindo, of its Legal Service, acting as Agent,

having regard to the report of the Judge-Rapporteur,

after hearing the Opinion of the Advocate General at the sitting on 28 September 1995,

gives the following

Judgment

1 By order of 4 January 1994, received at the Court on 9 May 1994, the Chamber for Contentious Administrative Affairs of Las Palmas of the Tribunal Superior de Justicia de Canarias (High Court of Justice, Canary Islands) referred to the Court for a preliminary ruling under Article 177 of the EC Treaty three questions on the interpretation of Articles 3(c), 5, 6, 30, 36, 52, 53, 56, 85 and 102(1) of the Treaty.

2 The questions were raised in administrative proceedings brought by Esso Española (hereinafter 'Esso'), which is established in Madrid, against the Comunidad Autónoma de Canarias seeking the annulment of Decree 54/1992 of the Council for Industry, Trade and Consumer Affairs of the Government of the Canary Islands of 23 April 1992, amending Decree 36/1991 of 14 March 1991, approving the regulation governing the wholesale trade in petroleum products in the Canary Islands.

3 Decree 54/1992 amended Article 14(2) of the regulation so as to provide henceforth that all operators are to supply at least four islands of the Canaries Archipelago.

4 The national court asks whether such a requirement constitutes a restriction on the freedom of establishment laid down in Articles 52 and 53 of the Treaty. Since it was also in doubt as to the compatibility of the rules with Articles 3(c), 5, 6, 30, 85 and 102(1) of the Treaty, the national court decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

'1. Does the requirement imposed by a Member State that petroleum product wholesalers wishing to establish themselves in its territory must supply a specific number of places in order to ensure supplies or cover throughout the national territory, taking into account the problems of insular regions in certain Member States:

(a) involve, in the light of Articles 3(c), 52 and 53 of the Treaty, a restriction incompatible with Community law in that it renders ineffective its provisions relating to the right of establishment and is not "objectively necessary" to secure the objective pursued?

(b) involve, in the light of the provisions of the Treaty relating to the protection of free competition, a restriction on that Community freedom, which may affect trade between Member States and prejudice the achievement of the objectives laid down in the Treaty concerning internal trade, and consequently fall within the scope of the prohibition in Article 85, read in conjunction with Articles 5 and 6 of the Treaty, thereby infringing Article 102(1)?

(c) constitute a measure having equivalent effect, within the meaning of Article 30 of the Treaty, which affects intra-Community trade?

2. If the requirement set out at the beginning of the first question is considered to be a restriction on the right of free establishment, does Article 56 of the Treaty or the concept of "public interest" apply, and if so in what conditions, in circumstances concerning the principle of equivalence of the conditions for taking up and pursuing activities as self-employed persons, and does the margin of discretion conferred on the Member States fall to be reviewed therefore by the Community judicature or by the national courts, and in the latter case on what criteria of interpretation?

3. If the requirement set out at the beginning of the first question is considered to be a measure of equivalent effect, is it incompatible with the free movement of goods or can it be considered to be a restriction which is lawful by virtue of Article 36 of the Treaty or the case-law of the Court of Justice concerning the "rule of reason"?'

Admissibility

5 In its observations the Commission questions the admissibility of the reference having regard to the fact that Decree 54/1992 was annulled by the courts in another decision.

6 The national court which made the reference informed the Court of Justice by letter of 15 June 1994, which was received on 29 June, that Esso had communicated a document to it to which was attached a copy of the judgment delivered by the Chamber of Contentious Administrative Affairs of Santa Cruz of the Tribunal Superior de Justicia de Canarias which annulled Decrees 54/1992 and 36/1991. Esso therefore requested the national court to withdraw the reference but the latter refused on the ground that the judgment to be delivered by the Court of Justice would be of great importance not only as regards the Canary Islands but for the whole of the national territory.

7 When asked by the Court of Justice whether the proceedings before it had not become devoid of purpose, the national court replied that they had not; however, it gave different reasons. In the first place, it maintained that an appeal had been lodged against the judgment annulling those decrees before the Tribunal Supremo (Supreme Court). Next, it pointed out that the judgment annulling the decrees was not based on the elements of Community law at issue in these proceedings. Lastly, it stated that if conflicting judgments were to be delivered an action to harmonize them could be brought before the Tribunal Supremo.

8 That reply indicates that the national court considers that an interpretation of Community law is still necessary in order to resolve the main dispute.

9 The Court has consistently held that it is for the national courts alone, before which the proceedings are pending and which must assume responsibility for the judgment to be given, to determine, having regard to the particular features of each case, both the need for a preliminary ruling to enable them to give judgment and the relevance of the questions which they refer to the Court (see in particular Case C-62/93 *BP Supergas* [1995] ECR I-1883, paragraph 10).

10 The Court must therefore consider the questions submitted by the national court.

First question

11 Having regard to the facts at issue in the main proceedings, the national court asks essentially whether rules whereby the regional authorities in a Member State responsible for governing an archipelago which forms part of the territory of that State require all wholesale petroleum product suppliers wishing to extend their activities to that part of the State territory to guarantee supplies to a specified number of islands in the archipelago because of the problems of supplying insular regions are compatible with Articles 3(c), 52, 53, 85 in conjunction with Articles 5 and 6, 102(1) and 30 of the EC Treaty.

Articles 3(c), 52 and 53 of the Treaty

12 It must be noted first that Articles 52 and 53 were adopted to implement the fundamental principle laid down in Article 3(c) of the Treaty that, for the purposes set out in Article 2, the activities of the Community are to include the abolition, as between Member States, of obstacles to the free movement of persons.

13 In addition, the Court has consistently held that the Treaty provisions on freedom of movement cannot be applied to activities which are confined in all respects within a single Member State, and the question whether that is the case depends on findings of fact which are for the national court to make (see in particular Case C-332/90 *Steen* [1992] ECR I-341, paragraph 9).

14 In this case, the order for reference indicates that the plaintiff in the main action, which was constituted in 1967 under Spanish law, has its head office in Madrid and pursues its activities in Spain, claims in its action before the national court that the rules at issue prevent it from extending its activities to the Canary Islands, which form part of the Spanish territory.

15 It is common ground, moreover, that all wholesale petroleum product suppliers wishing to do business in the Canaries Archipelago must comply with the rules at issue.

16 That situation, which has to do purely with the extension within the territory of the Member State of the activities of a company having its head office in that State and pursuing its activities there, has no connection whatsoever with any of the situations contemplated by Community law.

17 The reply to the first question must therefore be that Articles 3(c), 52 and 53 of the Treaty are not applicable to circumstances which are confined to a Member State, such as where a company which has its head office in a Member State and pursues its activities there is subject to rules whereby the regional authorities of a Member State responsible for governing an archipelago forming part of that State's territory

require all wholesale petroleum product suppliers wishing to extend their activities to that part of the national territory to supply a certain number of islands in the archipelago, having regard to the problems of supplying insular regions.

As regards Article 85, read in conjunction with Article 5, second paragraph, and Article 6 of the Treaty

18 It must be borne in mind that for the purposes of interpreting Article 3(f), the second paragraph of Article 5 and Article 85 of the Treaty, Article 85 taken on its own is concerned only with the conduct of undertakings and not with legislative or regulatory measures of the Member States. However, according to settled case-law, Article 85, read in conjunction with Article 5 of the Treaty, requires the Member States to refrain from introducing or maintaining in force measures, even of a legislative or regulatory nature, which may render ineffective the competition rules applicable to undertakings. Such is the case, according to that case-law, if a Member State requires or favours the adoption of agreements, decisions or concerted practices contrary to Article 85 or reinforces their effects, or deprives its own legislation of its official character by delegating to private traders responsibility for taking decisions affecting the economic sphere (see in particular Case C-379/92 *Peralta* [1994] ECR I-3453, paragraph 21).

19 The order making the reference contains no indication that the rules in question require or favour anti-competitive conduct or that they reinforce the effects of an existing agreement, decision or concerted practice.

20 Such rules cannot therefore be incompatible with Article 5, second paragraph, and Article 85 of the Treaty.

21 Since the national court has given no explanation as to the relevance of the question concerning Article 6 of the Treaty, it is not necessary to consider it.

Article 102(1) of the Treaty

22 As regards this article it is sufficient to recall that the obligations accepted by the Member States under Article 102(1) do not create individual rights which the national courts must protect (Case 6/64 *Costa* v *ENEL* [1964] ECR 585).

Article 30 of the Treaty

23 According to the order making the reference the regional rules at issue make no distinction as to the origin of the products, nor is their purpose to govern trade in those products between Member States.

24 Although such rules require petroleum product wholesalers to supply a certain number of islands forming part of the territory of a Member State, the restrictions they may impose on the free movement of such goods between Member States are too uncertain and indirect for the obligation they lay down to be regarded as being capable of hindering trade between Member States (see the judgment in *Peralta*, cited above, paragraph 24).

25 Such rules are therefore compatible with Article 30.

26 In the light of all the considerations set out above the reply to the first question must therefore be that

— Articles 3(c), 52 and 53 of the Treaty are not applicable to circumstances wholly internal to a Member State, such as where a company which has its head office in a Member State and pursues its activities there is required to comply with rules whereby the regional authorities of a Member State responsible for governing an archipelago forming part of the territory of that State require all petroleum product wholesalers wishing to extend their activities to that part of the national territory to supply a certain number of islands in the archipelago, having regard to the problems of supplying insular regions;

— such rules are compatible with Article 85, read in conjunction with the second paragraph of Article 5, and with Article 30 of the Treaty;

— Article 102(1) of the Treaty does not give rise to individual rights which the national courts must protect.

Second and third questions

27 The second and third questions require a reply only if the rules in question are to be regarded as restricting the freedom of establishment or as measures having an effect equivalent to quantitative restrictions on imports; it is accordingly not necessary to consider them.

Costs

28 The costs incurred by the United Kingdom and the Commission of the European Communities, which have submitted observations to the Court, are not recover-

able. Since these proceedings are, for the parties to the main proceedings, a step in the proceedings pending before the national court, the decision on costs is a matter for that court.

On those grounds,

THE COURT (Sixth Chamber),

in answer to the questions referred to it by the Tribunal Superior de Justicia de Canarias by order of 4 January 1994, hereby rules:

1. **Articles 3(c), 52 and 53 of the EC Treaty are not applicable to circumstances wholly internal to a Member State, such as where a company which has its head office in a Member State and pursues its activities there is required to comply with rules whereby the regional authorities of a Member State responsible for governing an archipelago forming part of the territory of that State require all petroleum product wholesalers wishing to extend their activities to that part of the national territory to supply a certain number of islands in the archipelago, having regard to the problems of supplying insular regions.**

2. **Such rules are compatible with Article 85, read in conjunction with the second paragraph of Article 5, and with Article 30 of the EC Treaty.**

3. **Article 102(1) of the EC Treaty does not give rise to individual rights which the national courts must protect.**

Hirsch Mancini Schockweiler

Kapteyn Ragnemalm

Delivered in open court in Luxembourg on 30 November 1995.

R. Grass G. Hirsch

Registrar acting as President of the Sixth Chamber