JUDGMENT OF THE COURT
4 February 1988 *

In Case 255/86

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

applicant,

v

Kingdom of Belgium, represented by Robert Hoebaer, Director in the Ministry of Foreign Affairs, Foreign Trade and Cooperation with Developing Countries, with an address for service in Luxembourg at its embassy, 4 rue des Girondins, Résidence Champagne,

defendant,

APPLICATION for a declaration that by adopting and maintaining in force national rules on the marketing of fruit and vegetables contrary to the rules of the common organization of the markets in that sector, the Kingdom of Belgium has failed to fulfil its obligations under the Treaty establishing the European Economic Community,

THE COURT

composed of: G. Bosco, President of Chamber, acting as President, O. Due and G. C. Rodríguez Iglesias (Presidents of Chambers), T. Koopmans, C. Kakouris, R. Joliet and T. F. O'Higgins, Judges,

Advocate General: J. L. da Cruz Vilaça
Registrar: D. Louterman, Administrator

* Language of the Case: French.

having regard to the Report for the Hearing and further to the hearing on 21 October 1987,

after hearing the Opinion of the Advocate General delivered at the sitting on 3 December 1987,

gives the following

Judgment

1 By an application lodged at the Court Registry on 8 October 1986, the Commission of the European Communities brought an action under Article 169 of the EEC Treaty for a declaration that by adopting and maintaining in force national rules on the marketing of fruit and vegetables contrary to the rules of the common organization of the markets in that sector, the Kingdom of Belgium had failed to fulfil its obligations under the Treaty and under those rules.

2 The rules in question are Regulation (EEC) No 1035/72 of the Council of 18 May 1972 on the common organization of the market in fruit and vegetables (Official Journal, English Special Edition 1972 (II), p. 437) and in particular the common quality standards defined in Regulation No 23/62 of the Council of 4 April 1962 on the progressive establishment of a common organization of the market in fruit and vegetables (Official Journal, English Special Edition 1959-62, p. 97) and in Regulation No 58/62 of the Commission of 15 June 1962 laying down the common quality standards for certain products listed in Annex I B to Regulation No 23/62 (Official Journal, English Special Edition 1959-62, p. 204), Council Regulation No 183/64/EEC of 17 November 1964 laying down common quality standards for asparagus and cucumbers (Official Journal, English Special Edition 1963-64, p. 229), Commission Regulation (EEC) No 1641/71 of 27 July 1971 laying down quality standards for dessert apples and pears (Official Journal, English Special Edition 1971 (II), p. 616) and Commission Regulation (EEC) No 778/83 of 30 March 1983 laying down quality standards for tomatoes (Official Journal 1983, L 86, p. 14).

3 The Belgian Royal Decree on the marketing of vegetables and fruit, which was adopted on 26 November 1982 and entered into force on 1 April 1983, contained provisions in addition to the Community rules governing the same subject-matter.

By letter of 10 January 1984 the Commission requested the Belgian Government to let it have its observations with regard to certain provisions of that Royal Decree which might contravene the Community rules in the fruit and vegetables sector.

4 The Belgian authorities replied to the Commission in a letter from Belgium's Permanent Representation dated 20 March 1984 in which it was essentially argued that the measures adopted were technically and administratively useful and that they did not discriminate against imported products, although it was acknowledged that some of the measures imposed obligations in addition to those contained in the Community legislation.

5 On 26 July 1984 the Commission delivered a reasoned opinion, as provided for in the first paragraph of Article 169 of the EEC Treaty, in which it reiterated its observations regarding the failure of the Kingdom of Belgium to fulfil the obligations arising under the legislation governing the marketing of fruit and vegetables and under Article 30 of the EEC Treaty. Since the Kingdom of Belgium has not complied with the reasoned opinion, the Commission has brought this action.

6 The Belgian Royal Decree of 12 January 1987, amending the abovementioned Royal Decree of 26 November 1982, abolished all the additional requirements at issue in the present case save those relating to the indication on bulk packages of domestic products of the net minimum weight and the number of units or bundles.

7 The only issue between the parties is whether the Kingdom of Belgium had the power to adopt those rules, which extend to other products requirements which the relevant Community legislation lays down solely for onions, artichokes, celery and headed cabbage.

8 As the Court has pointed out on many occasions, most recently in its judgment of 26 June 1979 in Case 177/78 *Pigs and Bacon Commission* v *McCarren and Company Limited* [1979] ECR 2161 and its judgment of 7 February 1984 in Case 237/83 (*Jongeneel Kaas BV and Others* v *State of the Netherlands* [1983] ECR 483, once the Community has adopted, pursuant to Article 40 of the Treaty, regulations establishing a common organization of the market in a given sector Member States are under an obligation to refrain from taking any measures which might undermine or create exceptions to it.

9 The common organization of the market in fruit and vegetables is governed by Regulation No 1035/72 of the Council, which established a Community system of quality standards to which the products governed by the regulation must comply. Quality standards are also laid down for certain products in Regulation No 23/62 of the Council and in Commission Regulations Nos 58/62, 183/64, 1641/71 and 778/83 mentioned above. As is apparent from the preamble to Regulation No 1035/72, the purpose of that system in laying down common quality standards is to keep products of unsatisfactory quality off the market, to guide production to meet consumers' requirements and to facilitate trade relations based on fair competition, thus helping to improve the profitability of production.

10 The Court has already held, in its judgment of 13 December 1983 in Case 222/82 *Apple and Pear Development Council* v *KJ Lewis Limited and Others* [1983] ECR 4083 and its judgment of 25 November 1986 in Case 218/85 *Association comité économique agricole régional fruits et légumes* v *A. Le Campion* [1986] ECR 3513, that the system of common quality standards is exhaustive.

11 Consequently, the Kingdom of Belgium had no power to extend to other products packaging requirements which, under the Community rules, apply only to certain vegetables, namely onions, artichokes, celery and headed cabbage. Even though those additional requirements concern only domestic products, they undermine the common nature of the quality standards which apply uniformly to all products in the Community.

12 It must therefore be held that by adopting and maintaining in force, in Article 7 (3) of the Royal Decree of 26 November 1982 on the marketing of vegetables and fruit, as amended by the Royal Decree of 12 January 1987, provisions requiring the minimum net weight and the number of units or bundles to be indicated on bulk packages of products grown in Belgium, the Kingdom of Belgium has failed to fulfil its obligations under the EEC Treaty and under Council Regulation No 1035/72 of 18 May 1972 and Council Regulation No 23/62 of 4 April 1962.

Costs

13 Under Article 69 (2) of the Rules of Procedure, the unsuccessful party must be ordered to pay the costs if they have been asked for in the successful party's pleading. Under Article 69 (4), a party who discontinues or withdraws from proceedings must be ordered to pay the costs, unless the discontinuance or withdrawal is justified by the conduct of the opposite party.

14 During the written procedure the Commission withdrew several of the claims formulated in its application owing to the fact that the Kingdom of Belgium had complied with those points after the commencement of the proceedings before the Court.

15 It follows that the Commission's partial withdrawal is justified by the attitude of the Kingdom of Belgium which has, however, been unsuccessful as regards the remainder of the application.

16 The Kingdom of Belgium should therefore be ordered to bear the costs.

On those grounds,

THE COURT

hereby:

(1) Declares that by maintaining in force, in Article 7 (3) of the Royal Decree of 26 November 1982 on the marketing of fruit and vegetables, as amended by the Royal Decree of 12 January 1987, provisions requiring the minimum net weight and the number of units or bundles to be indicated on bulk packages of products grown in Belgium, the Kingdom of Belgium has failed to fulfil its obligations under the EEC Treaty and under Regulation (EEC) No 1035/72 of the Council of 18 May 1972 on the common organization of the market in fruit and vegetables and Regulation No 23/62 of the Council of 4 April 1962 on the progressive establishment of a common organization of the market in fruit and vegetables.

(2) Orders the Kingdom of Belgium to bear the costs.

Bosco Due Rodríguez Iglesias

Koopmans Kakouris Joliet O'Higgins

Delivered in open court in Luxembourg on 4 February 1988.

P. Heim
Registrar

A. J. Mackenzie Stuart
President