JUDGMENT OF THE COURT
14 March 1985 *

In Case 269/83

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

applicant,

v

French Republic, represented by Gilbert Guillaume and François Renouard, acting as Agents, with an address for service in Luxembourg at the French Embassy, 2 Rue Bertholet,

defendant,

APPLICATION for a declaration that, by reserving preferential postal rates to French newspapers and periodicals, the French Republic has failed to fulfil its obligations under Article 30 of the EEC Treaty,

THE COURT

composed of: G. Bosco, President of Chamber, acting for the President, O. Due and C. Kakouris (Presidents of Chambers), T. Koopmans, U. Everling, K. Bahlmann and Y. Galmot, Judges,

Advocate General: C. O. Lenz
Registrar: P. Heim

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gives the following

* Language of the Case: French.
** after hearing the Opinion of the Advocate General delivered at the sitting on 22 January 1985,

JUDGMENT

(The account of the facts and issues which is contained in the complete text of the judgment is not reproduced)

Decision

1 By an application lodged at the Court Registry on 9 December 1983 the Commission of the European Communities brought an action under Article 169 of the EEC Treaty for a declaration that, by reserving a preferential postal tariff to French newspapers and periodicals, to the exclusion of similar publications of other Member States which might be posted and distributed in France, the French Republic has failed to fulfil its obligations under Article 30 of the EEC Treaty.

2 Article D. 18 of the Code des Postes et Télécommunications [Postal and Telecommunications Code] provides for a preferential 'press rate' for newspapers and periodicals which fulfil certain qualitative conditions. Under Article D. 21, as amended by Article 1 of Decree No 65-106 of 12 February 1965, newspapers and periodicals printed abroad, in whole or in part, are subject to the tariff for ordinary printed matter. None the less, 'French publications' which are printed in other Member States enjoy the preferential tariff applied to publications printed in France. Furthermore, foreign publications posted in France also qualify for the preferential tariff when the country concerned reciprocates by allowing French newspapers and periodicals posted in its own territory to enjoy the tariff which its domestic legislation provides in favour of the same category of item.

3 It appears from the explanations given to the Court by the French Government that the term 'French publications', mentioned above, refers to the Law of 29 July 1881 on the freedom of the press, and includes publications of which the chief editor is a French national residing in France.

4 By a letter of 10 June 1981, the Commission requested the French authorities to take the necessary steps to amend the provisions of Article D. 21 of the Code des

Postes et Télécommunications, and specifically to extend the preferential tariff to the publications of all Member States of the EEC. Since no action was taken on that request, the Commission, by a letter of 19 July 1982, invited the French Government to submit its observations on the article in question within one month.

5 Since the French authorities failed to respond to that letter, the Commission delivered a reasoned opinion under the first paragraph of Article 169 of the EEC Treaty, on 14 March 1983. When that opinion again failed to elicit a reply, the Commission brought the present action.

6 In essence, the Commission argues that the reservation of a preferential postal tariff to publications which are printed in France, or of which the chief editor is a French national residing in France, lowers the subscription rates for those publications alone and is thus liable to obstruct the distribution in France of publications from other Member States, in contravention of Article 30 of the Treaty. In the case of certain specialized journals at least, there is interchangeability between French and foreign publications. Since the contested provisions do not apply to domestic products and imports alike, they cannot be justified otherwise than under the provisions of Article 36, none of which may be relied on in this instance.

7 For its part the French Government maintains, in the first place, that the disputed provisions do not in actual fact constitute an obstacle to the free movement of goods. In practice, journals published abroad are either posted to France from the country of origin, subject to the international arrangements on postal rates, or imported into France for distribution by carrier to the various sales outlets. If those publications are posted in France, that suggests an active policy of exploration which implies the establishment of an administrative structure in France. That being so, it is easy for the publication to fulfil the requirements for being designated as a French publication and, as a result, benefiting from the preferential tariff.

8 Furthermore, according to the French Government, a reduced postal rate is quite irrelevant to the reader's choice between a French and a foreign publication, even on the assumption that the two are interchangeable. It is certainly not the price of

the publication which guides that choice; it is rather a matter of taste, of cultural, political or other affinity or of discernment as to the quality of the newspaper or periodical.

9 Those arguments of the French Government cannot be accepted. According to the established case-law of the Court, any commercial legislation by Member States which is liable to hinder intra-Community trade, whether directly or indirectly, actually or potentially, is to be regarded as a measure having an effect equivalent to quantitative restrictions. Even if, in this instance, the reader's choice is guided primarily by other than economic considerations, the reduction of subscription costs due to the preferential postal tariff may not be regarded as having no influence on that choice.

10 As the Court has held in its judgment of 5 April 1984 (Joined Cases 177 and 178/82 *Van de Haar and Another* [1984] ECR 1797), a national measure cannot evade the prohibition under Article 30 merely because the hindrance to importation is slight or because it is possible for the imported products to be marketed in other ways — as in this instance, by sales from news-stands or by postal despatch from abroad.

11 It must therefore be concluded on this point that to reserve the preferential postal tariff to publications which are printed in France or which fulfil the conditions for being regarded as French publications is liable to impede the distribution in France of publications from other Member States, and hence for the purposes of Article 30 constitutes a measure having an effect equivalent to a quantitative restriction.

12 It should be added that, in the case of publications printed in other Member States, the requirement that an officer of French nationality and resident in France be designated is in itself a measure having an effect equivalent to a quantitative restriction, as is apparent from *inter alia* the judgment of the Court of 2 March 1983 (Case 155/82 *Commission* v *Belgium* [1983] ECR 531).

13 In the second place, the French Government argues that the contested provisions are not discriminatory in character. It claims that, in combination, Articles D. 18

and D. 21 of the Code des Postes et Télécommunications enables foreign publications to enjoy the preferential tariff, as is indeed the case with several such publications. Similarly, newspapers and periodicals from other Member States which do not enjoy the preferential postal tariff because they do not meet the requirements demanded of French newspapers are treated on an equal footing with those French publications which do not qualify for the preferential tariff.

14 The French Government takes the view that Article 30 of the Treaty does not prohibit incentives to the distribution of highly specialized products such as newspapers and periodicals, which are neither necessarily nor exclusively 'national' products, provided that such measures have no discriminatory or unfavourable effects on the distribution of comparable products from other Member States.

15 Those arguments must also be rejected. In order to qualify for the preferential postal tariff, publications printed in other Member States must, under the terms of the disputed provisions, satisfy conditions which differ from those imposed on publications printed in France. The provisions thereby estabish a difference in treatment between national and imported products, and therefore fall within the scope of the prohibition laid down in Article 30.

16 On the basis of the foregoing considerations, it should be held that the French Republic, by reserving to French newspapers and periodicals or to newspapers and periodicals printed in France a preferential postal tariff pursuant to Article D. 21 of the Code des Postes et Télécommunications, to the exclusion of like publications from other Member States which may be posted and distributed in France, has failed to fulfil its obligations under Article 30 of the EEC Treaty.

Costs

17 Under Article 69 (2) of the Rules of Procedure the unsuccessful party shall be ordered to pay the costs. Since the defendant has been unsuccessful in its submissions it must be ordered to pay the costs.

On those grounds,

THE COURT

hereby:

(1) Declares that, by reserving to French newspapers and periodicals or to newspapers and periodicals printed in France a preferential postal tariff pursuant to Article D. 21 of the Code des Postes et Télécommunications, to the exclusion of like publications from other Member States which may be posted and distributed in France, the French Republic has failed to fulfil its obligations under Article 30 of the EEC Treaty;

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

Bosco Due Kakouris

Koopmans Everling Bahlmann Galmot

Delivered in open court in Luxembourg on 14 March 1985.

P. Heim
Registrar

G. Bosco
President of Chamber
Acting as President