JUDGMENT OF THE COURT
15 NOVEMBER 1983 [1]

# Commission of the European Communities v French Republic

(State aids — Compliance by a State with a Commission decision)

**Case 52/83**

*Objection of illegality — Action brought against a Member State for failure to fulfil its obligations by failing to comply with a decision prohibiting aid — Expiry of the limitation period for an action for a declaration that it is void — Inadmissibility of the objection of illegality raised with regard to the decision*

*(EEC Treaty, first and second subparagraphs of Art. 93 (2) and third paragraph of Art. 173)*

To allow a Member State to which a decision adopted under the first subparagraph of Article 83 (2) has been addressed a further opportunity to call in question the validity of that decision on the occasion of an application referred to in the second subparagraph of that article, in spite of the expiry of the period laid down in the third paragraph of Article 173 of the Treaty, would be impossible to reconcile with the principles governing the legal remedies established by the Treaty and would jeopardize the stability of that system and the principle of legal certainty upon which it is based.

In Case 52/83

COMMISSION OF THE EUROPEAN COMMUNITIES, represented by Marie-José Jonczy, a member of its Legal Department, acting as Agent, with an address for service in Luxembourg at the office of Oreste Montalto, a member of its Legal Department, Jean Monnet Building, Kirchberg,

applicant,

v

FRENCH REPUBLIC, represented by G. Guillaume, Director of Legal Affairs at the Ministry of External Affairs, acting as Agent, assisted by G. Boivineau, Deputy Principal Secretary for Foreign Affairs, acting as Assistant Agent, with an address for service in Luxembourg at its Embassy, 2 Rue Bertholet,

defendant,

1 — Language of the Case: French.

APPLICATION for a declaration that the French Republic, by not complying with the Commission Decision of 12 January 1983 on an aid scheme in favour of the textile and clothing industry in France, has failed to fulfil its obligations under the EEC Treaty,

THE COURT

composed of: J. Mertens de Wilmars, President, T. Koopmans, K. Bahlmann and Y. Galmot (Presidents of Chambers), P. Pescatore, Lord Mackenzie Stuart, A. O'Keeffe, G. Bosco, O. Due, U. Everling and C. Kakouris, Judges,

Advocate General: G. F. Mancini
Registrar: P. Heim

gives the following

## JUDGMENT

## Facts and Issues

The facts of the case, the course of the procedure and the conclusions, submissions and arguments of the parties may be summarized as follows:

Facts and written procedure

1. On 19 February 1982, the French Government, in conformity with Article 93 (3) of the EEC Treaty, notified the Commission of a draft order for the establishment of an aid scheme in favour of the textile and clothing industry under which the State was to take over part of the social security contributions payable by employers in the industry. The scheme was established by Order No 82-204 of 1 March 1982 and its implementing measures, announced by the French Government at the time of

notification of the draft order, were notified to the Commission on 16 April 1982 and put into effect on the same day by Decree No 82-340.

2. The taking over by the State of part of the social security contributions amounted to 10 % of the total amount of remuneration which, subject to the ceiling, served as the basis for calculation of the compulsory social security contributions payable by employers in the textile and clothing industry, where the undertakings in question undertook to maintain the level of employment and to attain a certain minimum level of investment. It is increased to 12 % where the undertaking concerned also commits itself to create additional employment. Undertakings whose difficulties are capable of affecting the economic and social balance of a region may obtain a reduction of social security charges equal to 8 %, without being bound by the same conditions relating to employment and investment, by simply presenting a plan for modernization and adaptation of the undertaking and for protecting employment, subject to approval by the competent administrative authority.

3. Furthermore, Article 5 (1) of the said Order No 82-204 provides that:

"The taking over shall be subject, regard being had to the position of the undertaking, to the conclusion between the State and the employer of a contract of a duration of 12 months giving in particular details of the commitments entered into by the employer pursuant to the provisions of this order, the date from which the taking over has effect, which must be later than the date on which the contract is concluded, and the means by which the employer's compliance with his commitments may be checked. No contract may be concluded after 31 December 1982."

4. Finally Article 5 (3) of that order provides that:

"The contract may be renewed, after amendment where necessary, for a further period of 12 months. The total duration of the contract or contracts may not exceed 24 months for any one undertaking."

5. The Commission, taking the view that such a scheme constituted an aid scheme incompatible with the common market within the meaning of Article 92 of the Treaty, called upon the French Government to submit its observations and then on 12 January 1983 adopted Decision No 83/245/EEC on an aid scheme in favour of the textile and clothing industry in France (Official Journal, L 137, 26. 5. 1983, p. 24).

6. Articles 1 and 2 of that decision are worded as follows:

"Article 1

The French Republic shall, within one month of notification of this decision, abolish the aid scheme in favour of the textile and clothing industry under which the State takes over responsibility for part of the social security contributions payable by employers in the industry, introduced by Order No 204 of 1 March 1982, the implementing rules for which were laid down by Decree No 82-340 of 16 April 1982.

Furthermore, the French Republic shall cease to grant aid under the scheme in

question from the date of notification of this decision.

Article 2

The French Republic shall notify the Commission of the provisions which it has adopted to comply with this decision no later than the expiry of the period fixed in the first paragraph of Article 1."

The final recital in the preamble to the decision reads as follows:

"... the French aid scheme for the textile and clothing industry ... is incompatible with the common market under Article 92 of the EEC Treaty and must accordingly be abolished. The French Government must not therefore conclude any contract as provided for in the above-mentioned provisions and must terminate any contracts already concluded with firms in breach of Article 93 (3) of the EEC Treaty."

7. The decision was notified to the French Republic on 21 January 1983.

8. On 23 February 1983 the French Government issued a communiqué on the aid scheme concerned. In that communiqué, which was sent to the Commission on the day it was published, the Government declares, *inter alia:*

"The 'employment investment' contract procedure will be reimplemented, degressively, for a second and final year. It will be amended in order to achieve a better proportion between the aid granted and the efforts made by undertakings to invest. Moreover, any means capable of encouraging a reduction in working hours with a view to increasing employment will be examined.

...

The French Government reiterates its willingness to carry out in conjunction with the Commission of the European Communities a complete study of the difficulties of the textile industry in Europe and of means of dealing with it."

9. The Commission, taking the view that the French Government had refused to comply with its decision, by an application lodged on 30 March 1983, brought this action pursuant to the second subparagraph of Article 93 (2) of the Treaty. The French Government submitted its defence on 11 May 1983.

10. By letter of 16 June 1983, the Commission informed the Court that it waived its right to submit a reply. The Commission gave the following reasons for its waiver. On 5 May 1983, the French Government notified it of a draft decree whose object was to define the conditions governing the renewal of the contracts concluded between the State and the employers in the textile and clothing industry in the context of the aid scheme established by Order No 204 of 1 March 1982. As the Commission was of the view that the project was not "of such a nature as to make the aid scheme concerned compatible with the common market within the terms of Article 92 of the EEC Treaty", it decided on 7 June 1983 to initiate with regard to the draft the procedure laid down in Article 93 (2). That decision was notified to the French Republic by letter of 15 June 1983. However the French Government put the planned measures into effect and published in the Official Journal of the French Republic of 8 June 1983 Decree No 83/458 of 7 June 1983, on the renewal of the

contract provided for by Order No 82-204 of 1 March 1982.

11. Upon hearing the report of the Judge-Rapporteur, the Court decided to open the oral procedure without any preparatory investigation. However, the Court invited the French Government to explain at the hearing to what extent subsidies under the aid scheme in question had been paid after 21 January 1983 and whether and to what extent if any the French authorities had effected renewals of contracts previously concluded.

## II — Conclusions of the parties

The *Commission* claims that the Court should:

1. Declare that the French Republic, by not complying within the period prescribed with the Commission Decision of 12 January 1983 on an aid scheme in favour of the textile and clothing industry in France, has failed to comply with its obligations under the Treaty;

2. Order the French Republic to pay the costs.

The *Government of the French Republic* claims that the Court should:

1. Dismiss the application as unfounded;

2. Order the applicant to pay the costs.

## III — Submissions and arguments of the parties during the course of the written procedure

1. In its application the *Commission* emphasizes that the decision of 12 January 1983 requires the French Republic, on the one hand, to abolish within one month, that is to say by 21 February 1983 at the latest, the aid scheme established and, on the other hand, with effect from 21 January 1983 not to grant any further aid pursuant to the scheme in question, which was, moreover, regard being had to the failure of the French Government to observe Article 93 (3) of the Treaty, void by reason of illegality. The Commission adds that pursuant to Article 189 of the Treaty, decisions are binding in their entirety upon those to whom they are addressed.

However, the communiqué of 23 February 1983 to which reference has already been made and which announced the renewal for a second year of the aid scheme at issue, could only be interpreted as a refusal of the government to comply with the Commission's decision.

The Commission concludes that there is no doubt that the French Government has not fulfilled its obligations under the first subparagraph of Article 93 (2) of the Treaty.

2. In its defence, the *French Government* states that it has fully complied with the Commission's decision in so far as it is entitled to interpret it in the light of Community law.

2.1. Thus, if the Commission's interpretation — or rather its intention — is to be accepted the French Government would have been required, *inter alia*, unilaterally to break contracts concluded before the decision came into effect. Such a requirement would however be contrary to Community law inasmuch as it takes no account of the principle of the protection of legitimate expectation.

The French Government on the other hand interprets the decision by reference

to the judgment of the Court of 12 July 1973 (Case 70/72 *Commission* v *Germany* [1973] ECR 813). In that judgment, the Court held that the Federal Republic of Germany was lawfully entitled to continue to grant investment subsidies, even after the Commission's decision, "to take account of the legitimate interests of investors". The government concludes therefrom that it is clear that the date which must be taken into account for the purpose of the abolition or cessation of an aid, in relation to the date on which a Commission decision takes effect, is not the date on which that aid is actually received in accountancy terms (receipt or allocation) by the recipient, but either the date of the administrative measure giving rise to the aid or, where there is a contractual commitment, the date on which the future recipient of the aid began to fulfil his undertakings precisely with a view to and for the purpose of receiving the aid which the national legislation or rules authorize him to claim.

It follows, according to the French Government, that although the decision in question may lawfully prohibit it from concluding other contracts after the date on which it takes effect, it can in no circumstances, as the Commission has claimed, require him to abrogate contracts already concluded.

Consequently, contracts concluded pursuant to Article 5 (1) of Order No 82-204 of 1 March 1982, aforesaid, are not affected by the Commission's decision because by virtue of its own internal legislation, the government could not conclude them until 31 December 1982, that is to say a date more than three weeks prior to the notification of the decision. Therefore, with regard to that category of contract, the Commission's decision is inapplicable.

2.2 With regard to the renewal of contacts already concluded, the French Government emphasizes that Article 5 (3) of Order No 82-204 clearly means that a contract is not renewed automatically or in identical terms, but must undergo amendments and, for those reasons, any renewal cannot occur immediately on expiry of the contract. The French Government interprets the Commission's decision as prohibiting it from renewing contracts made in 1982, as the extent to which amendments to be made to them within the actual terms of Order No 82-204 do not contribute to making the aid scheme compatible with Article 92 of the Treaty. It is in that light that the communiqué of 23 February 1983, announcing that the procedure for the contracts would be renewed, after amendment, for a second and final year and which suggested consultation with the Commission on that subject, must be understood. The Commission was therefore wrong to take the view that the communiqué amounted to a refusal to apply its decision.

2.3 In those circumstances, since the decision of 12 January 1983 could not apply to contracts concluded before 31 December 1982 and since no contract was either concluded or renewed after the date on which the decision took effect, the French Government repeats that it has fully conformed, with it.

IV — Oral procedure

At the sitting on 13 September 1983 the French Government, represented by G. Boivineau, and the Commission, represented by M.-J. Jonczy, presented oral argument.

The French Government also explained that subsidies pursuant to the aid scheme in question were paid after 21 January 1983 and that the French authorities had renewed contracts already concluded. The government added that 3 015 contracts had been concluded between the date of entry into force of the scheme in question and 31 December 1982, and that it estimated that some 2 400 contracts had been renewed for 1983.

The Advocate General delivered his opinion at the sitting on 6 October 1983.

## Decision

1 By application lodged at the Court Registry on 30 March 1983, the Commission of the European Communities brought an action pursuant to the second subparagraph of Article 93 (2) of the EEC Treaty for a declaration that the French Republic, by not complying within the period prescribed with Commission Decision No 82/245/EEC of 12 January 1983 on an aid scheme in favour of the textile and clothing industry in France (Official Journal, L 137, 26. 5. 1983, p. 24), had failed to fulfil an obligation under the Treaty.

2 It appears from the file that, on 19 February 1982, the French Government notified the Commission, in pursuance of Article 93 (3) of the Treaty, of a draft order for the establishment of an aid scheme in favour of the textile and clothing industry under which the State was to take over part of the social security contributions payable by employers in the industry. That aid scheme was later established by Order No 82-204 of 1 March 1982, published in Official Journal of the French Republic No 51 of 2 March 1982. Measures for its implementation were notified to the Commission on 16 April 1982 and brought into force by Decree No 82-340 of the same date, published in the Official Journal of the French Republic No 90 of 17 April 1982.

3 According to Article 5 of the aforementioned Order No 82-204, the taking over by the State of part of the social security contribution is to be subject to the conclusion between the State and the employer of a contract for a period of 12 months specifying the proportion of contributions taken over and the commitments entered into by the employer with regard to the maintenance or creation of employment and attaining a certain level of investment. The article also provides that no contract may be concluded after 31 December 1982, but contracts concluded before that date may be renewed for a further period of 12 months.

4 The Commission gave the French Government formal notice to submit its observations and subsequently, pursuant to the first subparagraph of Article 93 (2) of the Treaty took the aforementioned decision which led to this action.

5 Article 1 of that decision provides:

"The French Republic shall, within one month of notification of this decision, abolish the aid scheme in favour of the textile and clothing industry under which the State takes over responsibility for part of the social security contributions payable by employers in the industry, introduced by Order No 204 of 1 March 1982, the implementing rules for which were laid down by Decree No 82-340 of 16 April 1982.

Furthermore, the French Republic shall cease to grant aid under the scheme in question from the date of notification of this decision.

6 The decision was notified to the French Republic on 21 January 1983 and the French Government did not bring an action within the period prescribed by the third paragraph of Article 173 of the Treaty for a declaration that it was void.

7 On 23 February 1983, the French Government sent to the Commission a communiqué stating that the procedure for "employment-investment" contracts would be re-implemented, degressively, for a second and final year. The Commission took the view that the issue of the communiqué was

tantamount to a refusal by the French Government to comply with its decision and accordingly brought this action.

8 The French Government maintains that it has fully complied with the Commission's decision. It recalls that the decision was adopted after the period prescribed for the conclusion of contracts had expired. Consequently, no contract was concluded after the notification of the decision. The government admits, on the other hand, that the French authorities continued to fulfil undertakings into which they had entered by the contracts already concluded. However, it is of the view that it was entitled to interpret the Commission's decision in a manner which would permit it to observe the principle of the protection of legitimate expectation, which the French authorities would have breached if they had unilaterally abrogated contracts already concluded. The Court itself, it is claimed, recognized the existence of that principle in similar circumstances in its judgment of 12 July 1973 (in Case 70/72 *Commission* v *Germany* [1973] ECR 813).

9 It must be observed that, in contrast to the decision which led to Case 70/72, the Commission's decision of 12 January 1983 indicated clearly and unequivocally the obligations thereby imposed on the French Republic. It required the latter, from the date of notification, no longer to grant any aid under the scheme in question and, within a period of one month, to abolish the scheme. However, it is common ground that the French Republic continued to pay the aid for which the scheme provided to any employer who had made a contract and that the French Government took no steps to abolish the aid scheme within the period prescribed by the decision.

10 Moreover, the French Government's argument with regard to the principle of the protection of legitimate expectation does not relate to the interpretation of the decision, but constitutes a contention relating to its validity, which could only have been raised in support of an application for a declaration that it was void. In fact, as the Court has already stressed in its judgment of 12 October 1978 (Case 156/77 *Commission* v *Belgium,* [1978]

ECR 1881), to allow a Member State to which a decision adopted under the first subparagraph of Article 93 (2) has been addressed a further opportunity to call in question the validity of that decision on the occasion of an application referred to in the second subparagraph of that article, in spite of the expiry of the period laid down in the third paragraph of Article 173 of the Treaty, would be impossible to reconcile with the principles governing the legal remedies established by the Treaty and would jeopardize the stability of that system and the principle of legal certainty upon which it is based.

11 In those circumstances, it must be declared that the Member State in question has failed to fulfil its obligations, as contended in the Commission's conclusions.

## Costs

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

On those grounds,

THE COURT

hereby:

1. **Declares that the French Republic, by not complying within the period prescribed with Commission Decision No 83/245 of 12 January 1983 on an aid scheme in favour of the textile and clothing industry in France, has failed to fulfil one of its obligations under the Treaty;**

**2. Orders the French Republic to pay the costs.**

| | | | |
|---|---|---|---|
| | Mertens de Wilmars | Koopmans | Bahlmann |
| Galmot | Pescatore | Mackenzie Stuart | O'Keeffe |
| Bosco | Due | Everling | Kakouris |

Delivered in open court in Luxembourg on 15 November 1983.

P. Heim
Registrar

J. Mertens de Wilmars
President

## OPINION OF MR ADVOCATE GENERAL MANCINI DELIVERED ON 26 OCTOBER 1983 [1]

*Mr President,*
*Members of the Court,*

1. This case is a direct action brought by the Commission, pursuant to the second subparagraph of Article 93 (2) of the EEC Treaty, against the French Republic which is charged with having failed to comply with a Commission decision of 12 January 1983 relating to a system of state aids in favour of textile and clothing undertakings.

To summarize the facts — on 19 February 1982 the French Government notified the Commission of a draft regulation establishing the system to which I have referred and on 1 March brought it into force (Order No 204, Official Journal of the French Republic of 2 March 1982) without waiting for the Commission to make its own observations under Article 93 (3) of the EEC Treaty. The regulation provided for the State to take over temporarily part of the costs arising from social insurance. To obtain the relief, however, the undertaking concerned had to conclude with the State before 31 December 1982 an agreement valid for 12 months giving details of the duties which it assumed with regard to maintaining the level of employment and to the making of new investments. It also provided for the

1 — Translated from the Italian.