

Case C-265/95

Commission of the European Communities

v

French Republic

(Free movement of goods — Agricultural products — Trade barriers resulting from actions by private individuals — Obligations of the Member States)

Opinion of Advocate General Lenz delivered on 9 July 1997	I - 6961
Judgment of the Court, 9 December 1997	I - 6990

Summary of the Judgment

- 1. Free movement of goods — Trade barriers resulting from actions by private individuals — Obligations of the Member States — Adoption of measures to ensure the free movement of goods — Margin of discretion of the Member States — Review by the Court (EC Treaty, Arts 5 and 30)*
- 2. Free movement of goods — Common organization of the markets in agricultural products — Trade barriers resulting from actions by private individuals — Obligations of the Member States — Adoption of measures to ensure the free movement of goods — Measures manifestly inadequate, having regard to the frequency and seriousness of incidents — Failure to fulfil obligations — Justification based on internal difficulties — Whether permissible — Conditions — Justification based on the assumption of responsibility for losses caused to the victims, on grounds of an economic nature, or on the possible failure by another Member State to fulfil its obligations — Not permissible (EC Treaty, Arts 5 and 30)*

1. As an indispensable instrument for the realization of a market without internal frontiers, Article 30 does not merely prohibit measures emanating from the State which, in themselves, create restrictions on trade between Member States, but may also apply where a Member State abstains from adopting the measures required in order to deal with obstacles to the free movement of goods which are not caused by the State. The fact that a Member State abstains from taking action or fails to adopt adequate measures to prevent obstacles to the free movement of goods that are created, in particular, by actions by private individuals on its territory aimed at products originating in other Member States is just as likely to obstruct intra-Community trade as is a positive act. Article 30 therefore requires the Member States not merely themselves to abstain from adopting measures or engaging in conduct liable to constitute an obstacle to trade but also, when read with Article 5 of the Treaty, to take all necessary and appropriate measures to ensure that the free movement of goods, a fundamental freedom, is complied with on their territory.

Although the Member States, which retain exclusive competence as regards the maintenance of public order and the safeguarding of internal security, unquestionably enjoy a margin of discretion in determining what measures are most appropriate to eliminate barriers to the importation of goods in a given situation and it is therefore not for the Community institutions to act in place of the Member States and to prescribe for them the mea-

asures which they must adopt and effectively apply in order to safeguard the free movement of goods on their territories, it nevertheless falls to the Court to verify, in cases brought before it, whether the Member State concerned has adopted appropriate measures for ensuring the free movement of goods.

2. A Member States fails to fulfil its obligations under Article 30 of the Treaty, in conjunction with Article 5 of that Treaty, and under the regulations on the common organization of markets in agricultural products where the measures which it adopted in order to deal with actions by private individuals creating obstacles to the free movement of certain agricultural products were, having regard to the frequency and seriousness of the incidents in question, manifestly inadequate to ensure freedom of intra-Community trade in agricultural products on its territory by preventing and effectively dissuading the perpetrators of the offences in question from committing and repeating them.

That failure cannot be justified either by apprehension of internal difficulties, unless the Member State can show that action on its part would have consequences for public order with which it could not cope by using the means at its disposal, or by the assumption of responsibility for the losses caused to the victims, or on economic grounds, or by the claim that another Member State may have infringed rules of Community law.