

Case C-24/00

Commission of the European Communities

v

French Republic

(Failure of a Member State to fulfil obligations — Articles 30 and 36 of the EC Treaty (now, after amendment, Articles 28 EC and 30 EC) — National legislation exhaustively listing the nutrients which may be added to foodstuffs — Measures having equivalent effect — Justification — Public health — Consumer protection — Proportionality)

Opinion of Advocate General Mischo delivered on 26 June 2001 I-1280

Judgment of the Court (Sixth Chamber), 5 February 2004 I-1306

Summary of the Judgment

1. *Free movement of goods — Quantitative restrictions — Measures having equivalent effect — National legislation making the addition of nutrients to foodstuffs subject to authorisation — Not permissible in the absence of a simplified procedure (EC Treaty, Art. 30 (now, after amendment, Art. 28 EC))*

2. *Free movement of goods — Quantitative restrictions — Measures having equivalent effect — National legislation hindering the marketing of foodstuffs enriched with nutrients — Not permissible — Justification — Protection of public health — Not justified without establishing a real risk*
(EC Treaty, Arts 30 and 36 (now, after amendment, Arts 28 EC and 30 EC))

1. A Member State which does not provide for a simplified procedure for having included on the national list of authorised nutrients those added to foodstuffs for daily consumption and foodstuffs intended for particular nutritional uses which are lawfully manufactured and/or marketed in other Member States fails to fulfil its obligations under Article 30 of the Treaty (now, after amendment, Article 28 EC).
2. A Member State which hinders the marketing on its territory of certain foodstuffs, such as food supplements and dietary products containing the substances L-tartrate and L-carnitine, and confectionery and drinks to which certain nutrients have been added, without establishing that the marketing of such foodstuffs entails a real risk for public health, fails to fulfil its obligations under Article 30 of the Treaty (now, after amendment, Article 28 EC).

The procedure must be one which is readily accessible and can be completed within a reasonable time, and, if it leads to a refusal, the decision of refusal must be open to challenge before the courts.

(see paras 26, 76, operative part)

While Community law does not, in principle, preclude legislation of a Member State which prohibits, save with prior authorisation, possession with a view to sale or the putting on sale of foodstuffs intended for human consumption where nutrients other than those whose addition is lawful under the said legislation have been added thereto, since it is for the Member States, in the absence of harmonisation and to the extent that there is still uncertainty in the current state of scientific research, to decide on the level of protection of human health and

life they wish to ensure, that discretion must nevertheless be exercised in compliance with the principle of proportionality. It is, furthermore, for the national authorities to show in each case, in the light of national nutritional habits and in the light of the results of international scientific research, that their rules are necessary to give effective protection to the interests referred

to in Article 36 of the Treaty (now, after amendment, Article 30 EC) and, in particular, that the marketing of the products in question poses a real risk to public health.

(see paras 49, 51-53, 76, operative part)