JUDGMENT OF THE COURT
10 MAY 1984 [1]

Commission of the European Communities v Hellenic Republic

(Payment for imports in cash)

Case 58/83

1. *Accession of new Member States to the Communities — Hellenic Republic — Free movement of goods — Derogations — Strict interpretation.*
(EEC Treaty, Art. 30; Act of Accession, Arts 35 and 38)

2. *Member States — Obligations — Failure to fulfil — Justification — Not acceptable.*
(EEC Treaty, Art. 169)

1. The general scheme of Article 30 of the EEC Treaty and Article 35 of the Act of Accession of the Hellenic Republic provides for the free movement of goods. In so far as Article 38 constitutes a derogation from that principle it must be restrictively interpreted.

2. A Member State may not plead administrative difficulties existing in that State in order to justify a failure to comply with its obligations.

In Case 58/83

COMMISSION OF THE EUROPEAN COMMUNITIES, represented by Xenophon Yataganas, a member of its Legal Department, with an address for service in Luxembourg at the office of Oreste Montalto, also a Member of its Legal Department, Jean Monnet Building, Kirchberg,

applicant,

1 — Language of the Case: Greek.

v

HELLENIC REPUBLIC, represented by Yannis Kranidiotis, a special adviser to the State Secretary for Foreign Affairs, with an address for service in Luxembourg at the Greek Embassy,

defendant,

APPLICATION for a declaration under Article 169 of the EEC Treaty that the Hellenic Republic has failed to fulfil its obligations under Article 30 et seq. of the EEC Treaty and Articles 35 and 38 of the Act of Accession of the Hellenic Republic to the European Communities,

THE COURT

composed of: Lord Mackenzie Stuart, President, T. Koopmans and Y. Galmot (Presidents of Chambers), P. Pescatore, A. O'Keeffe, G. Bosco and C. Kakouris, Judges,

Advocate General: G. F. Mancini
Registrar: J. A. Pompe, Deputy Registrar

gives the following

JUDGMENT

Facts and Issues

I — Facts and written procedure

The proceedings relate to the interpretation of the scope of the obligation assumed by Greece in Article 38 of the Act of Accession to the European Communities which provides that the rate of cash payments in force in Greece on 31 December 1980 with regard to imports from the existing Member States was to be progressively reduced over a period of three years from 1 January 1981. The rate of cash payments was to be reduced in accordance with the following timetable: 1 January 1981, 25%; 1 January 1982, 25%; 1 January 1983, 25% and 1 January 1984, 25%.

By decision of 23 January 1981, the Minister for Commerce decided that certain products the import value of which was required to be paid wholly in cash as at 31 December 1980 could thereafter be freely imported into Greece. On the other hand, certain other products continued to be subject to the rule requiring payment of their total value in cash.

The Commission took the view that that measure was not in conformity with the obligations imposed by Article 38 of the Act of Accession and initiated the procedure under Article 169 of the EEC Treaty by means of a formal notice dated 24 March 1982. That was followed by a reasoned opinion dated 25 October 1982 and finally by an application dated 24 March 1983 which was received at the Court Registry on 11 April 1983. The Greek Government lodged its defence on 16 June 1983 and the Commission waived its right to submit a reply.

Upon hearing the report of the Judge-Rapporteur and the views of the Advocate General the Court decided to open the oral procedure without any preparatory inquiry.

II — Conclusions of the parties

The *Commission* claims that the Court should:

1. Declare that, by subjecting the importation of certain products from other Member States to the requirement to pay for them wholly in cash, the Hellenic Republic has failed to fulfil its obligations under Article 30 et seq. of the EEC Treaty and under Articles 35 and 38 of the Act of Accession;

2. Order the Hellenic Republic to pay the costs.

The *Hellenic Republic* contends that the Court should:

1. Dismiss the Commission's application;

2. Order the Commission to pay the costs.

III — Submissions and arguments of the parties

According to the *Commission,* the Greek authorities claimed to have complied with the provisions of Article 38 of the Act of Accession by transferring to the list of products which might be imported without cash payments a number of products which in their view represented 25% of the volume of imports.

The Commission maintains that that view does not accord with the various language versions of Article 38, which display no discrepancies and of which the meaning is clear. The requirement of cash payments for imports was to be gradually removed by means of four annual reductions, each of 25%. The only sure means of achieving the desired result is to give all imports without exception, that is to say each transaction involving the importation of goods, the benefit of those reductions. Support for that logical conclusion is provided by the fact that in practice it would be impossible for the Greek authorities to determine what represents a 25% reduction in cash payments, since it is impossible to determine the volume of all imports in advance.

The interpretation adopted by the Greek authorities, which enables them to raise obstacles to the importation of certain products, amounts to a selective restriction on imports in sectors where Greece considers itself to be in need of special protection. It is also a policy of

unequal treatment of importers. In consequence the measures in question are equivalent to quantitative restrictions on imports contrary to Article 30 et seq. of the EEC Treaty.

Article 38 of the Act of Accession provided for the immediate abolition of such measures from 1 January 1981 and Article 38 introduces a transitional period of three years for the action referred to therein to be taken.

The Greek policy infringes Article 38 and is incompatible with the objective thereof which is to dismantle restrictive systems progressively in order to avoid serious disturbances. The result would be that at the end of the transitional period the restrictions in question would still exist with respect to the most sensitive imported products and would have to be abolished completely some months afterwards.

The Greek authorities argue that there are difficulties of a technical nature. That argument cannot be regarded as sufficient to justify a Member State's not complying with the Community rules. The Greek authorities seek to argue on the basis of records of the negotiations preceding accession. Apart from the fact that the Commission considers that it is not possible to argue for a derogation from the application of a precise provision of Community law by recourse to the minutes of the proceedings of the Ministerial Conference, it observes that the detailed arrangements in question were specifically embodied in the requirement laid down in Article 38 that there should be four successive reductions of 25%.

The *Greek Government* considers it necessary to consider the economic aims of Article 38, which can only be to ensure normal adjustment of the Greek import system as a whole. The Greek Government's interpretation of that article is permissible in view of its abstract wording. The article does not settle the question whether the 25% reduction in cash payments refers to each individual transaction or to trade as a whole. Thus the Sixth Ministerial Conference decided that the progressive reduction should be effected subject to agreement on the detailed arrangements for the abolition of restrictions. The legislature's intention is clarified by the minutes of the meetings. The sole point of disagreement between the parties relates to the detailed arrangements for implementation. The Commission cannot act until after the transitional period in order to check whether all restrictions have been abolished in all areas.

Greece contends that it has fulfilled its obligation by transferring to the list of products in respect of which deferred payment on importation was authorized a number of products, including machines, raw materials, semi-finished products and so forth, the volume of which may be determined in advance so that it is possible in fact to speak of a total reduction of 25% in cash payments. The Greek Government annexes to its defence a list giving examples of products in respect of which purchase on credit is permitted and which in its view shows the stable nature of such imports, by contrast with the products not included on the list which are subject to considerable fluctuations.

The interpretation adopted by the Greek authorities does not, in the view of the Greek Government, constitute an obstacle to the importation of certain products and liberalization of others, as the Commission alleges, since what is involved is not liberalization but merely a different method of payment. That has no connection with the question whether a product is freely imported or is subject to a quota system. There is no discriminatory treatment of importers since foreign undertakings give credit only for products such as machines, raw materials and so forth, for which the Greek authorities have already authorized purchases on credit. Even if the Commission's interpretation were adopted it would make no fundamental difference in practice since it is impossible to obtain credit from foreign undertakings in respect of certain imports.

IV — Oral procedure

At the sitting on 11 January 1984 oral argument was presented for the Commission by Mr Yataganas and for the Greek Government by Mr C. Stephanou, acting as Agent, and Mrs O. Pantazi, acting as expert.

The Advocate General delivered his opinion at the sitting on 4 April 1984.

Decision

1 By application lodged at the Court Registry on 24 March 1983 the Commission brought an action under Article 169 of the Treaty for a declaration that by subjecting the importation of certain products from other Member States to the requirement to pay for them wholly in cash, the Hellenic Republic, has failed to fulfil its obligations under Article 30 et seq. of the EEC Treaty and under Articles 35 and 38 of the Act of Accession.

2 Article 38 of the Act of Accession provides that cash payments with regard to imports from the other Member States are to be reduced in accordance with the following timetable: 1 January 1981, 25%, 1 January 1982, 25%, 1 January 1983, 25% and 1 January 1984, 25%.

3 By decision of 23 January 1981 the Greek Minister for Commerce decided that certain products in respect of which as at 31 December 1980 payment in cash was required in full upon importation could thereafter be imported without having to satisfy that condition. On the other hand certain other

products would continue to be subject to the requirement to pay for them wholly in cash.

4 The Commission considered that by adopting that decision the Hellenic Republic had failed properly to fulfil its obligations. Instead of completely liberalizing a certain number of products it ought to have reduced by 25% the amount required to be paid in cash with regard to all the products to which Article 38 applies.

5 The Hellenic Republic contests that interpretation. In its view the wording of Article 38 is abstract and does not deal with the question whether the reduction of 25% in the amount to be paid in cash refers to each individual transaction.

6 The Hellenic Republic contends that it fulfilled its obligation by transferring to the list of products for the importation of which deferred payment was authorized a number of products the volume of which could be determined in advance and represented 25% of the sums paid in cash.

7 In support of its interpretation the Greek Government refers to the negotiations preceding the Act of Accession. The view of the Sixth Ministerial Conference was that the requirement of payments in cash should be progressively eliminated over a period of three years after accession subject to an agreement on the detailed arrangements to be adopted in that respect. In the absence of such an agreement the Hellenic Republic is free to adopt the detailed arrangements which best suit its interests.

8 The Greek Government also considers that the provision in question was included for its benefit and it thus enjoys a degree of discretion with regard to its interpretation. The Act of Accession was not intended to adopt the interpretation proposed by the Commission. In view of the complex practical and administrative difficulties which would arise if the interpretation proposed by the Commission were adopted, it is appropriate to adopt that proposed by the Greek Government.

9 That argument cannot be accepted. The general scheme of Article 30 of the EEC Treaty and Article 35 of the Act of Accession provides for the free movement of goods. In so far as Article 38 constitutes a derogation from that principle it must be restrictively interpreted. The aim of Article 38 is progressively to dismantle the machinery protecting national industry in order to enable it to use the transitional period to adapt to the increased competition arising from the opening of Greece's frontiers. The method adopted by the Greek Government does not allow that aim to be achieved since it provides, depending on the products involved, either for total maintenance or for immediate removal of the protective machinery without a gradual change from one situation to the other. Moreover, the risk of arbitrariness inherent in that method is not to be underestimated.

10 The records of the registrations preceding the Act of Accession in no way contradict that interpretation since the detailed arrangements for the progressive abolition of the system of payments in cash in respect of which agreement was to be reached are defined in Article 38 itself in so far as it provides for four successive reductions of 25%.

11 Likewise, the interpretation which the Greek Government advocates cannot be accepted merely because of administrative difficulties. According to well-established case-law of the Court, a Member State may not plead administrative difficulties existing in that State in order to justify a failure to comply with its obligations.

12 Consequently, the Commission has established the failure to fulfil obligations alleged by it and its application must therefore be upheld.

Costs

13 Under Article 69 (2) of the Rules of Procedure the unsuccessful party is to be ordered to pay the costs.

14 Since the Hellenic Republic has failed in its submissions it must be ordered to pay the costs.

On those grounds,

THE COURT

hereby:

1. **Declares that by continuing in 1981 to subject the importation of certain products from other Member States to the requirement to pay for them wholly in cash, the Hellenic Republic has failed to fulfil its obligations under Article 38 of the Act of Accession;**

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

Mackenzie Stuart Koopmans Galmot

Pescatore O'Keeffe Bosco Kakouris

Delivered in open court in Luxembourg on 10 May 1984.

For the Registrar

H. A. Rühl

Principal Administrator

A. J. Mackenzie Stuart

President