JUDGMENT OF THE COURT
14 November 1989 *

In Case 30/88

Hellenic Republic, represented by G. Kranidiotis, Special Secretary at the Ministry of Foreign Affairs, assisted by S. Perrakis, University Professor, S. Zisimopoulos, an expert in the European Communities Department at the Ministry of Foreign Affairs, and C. Samonis, a member of the Department for Community Legal Affairs at the Ministry of Foreign Affairs, with an address for service in Luxembourg at the Embassy of the Hellenic Republic, 117 Val Sainte-Croix,

applicant,

v

Commission of the European Communities, represented by P. J. Kuiper, a member of its Legal Department, assisted by S. Afendras, of the Athens Bar, with an address for service in Luxembourg at the office of Georgios Kremlis, a member of the Commission's Legal Department, Wagner Centre, Kirchberg,

defendant,

APPLICATION for a declaration that three Commission decisions approving on 17 November and 10 December 1987 financing projects forming part of the special aid for Turkey are void,

THE COURT

composed of O. Due, President, Sir Gordon Slynn, C. N. Kakouris, F. A. Schockweiler and M. Zuleeg (Presidents of Chambers), T. Koopmans, G. F. Mancini, R. Joliet, T. F. O'Higgins, J. C. Moitinho de Almeida, G. C. Rodríguez Iglesias, F. Grévisse and M. Díez de Velasco, Judges,

Advocate General: M. G. Tesauro
Registar: J.-G. Giraud

* Language of the case: Greek

having regard to the Report for the Hearing and further to the hearing on 25 April 1989,

after hearing the Opinion of the Advocate General delivered at the sitting on 4 July 1989,

gives the following

Judgment

1 By application lodged at the Court Registry on 27 January 1988, the Hellenic Republic brought an action under the first paragraph of Article 173 of the EEC Treaty for a declaration that three Commission decisions of 17 November and 10 December 1987 concerning financing projects as special aid for Turkey are void.

2 According to the documents before the Court, in 1979 the Community stated that it was prepared to consider specific action — in the form of grants to Turkey amounting to ECU 75 million over a period of two years — to finance cooperation measures. The EEC-Turkey Association Council took formal note of the Community's offer to grant Turkey exceptional aid amounting to ECU 75 million and laid down the conditions for carrying that offer into effect (Decision No 2/80 of the Association Council). The decision is worded as follows:

'(1) Turkey and the Community shall cooperate in the Association Committee to implement the exceptional aid of 75 million European units of account made available to Turkey by the Community.

(2) For the submission of specific projects, Turkey shall approach the Commission directly which shall examine them in the light of the criteria indicated by the Community delegation to the Council Association for the use of the exceptional aid.

(3) The Community shall inform Turkey of the response to its requests.

(4) The Association Committee shall follow the implementation of the aid. For this purpose it shall meet at the request of one of the two parties.

(5) This decision shall enter into force on 1 July 1980.'

3 According to a 'declaration of the Council concerning the internal implementation of Decision No 2/80', which is set out in the Minutes of the Council meeting of 30 June 1980, 'as regards the procedure for the approval of projects, the Council agreed to apply the procedure followed for the implementation of the Financial Protocols concluded with the Mediterranean countries'. That *ad hoc* procedure provided that only financing projects submitted by the Commission and the European Investment Bank which had received unanimous approval within the *ad hoc* group, established at that time, could be considered to have been adopted. Three initial special aid projects were examined by the Commission and, in July 1981, were approved in accordance with the *ad hoc* procedure.

4 In view of internal political developments in Turkey, the Community decided, at the end of 1981, to freeze its relations with that country, especially in the field of financial cooperation. The special aid was suspended after ECU 46 million had been committed. An amount of ECU 29 million therefore remained available.

5 Following the resumption of relations between the Community and Turkey in 1986, the Commission invited Turkey to submit projects which could be financed by new commitment appropriations as part of the special aid. When Turkey replied to that invitation, the Commission took the view that the *ad hoc* procedure for approving projects submitted to implement the Financial Protocols with the Mediterranean countries was no longer applicable since, in the meantime, the Council had adopted Regulation (EEC) No 3973/86 of 22 December 1986 concerning the application of the Protocols on financial and technical cooperation concluded between the Community and Algeria, Morocco, Tunisia, Egypt, Lebanon, Jordan, Syria, Malta and Cyprus (Official Journal 1986, L 370, p. 5).

6 When that regulation was adopted, the Council and the Commission declared that it 'can in no case constitute a precedent for the implementation of financial protocols other than those covered by the regulation' and that 'the procedure for implementing these other protocols will be adopted having regard to the merits of each case'. However, the Commission considered that it was appropriate to take advantage of the Member States' experience in dealing with development projects in Mediterranean countries and consequently decided to consult them as 'members' of the 'Article 6 Committee' provided for in Regulation No 3973/86 without thereby applying the procedures of that committee.

7 The Commission therefore put three projects for assisting Turkey — an EEC-Turkey business-week project, an anti-malaria programme in the eastern Mediterranean coastal region of Turkey and a project for the exploitation of geothermal energy in western Anatolia — on the agenda of the Article 6 Committee. Despite objections of the Greek delegation that the procedure followed was illegal, the committee members gave their assent to the projects by a qualified majority. By decisions of 17 November and 10 December 1987, the Commission approved the financing of those projects as special aid.

8 Reference is made to the Report for the Hearing for a fuller account of the facts of the case, the course of the procedure and the submissions and arguments of the parties, which are mentioned or discussed hereinafter only in so far as is necessary for the reasoning of the Court.

9 The Hellenic Republic relies on four submissions in support of its application, namely lack of a legal basis, infringement of Community law, infringement of essential procedural requirements, abuse of procedure and the Commission's lack of power to adopt the disputed measures.

Lack of a legal basis

10 The Greek Government claims that it is apparent from Article 2(1) of Agreement 64/737/EEC on measures and procedures required for the implementation of the agreement establishing an association between the EEC and Turkey (*Journal*

officiel L 217, 29.12.1964, p. 3703), hereinafter referred to as 'the Intergovernmental Agreement', in conjunction with Articles 7 and 22 of the EEC-Turkey Association Agreement (*Journal officiel* 1964, L 217, p. 3685), that the decisions of the Association Council are, for the purposes of their implementation, to be the subject of measures adopted by the Council acting unanimously after the Commission has been consulted. Since no such implementing measure was adopted in this case, the Commission had no legal basis for financing the projects in Turkey. According to the Greek Government, Article 2(1) of the Intergovernmental Agreement is clear and precise in that regard and leaves the competent Community institutions no scope for derogating from it.

11 The Commission contends that the purpose of Article 2(1) is not to oblige the Council to transpose every decision of the Association Council which falls within the competence of the Community. The requirement of unanimity within the Council 'for the purposes of the implementation' of decisions of the Association Council should be understood as meaning 'if it is necessary for their implementation in the Community' and not as meaning 'because it is necessary or indispensable for their implementation in the Community'. Moreover, the Council's practice in this field broadly corresponds to that interpretation. The Commission therefore considers that Decision No 2/80 constitutes the legal basis for budget Heading 9632 concerning special aid for Turkey, inasmuch as it contains the essential details for implementing the corresponding appropriations thereby entered in the budget of the Communities.

12 It must be pointed out first of all that as the Court has consistently held (see, most recently, the judgment of 30 September 1987 in Case 12/86 *Demirel* v *Stadt Schwäbisch Gmünd* [1987] ECR 3719, paragraph 7), the provisions of an agreement concluded by the Council under Articles 228 and 238 of the Treaty form, as from the entry into force of the agreement, an integral part of the Community legal system.

13 For the attainment of the objectives laid down by the EEC-Turkey Association Agreement and in the circumstances provided for by that agreement, Article 22 thereof confers a power of decision on the Association Council. With regard to Decision No 2/80, the Court has already held in its judgment of 27 September 1988 in Case 204/86 *Hellenic Republic* v *Council* [1988] ECR 5323, paragraph 20 that, by providing for cooperation with regard to '... the implementation of the aid ... made available to Turkey', the Association Council placed that aid within

the institutional framework of the Association. Since it is directly connected with the Association Agreement, Decision No 2/80 forms, from its entry into force, an integral part of the Community legal system.

14 It is on the basis of those considerations that it is then appropriate to consider the Greek Government's arguments, according to which the decisions of the Association Council must, in order to be implemented, be the subject of unanimous agreement within the Council.

15 According to Article 7 of the Association Agreement, the contracting parties are to take all the general or specific measures for ensuring the performance of the obligations arising from the agreement and are to refrain from taking any measures which may jeopardize the attainment of its aims. Article 22 of the Association Agreement provides that both parties are required to take the measures entailed by the implementation of decisions adopted by the Association Council.

16 In this case, Decision No 2/80 in fact laid down the conditions in which the special aid for Turkey was to be implemented. It determined the essential details of the aid, such as the amount thereof and the procedures for the submission of projects by Turkey and for their consideration by the Commission. The decision also stated that the implementation of the aid would be monitored by the Association Committee. The wording of the provisions of Decision No 2/80 therefore enabled them to be implemented without the prior adoption of supplementary measures. Accordingly, Article 2 of the Intergovernmental Agreement does not have to be applied in any circumstances.

17 The Greek Government's first submission must therefore be rejected.

Infringement of essential procedural requirements, abuse of procedure and the Commission's lack of power

18 In raising the submissions concerning the infringement of essential procedural requirements, abuse of procedure and lack of power, the Greek Government accuses the Commission of following an unlawful procedure for the approval of

three financing projects in Turkey. In that regard, the Greek Government submits that the approval of the special aid falls within the powers of the Council, which, on the basis of a 'gentlemen's agreement' concluded in 1980, retained the exclusive power to adopt the legal measures needed to implement the aid, in accordance with an *ad hoc* procedure. Under that procedure, the Commission should have secured the unanimous agreement of the Member States in order to obtain authorization to commit funds as special aid.

19 The Greek Government emphasizes, in addition, that Regulation No 3973/86 replaced the *ad hoc* procedure only in the case of the countries to which it applies, but that the procedure is still 'provisionally' in force for any other country which, like Turkey, does not come within the scope of the regulation and has not been the subject of a specific financial regulation whose adoption, moreover, is exclusively a matter for the Council.

20 The Commission considers that the procedure 'followed to implement the Financial Protocols concluded with the Mediterranean countries', as apparent in the declaration made by the Council at the time of the adoption of Decision No 2/80 of the Association Council, corresponds to the procedure laid down in the new regulation, No 3973/86, in so far as the *ad hoc* procedure previously applicable had lapsed. However, the Commission states that it was aware of the fact that Regulation No 3973/86 as such was not to be applied because its scope was strictly limited to the countries listed in it. The Commission therefore opted to apply Regulation No 3973/86 by analogy, limiting its application to consultation of the members of the Article 6 Committee 'by analogy'.

21 The Commission also emphasizes that a specific regulation to implement the special aid for Turkey was not required, since all the guidance needed for its implementation was already contained in Decision No 2/80 of the Association Council, in particular paragraph 2 thereof. For the rest, all the technical rules for the disbursement of funds were set out in the Financial Regulation of 21 December 1977 (Official Journal 1977, L 356, p. 1). The Commission also states that, in order to ensure that it had a more solid economic and political basis for its decisions regarding the projects to be financed, it asked the members of the Article 6 Committee for their opinion, although it was not legally obliged to do so.

22 It should be noted in the first place that paragraph 2 of Decision No 2/80 provides that 'for the submission of specific projects, Turkey shall approach the Commission directly which shall examine them in the light of the criteria indicated by the Community delegation to the Association Council for the use of the exceptional aid'. It is apparent from that provision that, on the basis of the criteria indicated by the Community delegation to the Association Council, the Commission alone has the power to lay down the detailed rules and arrangements for the use of the aid and for the approval of specific projects. That power involves the possibility of using specific procedures for examining specific projects. The Commission may therefore seek, from both the Council and the Member States, any opinion necessary for the management of the aid, it may consult experts and it may have recourse to procedures laid down in similar fields.

23 In this case, the Commission consulted the members of the Article 6 Committee provided for in Regulation No 3973/86 so as to be able to take advantage of their experience in dealing with development projects in Mediterranean countries. There is nothing in the file to suggest that, in so doing, the Commission acted in a manner contrary to the provisions of Decision No 2/80, in particular by departing from the criteria indicated by the Community delegation to the Association Council for the use of the aid. The Greek Government's argument cannot therefore be accepted.

24 It follows from the foregoing that the second, third and fourth submissions raised by the Greek Government must be rejected.

25 The action as a whole must therefore be dismissed.

Costs

26 Under Article 69(2) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs. Since the applicant has failed in its action, it must be ordered to pay the costs.

On those grounds,

THE COURT

hereby:

(1) Dismisses the application;

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

Due Slynn Kakouris Schockweiler Zuleeg

Koopmans Mancini Joliet O'Higgins

Moitinho de Almeida Rodríguez Iglesias Grévisse Díez de Velasco

Delivered in open court in Luxembourg on 14 November 1989.

J.-G. Giraud
Registrar

O. Due
President