ORDER OF THE PRESIDENT OF THE COURT
12 October 2000 *

In Case C-278/00 R,

Hellenic Republic, represented by I. Chalkias, Assistant Legal Adviser in the State Legal Service, and C. Tsiavou, Legal Agent in the State Legal Service, acting as Agents, with an address for service in Luxembourg at the Greek Embassy, 117 Val Sainte-Croix,

applicant,

v

Commission of the European Communities, represented by J. Flett and D. Triantafyllou, of its Legal Service, acting as Agents, with an address for service in Luxembourg at the office of C. Gómez de la Cruz, of its Legal Service, Wagner Centre, Kirchberg,

defendant,

* Language of the case: Greek.

APPLICATION for suspension of operation of Commission Decision C(2000) 686 final of 1 March 2000 relating to the aid schemes implemented by Greece in order to regulate debts of agricultural cooperatives in the years 1992 and 1994, including aid for the reorganisation of the dairy cooperative AGNO, or, in the alternative, of Article 2 of that decision,

THE PRESIDENT OF THE COURT

makes the following

Order

1 By application lodged at the Court Registry on 13 July 2000, the Hellenic Republic brought an action under Article 230 EC for annulment of Commission Decision C(2000) 686 final of 1 March 2000 relating to the aid schemes implemented by Greece in order to regulate debts of agricultural cooperatives in the years 1992 and 1994, including aid for the reorganisation of the dairy cooperative AGNO (hereinafter 'the contested Decision').

2 By a separate document lodged at the Court Registry on the same day, the Hellenic Republic applied for suspension of operation of the contested Decision or, in the alternative, of Article 2 of that Decision, pursuant to Article 242 EC.

3 The Commission submitted its written observations on the application for interim relief on 10 August 2000.

4 Since the parties have submitted written observations, there is no need for them to submit oral argument at a hearing.

5 Article 1(2) of the contested Decision states that four categories of aid, of different kinds, contained in several provisions laid down by law and granted to Greek agricultural cooperatives, in particular to the dairy cooperative AGNO (hereinafter 'AGNO') are incompatible with the common market. Under Article 2(1) of the Decision, the Greek authorities are required to take the measures necessary to recover the unlawful aid to which Article 1(2) refers from its recipients within a period of two months from the date of notification of the contested Decision.

6 The application for suspension of operation brought by the Hellenic Republic reiterates the operative part of the contested Decision and refers to the application for annulment, with the information that the latter clearly states the subject-matter of the proceedings, namely the repayment with interest of aid which the Commission maintains was granted unlawfully.

7 These particulars are followed by an account, consisting of three points, of the factual and legal circumstances substantiating the urgency of the application for suspension.

8 First of all, it is claimed that the possible operation of the contested Decision would affect hundreds of cooperative organisations with thousands of members and would lead to very serious social and commercial upheaval, threatening social harmony and the reorganisation carried out in the agricultural sector. The Hellenic Republic also claims that the immediate implementation of the Decision would cause the depopulation of disadvantaged mountainous regions, break up the fabric of society and ruin the agricultural cooperative organisations.

Furthermore, the recovery of the sums to be repaid, amounting to GRD 260 000 000 000 plus interest, would inevitably mean enforcement as well as the seizure and sale by auction of the assets not only of the cooperative organisations and of AGNO but also, in view of their personal liability, of the members of those cooperatives, who would risk losing all their movable and immovable property.

9 Secondly, the application for suspension of operation should be granted on the ground that the immediate implementation of the contested Decision would infringe the general principles of law and prejudice the rights of third parties.

10 Finally, it would, in any event, be impossible to recover the aid, since, under national law, any sum paid wrongfully, unlawfully or in error is covered by the rules on the limitation of actions if it is not claimed within a period of five years.

11 The Hellenic Republic also points out that, if the interests involved in this case are weighed up, it becomes apparent that it is desirable to grant the application for suspension of operation since it has no adverse consequences. The effects, if there were any, of the repayment of the debts which is the subject of the contested Decision, have ceased to be felt on the market and the continuation of that situation until the delivery of judgment on the substance of the case would not accentuate the instability of the market or extend the competitive advantage allegedly bestowed.

12 Under Article 242 EC the Court may, if it considers that the circumstances so require, order suspension of the operation of the contested act in any cases before it.

13 Article 83(2) of the Rules of Procedure provides that applications made pursuant to Article 242 EC must state the subject-matter of the proceedings, the circumstances giving rise to urgency and the pleas of fact and law establishing a prima facie case for the interim measures applied for.

14 In so far as concerns the urgency of the application, it is for the party who pleads serious and irreparable damage to prove its existence (order of 25 July 2000 in Case C-377/98 R *Netherlands* v *Parliament and Council* [2000] ECR I-6229, paragraph 50).

15 Although it is true that, in order to establish the existence of such damage, it is not necessary to require absolute proof that the damage would occur and is enough for it to be reasonably foreseeable, the fact remains that the applicant is still required to prove the facts which are deemed to attest to the probability of serious and irreparable damage (order of 14 December 1999 in Case C-335/99 P(R) *HFB* v *Commission* ECR I-8705, paragraph 67, and order in *Netherlands* v *Parliament and Council*, referred to above, paragraph 51).

16 In the present case, it should be noted that, in order to establish the urgency of its application for suspension of operation of the contested Decision, the applicant has merely made general observations, as reproduced in paragraphs 8 to 10 of this order, without adducing any specific evidence in support of its claims.

17 In fact, with regard, first of all, to the consequences of the operation of the contested Decision for the cooperatives concerned and their members, as well as for AGNO, the application contains no information whatever concerning the financial position of the interested parties and the amounts, even approximate, which each of them would be called upon to repay, let alone regarding the

duration and other detailed rules of the procedures to be followed by the national authorities in order to obtain recovery of the sums involved.

18 Similarly, no particulars whatsoever are given of the possible serious impact on the social harmony of the Member State concerned, which the application for suspension states is expected to occur if the contested Decision is implemented forthwith.

19 In the circumstances, to grant the suspension requested would therefore be tantamount to making the action for annulment brought against the contested Decision suspensory in nature, since any Commission decision requiring the recovery of State aid which is unlawful and incompatible with the common market is liable, by virtue of its very purpose, to cause problems for the recipient of that aid.

20 Next, the Hellenic Republic maintains that the operation of the contested Decision would infringe the rights of third parties, namely, the Greek Agricultural Bank, AGNO and the agricultural cooperative organisations.

21 In this connection, it should be pointed out once again that an adverse effect on the rights of the persons considered to be the recipients of State aid which is incompatible with the common market forms an integral part of any Commission decision requiring the recovery of such aid and cannot be regarded as constituting in itself serious and irreparable damage, whether or not a specific assessment is made of the seriousness and irreparability of the precise prejudice alleged in each case considered.

22 Furthermore, in respect, specifically, of the Greek Agricultural Bank, it is apparent from the contested Decision that, according to the Commission, the

State may exercise a decisive influence over its management and that the use of the Bank's resources may be treated in the same way as a measure adopted by the Greek State. Since the application for suspension does not challenge that assessment, the particular situation of the Greek Agricultural Bank as a third party cannot therefore be taken into consideration. Moreover, the applicant does not explain the reason why the operation of the contested Decision would be likely to cause serious and irreparable damage to the undertaking deemed by the contested Decision to be the distributor of the aid to be recovered.

23 Nor, finally, can any serious and irreparable damage be inferred from the Greek Government's observation that under the provisions of national law it is impossible to recover aid, subject always to the compatibility of those provisions with the relevant obligations of the Member States under Community law.

24 Since the applicant has completely failed to substantiate its claims regarding the serious and irreparable damage which would stem from the operation of the contested Decision, the urgency of the application for its suspension is not established to the requisite legal standard.

25 In addition, it should be noted that this application also fails to satisfy the requirements of Article 83(2) of the Rules of Procedure, under which an application must state, in particular, the pleas of fact and law establishing a prima facie case for the suspension it is seeking.

26 In fact, the applicant simply refers to its action for annulment of the contested Decision and states that that action will probably succeed.

27 A mere reference to the application for annulment of the contested Decision cannot compensate for the total lack of clarification of the reasons for the

application for annulment which establish the prima facie validity of the application for suspension of operation (see, to that effect, the order of 10 June 1988 in Case 152/88 R *Sofrimport* v *Commission* [1988] ECR 2931, paragraph 12).

28 It follows from the foregoing that the application for suspension of the operation of the contested Decision must be dismissed.

On those grounds,

THE PRESIDENT OF THE COURT

hereby orders:

1. The application for interim measures is dismissed.

2. The costs are reserved.

Luxembourg, 12 October 2000.

R. Grass — Registrar

G.C. Rodríguez Iglesias — President