JUDGMENT OF THE COURT

14 July 1994 *

In Case C-385/92,

Hellenic Republic, represented by Fokion Georgakopoulos, Assistant Legal Adviser, acting as Agent, with an address for service in Luxembourg at the Greek Embassy, 117 Val Ste Croix,

applicant,

v

Commission of the European Communities, represented by Xenophon A. Yataganas, Legal Adviser, acting as Agent, with an address for service in Luxembourg at the office of Georgios Kremlis, of its Legal Service, Wagner Centre, Kirchberg,

defendant,

* Language of the case: Greek.

APPLICATION for the annulment of Commission Regulation (EEC) No 2294/92 of 31 July 1992 on detailed rules for the application of the support system for producers of the oil seeds referred to in Council Regulation (EEC) No 1765/92 (OJ 1992 L 221, p. 22),

THE COURT,

composed of: O. Due, President, G. F. Mancini (Rapporteur), D. A. O. Edward (Presidents of Chambers), C. N. Kakouris, R. Joliet, F. A. Schockweiler, G. C. Rodríguez Iglesias, P. J. G. Kapteyn and J. L. Murray, Judges,

Advocate General: F. G. Jacobs,
Registrar: L. Hewlett, Administrator,

having regard to the Report for the Hearing,

after hearing oral argument from the Hellenic Republic and the Commission at the hearing on 18 January 1994,

after hearing the Opinion of the Advocate General at the sitting on 9 March 1994,

gives the following

Judgment

1 By application lodged at the Court Registry on 23 October 1992, the Hellenic Republic brought an action for the annulment of Commission Regulation (EEC) No 2294/92 of 31 July 1992 on detailed rules for the application of the support system for producers of the oil seeds referred to in Council Regulation (EEC) No 1765/92 (OJ 1992 L 221, p. 92).

2 Council Regulation (EEC) No 1765/92 of 30 June 1992 establishing a support system for producers of certain arable crops (OJ 1992 L 181, p. 12, 'the basic regulation') introduced a system of compensatory payments for producers of cereals, protein crops and oil seeds, including soya beans.

3 According to Article 2(5) of that regulation, 'The compensatory payment shall be granted under: (a) a "general scheme", open to all producers, or (b) a "simplified scheme" open to small producers'. The latter, defined in Article 8(2), may opt for the general scheme or the simplified scheme.

4 Under Article 2(5), producers applying for the compensatory payment under the general scheme are required to set aside part of the land of their holding and receive compensation in return. According to Article 8(3), no set-aside requirement is imposed under the simplified scheme but the compensatory payment is paid at the rate applicable for cereals, whatever the crops actually produced. As is

apparent from Articles 4 and 5, the rate for cereals is significantly lower than that for oil seeds.

5 As regards the conditions for the payment of compensatory payments, Article 10(1) and (2) of the basic regulation provide:

'1. The compensatory payments for cereals, and protein crops, as well as the compensation for the set-aside obligation, shall be paid between 16 October and 31 December next following the harvest.

2. In order to qualify for the compensatory payment, a producer must, at the latest by 15 May preceding the relevant harvest:

— have sown the seed,

— have lodged an application.'

6 In implementation of the basic regulation, Regulation No 2294/92 ('the implementing regulation'), which became applicable as from the 1993/1994 marketing year, provides (Article 2(1)):

'1. The compensatory payment provided for in Article 5(1) and (2) of Regulation (EEC) No 1765/92 shall be allocated solely to areas under oil seed crops:

...

(b) included in a "general scheme" as referred to in Article 2(5) of Regulation (EEC) No 1765/92;

(c) covered by an application including a cultivation plan and lodged with the competent authority by the date set by the Member State for that seed and region in question, which may not be later than the date mentioned in Annex I;

(d) entirely sown by that date at the latest with rape, sunflower or soya ...

...'

Annex I, to which that provision refers, sets the final date in question as '15 May prior to the marketing year'.

7 Article 4 of the implementing regulation provides:

'One plot of land may not be the subject of more than one application for a compensatory payment as provided for in Regulation (EEC) No 1765/92 in the same marketing year'.

8 It is apparent from the documents before the Court that soya beans may be grown in two ways: as a 'main crop' and as a 'secondary crop', the latter either preceding or following the main crop.

9 The applicant states that, in the Hellenic Republic, the best period for growing soya beans is between 20 April and 15 July and that small producers usually do not sow soya beans as a secondary crop until after 15 May. Since Article 2(1) of the implementing regulation requires the land to be sown before that date, small producers are in practice excluded from the benefit of compensatory payments for their secondary crops.

10 For that reason, the Greek Government claims that the Court should annul the implementing regulation. Its action is based on six pleas in law: the first five allege breach of the obligation to state reasons, of the principle of non-discrimination, of Article 39 of the Treaty, of the principle of the protection of legitimate expectations and of the principle of Community preference, and the sixth is that the Commission was not competent to adopt Article 4 of the implementing regulation.

The first five pleas in law

11 The first five pleas in law are identical in all respects to those relied on by the Greek Government in order to obtain, in parallel with the present action, the annulment of the basic regulation, and they have been rejected by the Court in its judgment of 14 July 1994 in Case C-353/92 *Greece* v *Council* [1994] ECR I-3411.

12 Although different in scope, Article 2(1) of the implementing regulation at issue in these proceedings and Article 10(2) of the basic regulation to which the abovementioned judgment relates both make payment of the compensatory payment conditional upon the producer's having sown his land and submitted his application

before 15 May. The only difference is that whilst the second of those provisions relates to small soya producers who have opted for a compensatory payment under the simplified scheme, the first relates to small producers who have opted for the general scheme.

13 It is clear that the final date of 15 May produces the same effects and imposes the same constraints on small soya producers who have applied for compensatory payment under the general scheme as on those who have applied for it under the simplified scheme.

14 Accordingly, the first five pleas in law must be dismissed for the reasons set out in paragraphs 16 to 51 of the judgment in Case C-353/92, cited above. Since they are unfounded in relation to the basic regulation, it necessarily follows that they are unfounded in relation to the implementing regulation.

The sixth plea in law: the Commission's lack of competence

15 According to the Greek Government, the Commission exceeded its powers by adopting Article 4 of the implementing regulation, which authorizes producers to submit only one application per marketing year. According to the Greek Government, there is no basis for that provision in the basic regulation and it is therefore invalid.

16 The provisions of the basic regulation which, for compensatory payments, require observance of a final date for the sowing of land and the lodgment of applications

give effect to the principle underlying that regulation that such payments are available on one occasion only for a given area in respect of a given marketing year. The seventeenth recital in the preamble to the regulation states in that regard that 'compensatory payments should be paid once a year for a given area ...'.

17 Since Article 4 of the implementing regulation at issue in these proceedings merely defines the scope of that principle for oil seed producers operating holdings under the general scheme, the Commission must be regarded as having been competent to adopt it.

18 That plea in law is therefore also unfounded.

19 Since none of the pleas in law put forward by the Greek Government has been upheld, the action must be dismissed in its entirety.

Costs

20 Under Article 69(2) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings. Since the Hellenic Republic has been unsuccessful, it must be ordered to pay the costs.

On those grounds,

THE COURT

hereby:

1. Dismisses the application;

2. Orders the applicant to pay the costs.

Due Mancini Edward

Kakouris Joliet Schockweiler

Rodríguez Iglesias Kapteyn Murray

Delivered in open court in Luxembourg on 14 July 1994.

R. Grass O. Due

Registrar President