JUDGMENT OF THE COURT (Fourth Chamber)

22 April 2010 *

In Case C-122/09,

REFERENCE for a preliminary ruling under Article 234 EC from the Simvoulio tis Epikratias (Greece), made by decision of 11 November 2008, received at the Court on 2 April 2009, in the proceedings

Enosi Efopliston Aktoploïas and Others

v

Ipourgos Emporikis Naftilias,

Ipourgos Aigaiou,

* Language of the case: Greek.

THE COURT (Fourth Chamber),

composed of J.-C. Bonichot, President of the Chamber, C. Toader, C.W.A. Timmermans (Rapporteur), K. Schiemann and P. Kūris, Judges,

Advocate General: P. Cruz Villalón,
Registrar: N. Nanchev, Administrator,

having regard to the written procedure and further to the hearing on 25 February 2010,

after considering the observations submitted on behalf of:

— Enosi Efopliston Aktoploïas and Others, by A. Kalogeropoulos, dikigoros,

— the Greek Government, by S. Khala and S. Trekli, acting as Agents,

— the European Commission, by L. Lozano Palacios and D. Triantafyllou, acting as Agents,

having decided, after hearing the Advocate General, to proceed to judgment without an Opinion,

gives the following

Judgment

1 The present reference for a preliminary ruling concerns the interpretation of Articles 10 EC, 49 EC and 249 EC and of Articles 1, 2, 4 and 6(3) of Council Regulation (EEC) No 3577/92 of 7 December 1992 applying the principle of freedom to provide services to maritime transport within Member States (maritime cabotage) (OJ 1992 L 364, p. 7).

2 The reference was made in proceedings brought by Enosi Efopliston Aktoploïas (Association of Coastal Shipowners) and four public limited coastal shipping companies, ANEK, Minoïkes Grammes, N.E. Lesvou and Blue Star Ferries, against Ipourgos Emporikis Naftilias (Minister for Merchant Shipping) and Ipourgos Aigaiou (Minister for the Aegean) concerning the validity of two decisions adopted by the ministers making maritime cabotage subject to certain conditions.

Legal context

European Union legislation

3 Article 1(1) of Regulation No 3577/92 states:

'As from 1 January 1993, freedom to provide maritime transport services within a Member State (maritime cabotage) shall apply to Community shipowners who have their ships registered in, and flying the flag of a Member State, provided that these ships comply with all conditions for carrying out cabotage in that Member State, including ships registered in Euros, once that Register is approved by the Council.'

4 Article 6 of Regulation No 3577/92 provides:

'1. By way of derogation, the following maritime transport services carried out in the Mediterranean and along the coast of Spain, Portugal and France shall be temporarily exempted from the implementation of this Regulation:

— cruise services, until 1 January 1995,

— transport of strategic goods (oil, oil products and drinking water), until 1 January 1997,

— services by ships smaller than 650 gt, until 1 January 1998,

— regular passenger and ferry services, until 1 January 1999.

2. By way of derogation, island cabotage in the Mediterranean and cabotage with regard to the Canary, Azores and Madeira archipelagoes, Ceuta and Melilla, the French islands along the Atlantic coast and the French overseas departments shall be temporarily exempted from the implementation of this Regulation until 1 January 1999.

3. For reasons of socio-economic cohesion, the derogation provided for in paragraph 2 shall be extended for Greece until 1 January 2004 for regular passenger and ferry services and services provided by vessels less than 650 gt.'

National legislation

5 Law No 2932/2001, entitled 'Freedom to provide maritime cabotage services etc.' (FEK (Official Gazette) A 145/27.6.2001), states as follows in Article 1(1):

'As from 1 November 2002 freedom to provide services shall exist in respect of maritime transport services which: (a) are provided for remuneration by a shipowner of a

Member State of the European Community (EC), the European Economic Area (EEA) or the European Free Trade Association (EFTA), except for Switzerland, and (b) are carried out between ports situated on the mainland and the islands or between ports situated on the islands by passenger/vehicle, passenger or cargo ships operating a regular passenger and ferry service, and by ships of a tonnage of up to 650 gt … provided that these ships are registered in, and fly the flag of, Greece or another State in the EC, EEA or EFTA, except for Switzerland.'

6 Pursuant to Article 3(1) of Law No 2932/2001:

'The operation of a passenger/vehicle, passenger or cargo ship shall be for a period of one year, starting on 1 November (regular operation).'

The actions in the main proceedings and the questions referred for a preliminary ruling

7 The applicants in the main proceedings have brought two actions before the referring court. By the first, the applicants are seeking the annulment of Decision No 3332.3/1 of the Minister for Merchant Shipping of 19 October 2001, entitled 'Letter of guarantee of proper fulfilment of the conditions regarding a ship's operation' (FEK B 1448/22.10.2001), and by the second, the annulment of Joint Decision No 3332.3/3 of

the Minister for Merchant Shipping and the Minister for the Aegean of 19 October 2001, entitled 'Determination of the form, content and other required elements and documents and of related preconditions for the declaration of a ship's regular operation' (FEK B 1448/22.10.2001).

8 The applicants submit, inter alia, that the relevant provisions of Law No 2932/2001, on the basis of which those decisions were adopted, are invalid because they are contrary, in particular, to Article 49 EC and to certain provisions of Regulation No 3577/92.

9 The main proceedings gave rise to an initial reference for a preliminary ruling, which was replied to by order of 28 September 2006 in Case C-285/05 *Enosi Efopliston Aktoploïas and Others*. By the first question in that case, the referring court asked, in essence, whether Regulation No 3577/92 could confer rights on individuals before 1 January 2004 when, for the type of cabotage in question, the regulation was applicable in Greece only from that date.

10 In answering that question, the Court stated as follows in paragraphs 17 to 19 of the order in Case C-285/05:

'17 … [W]here the regulation concerned grants a Member State a specified period in which to comply with the obligations resulting from it, the regulation may not be relied on by individuals before the expiry of the period in question (see, to that effect, Case C-156/91 *Hansa Fleisch Ernst Mundt* [1992] ECR I-5567, paragraph 20).

18 In the case of Regulation No 3577/92, it is apparent from Article 6(2) and (3) that Greek island cabotage, as regards regular passenger and ferry services and services provided by vessels less than 650 gt, is exempted from the implementation of the regulation until 1 January 2004. The wording of that provision is such that derogations from the temporary exemption are not permitted. It follows that, in this particular cabotage sector, the regulation did not begin to have effects until 1 January 2004 and can therefore confer rights on individuals only from that date (see also, to that effect, [Case 43/71] *Politi* [[1971] ECR 1039], paragraph 10).

19 That interpretation cannot be invalidated on the basis of the reasoning followed by the Court in Case C-129/96 *Inter-Environnement Wallonie* [1997] ECR I-7411, paragraph 45, where it was held that, although the Member States were not obliged to adopt measures before the end of the period prescribed for transposition, it followed from the second paragraph of Article 10 EC in conjunction with the third paragraph of Article 249 EC and from Council Directive 91/156/EEC of 18 March 1991 amending Directive 75/442/EEC on waste (OJ 1991 L 78, p. 32) that during that period they had to refrain from taking any measures liable seriously to compromise the result prescribed by the directive. Even if the temporary derogation laid down by Regulation No 3577/92 can be equated with the period for transposing a directive, it is not in any event apparent from the order for reference that it is alleged in the main proceedings that the Hellenic Republic took measures liable seriously to compromise the application of that regulation from 1 January 2004.'

11 Having regard to paragraph 19 of the order in Case C-285/05, the referring court considered that the answer to the first question referred in Case C-285/05 would possibly be different if each of the following two conditions were met, namely: (a) the Court of Justice takes the view that while the Hellenic Republic's exemption until 1 January 2004 from the implementation of Regulation No 3577/92 was in force the Greek

legislature had to refrain from adopting provisions liable seriously to compromise the full and effective application of that regulation in Greece from 1 January 2004; and (b) the Court of Justice considers that provisions such as the Greek provisions adopted before 1 January 2004 that are relevant to the outcome of the main proceedings seriously compromise the full and effective application of Regulation No 3577/92 in Greece from 1 January 2004 onwards.

12 Taking the view that the resolution of the disputes before it required further interpretation of Articles 10 EC, 49 EC and 249 EC and of certain provisions of Regulation No 3577/92, the Simvoulio tis Epikratias (Council of State) decided to stay the proceedings and refer the following questions to the Court for a preliminary ruling:

'1. In accordance with the second paragraph of Article 10 EC and the second paragraph of Article 249 EC:

(a) was the Greek legislature obliged, for the duration of the temporary exemption until 1 January 2004 from the implementation of … Regulation … No 3577/92 … which was introduced by Article 6(3) of that regulation and relates to Greece, to refrain from adopting provisions liable seriously to compromise the full and effective application of the regulation in Greece from 1 January 2004 onwards?

(b) are individuals entitled to rely on that regulation to contest the validity of provisions adopted by the Greek legislature before 1 January 2004 in the event

that those national provisions seriously compromise the full and effective application of the regulation in Greece from 1 January 2004?

2. If the first question referred for a preliminary ruling is answered in the affirmative, is the full application from 1 January 2004 of Regulation No 3577/92 in Greece seriously compromised by reason of the adoption by the Greek legislature, before 1 January 2004, of provisions which are exhaustive and permanent in nature, do not lay down that they cease to have force from 1 January 2004 and are contrary to provisions of that regulation?

3. If the answers to the first two questions referred for a preliminary ruling are in the affirmative, do Articles 1, 2, and 4 of Regulation No 3577/92 permit the adoption of national rules under which shipowners may provide maritime cabotage services only on specific operational routes determined each year by a national authority competent for that purpose and after first obtaining an administrative licence granted under an authorisation scheme having the following characteristics:

   (a) it relates to all operational routes, without exception, which serve islands, and

   (b) the competent national authorities may approve an application submitted for the grant of a licence to operate a service by unilaterally amending, in the exercise of their discretion and without prior definition by a rule of law of the criteria applied, the elements of the application which relate to the frequency and the period of interruption of the service and to the fare tariff?

4. If the answers to the first two questions referred for a preliminary ruling are in the affirmative, is a restriction on the freedom to provide services that is impermissible for the purposes of Article 49 EC introduced by national legislation which provides that a shipowner to whom the administration has granted a licence to operate a ship on a specified route (either after his application in that regard has been approved as it stands, or after it has been approved with amendments to certain of its elements, which he accepts) is in principle obliged to work the particular operational route continuously for the entire duration of the annual operational period, and that to secure compliance with this obligation imposed on him he must deposit, before the operational service commences, a letter of guarantee all or part of whose amount will be forfeited if the obligation in question is not complied with or not complied with precisely?'

Consideration of the questions referred

The second question

13 By its second question, which it is appropriate to consider first, the referring court asks in essence whether, assuming that the Greek legislature was required, for the duration of the exemption in Greece from implementation of Regulation No 3577/92, to refrain from adopting provisions liable seriously to compromise the full and effective application of the regulation from 1 January 2004, the date on which that period of exemption expired, such full and effective application is seriously compromised because the Greek legislature adopted before 1 January 2004 provisions contrary to the regulation which are exhaustive and permanent in nature and do not lay down that they cease to apply from 1 January 2004.

14 The applicants in the main proceedings take the view that this question should be answered in the affirmative, whereas the Greek Government and the European Commission suggest, in essence, that it be answered in the negative.

15 The mere fact that a Member State adopted, in 2001, legislation such as Law No 2932/2001 – assuming that the latter is not consistent with Regulation No 3577/92 – cannot be considered, in itself, seriously to compromise the application of the regulation after the end of the period of temporary exemption, fixed at 1 January 2004, irrespective, moreover, of the exhaustive nature of that legislation. A fact of that kind is not, in itself, such as to prevent the regulation from applying fully after the end of the period of temporary exemption.

16 The same is true of the fact that legislation such as Law No 2932/2001 is permanent in nature. As the Greek Government and the Commission rightly point out, there is nothing to prevent that legislation from being repealed before the end of the period of temporary exemption.

17 Consequently, the answer to the second question referred is that, assuming that the Greek legislature was required, for the duration of the exemption in Greece from implementation of Regulation No 3577/92, to refrain from adopting provisions liable seriously to compromise the full and effective application of the regulation from 1 January 2004, the date on which that period of exemption expired, such full and effective application is not seriously compromised simply because in 2001 the Greek legislature adopted provisions contrary to the regulation which are exhaustive and permanent in nature and do not lay down that they cease to apply from 1 January 2004.

The first, third and fourth questions

18 In view of the answer given to the second question, it is unnecessary to reply to the first question. Moreover, since the third and fourth questions have been asked should the answers to the first two questions be in the affirmative, it is also unnecessary to answer those questions.

Costs

19 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national court, the decision on costs is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (Fourth Chamber) hereby rules:

Assuming that the Greek legislature was required, for the duration of the exemption in Greece from implementation of Council Regulation (EEC) No 3577/92 of 7 December 1992 applying the principle of freedom to provide services to maritime transport within Member States (maritime cabotage), to refrain from adopting provisions liable seriously to compromise the full and effective application of the regulation from 1 January 2004, the date on which that period of exemption expired, such full and effective application is not seriously compromised simply

because in 2001 the Greek legislature adopted provisions contrary to the regulation which are exhaustive and permanent in nature and do not lay down that they cease to apply from 1 January 2004.

[Signatures]