JUDGMENT OF THE COURT (Sixth Chamber)

15 June 2000 *

In Case C-470/98,

Commission of the European Communities, represented by M. Condou-Durande, of its Legal Service, acting as Agent, with an address for service in Luxembourg at the office of C. Gómez de la Cruz, of its Legal Service, Wagner Centre, Kirchberg,

applicant,

v

Hellenic Republic, represented by I.-K. Chalkias, Deputy Legal Adviser in the State Legal Service, and N. Dafniou, Legal Assistant in the Special Department for Community Legal Affairs in the Ministry of Foreign Affairs, acting as Agents, with an address for service in Luxembourg at the Greek Embassy, 117 Val Sainte-Croix,

defendant,

APPLICATION for a declaration that by failing, except as regards fresh meat and poultrymeat, to adopt within the prescribed period the necessary measures to

* Language of the case: Greek.

ensure that the costs of the veterinary and administrative checks in respect of products of agricultural origin from third countries, required by Articles 3(ii) and 4 of Council Directive 90/675/EEC of 10 December 1990 laying down the principles governing the organisation of veterinary checks on products entering the Community from third countries (OJ 1990 L 373 p. 1), are met by the consignor, the consignee or their agent without reimbursement by the State, the Hellenic Republic has failed to fulfil its obligations under the EC Treaty and that directive,

THE COURT (Sixth Chamber),

composed of: J.C. Moitinho de Almeida, President of the Chamber, R. Schintgen (Rapporteur), C. Gulmann, J.-P. Puissochet and F. Macken, Judges,

Advocate General: N. Fennelly,
Registrar: R. Grass,

having regard to the Report of the Judge-Rapporteur,

after hearing the Opinion of the Advocate General at the sitting on 6 April 2000,

gives the following

Judgment

1 By application lodged at the Court Registry on 18 December 1998, the Commission of the European Communities brought an action under Article 169 of the EC Treaty (now Article 226 EC) for a declaration that by failing, except as regards fresh meat and poultrymeat, to adopt within the prescribed period the necessary measures to ensure that the costs of the veterinary and administrative checks in respect of products of agricultural origin from third countries, required by Articles 3(ii) and 4 of Council Directive 90/675/EEC of 10 December 1990 laying down the principles governing the organisation of veterinary checks on products entering the Community from third countries (OJ 1990 L 373 p. 1, hereinafter 'the Directive'), are met by the consignor, the consignee or their agent without reimbursement by the State, the Hellenic Republic has failed to fulfil its obligations under the EC Treaty and the Directive.

2 Article 3 of the Directive provides:

'The Member States shall ensure that the customs authorities do not authorise entry for home use into one of the territories referred to in Annex I unless — without prejudice to the special provisions to be adopted in accordance with Article 17 — proof has been supplied:

...

(ii) that the veterinary checks have been paid for, and that where relevant a deposit covering any costs provided for in Article 16(3) has been lodged. If necessary, detailed rules for implementing this Article shall be adopted in accordance with the procedure laid down in Article 24.'

3 Article 4 of the Directive is worded as follows:

'1. Each consignment of products from a third country shall be subjected to a documentary and identity check, irrespective of the customs destination of the products, in order to verify:

— their origin,

— their subsequent destination, particularly in the case of non-harmonised products,

— that the particulars they contain afford the guarantees required by Community rules or, where products are concerned for which trade has not been harmonised at Community level, the guarantees required under national rules referred to in the various cases covered by this Directive.

...

7. All expenditure incurred by the application of this Article shall be chargeable to the consignor, the consignee or their agent, without reimbursement by the Member State.'

4 Under the first subparagraph of Article 32(1) of the Directive, the Member States were to bring into force the laws, regulations and administrative provisions necessary to comply with the Directive by 31 December 1991 at the latest and forthwith to inform the Commission thereof.

5 Following a request for information sent by the Commission to the Member States on 1 December 1994 concerning their application of the national system of health fees which is designed to cover the costs of veterinary inspections and checks in respect of products of agricultural origin under the Directive, it was apparent that the Greek authorities were not applying any national fee to cover the costs of inspecting products of agricultural origin, other than fresh meat and poultrymeat, on their importation into Greece.

6 Since the Commission considered that that situation was not consistent with Articles 3 and 4 of the Directive, which required each consignment of the products in question from a third country to be subjected to a veterinary check at the cost of the consignor, the consignee or their agent, it called on the Hellenic Republic by letter of 27 December 1996 to submit its observations within two months.

7 By letter of 14 March 1997 the Hellenic Republic replied that the Directive had been transposed into domestic law by Presidential Decree No 420/93 (FEK A, 179) but that, as regards specifically the setting of the fees for the checks required by the Directive, the competent national authorities had prepared a draft

provision, a copy of which the Hellenic Republic sent to the Commission, laying down national fees whose amount would be determined by order of the Minister for Agriculture.

8 Since the Commission received no further information from the Greek authorities, it sent a reasoned opinion to the Hellenic Republic on 13 March 1998, calling on it to adopt within two months of notification the measures necessary to comply with the obligations under Articles 3(ii) and 4 of the Directive.

9 As the Hellenic Republic did not act on the reasoned opinion, the Commission brought the present proceedings.

10 The Hellenic Republic does not dispute that it has failed to fulfil its obligations as alleged by the Commission. It merely states that a draft presidential decree intended to implement the relevant provisions of the Directive was rejected by the Council of State and that the necessary procedures for a new draft to become law have not yet been completed.

11 In that regard, it must be pointed out that, according to settled case-law, a Member State may not plead provisions, practices or circumstances existing in its internal legal system in order to justify a failure to comply with the obligations and time-limits laid down in a directive (see, in particular, Case C-326/97 *Commission* v *Belgium* [1998] ECR I-6107, paragraph 7).

12 Since the Directive was not fully transposed within the period laid down, the Commission's action must be considered well founded.

13 It must therefore be held that by failing, except as regards fresh meat and poultrymeat, to adopt within the prescribed period the necessary measures to ensure that the costs of the veterinary and administrative checks in respect of products of agricultural origin from third countries, required by Articles 3(ii) and 4 of the Directive, are met by the consignor, the consignee or their agent without reimbursement by the State, the Hellenic Republic has failed to fulfil its obligations under the Directive.

Costs

14 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 Commission has applied for costs and the Hellenic Republic has been unsuccessful, the latter must be ordered to pay the costs.

On those grounds,

THE COURT (Sixth Chamber)

hereby:

1. Declares that by failing, except as regards fresh meat and poultrymeat, to adopt within the prescribed period the necessary measures to ensure that the

costs of the veterinary and administrative checks in respect of products of agricultural origin from third countries, required by Articles 3(ii) and 4 of Council Directive 90/675/EEC of 10 December 1990 laying down the principles governing the organisation of veterinary checks on products entering the Community from third countries, are met by the consignor, the consignee or their agent without reimbursement by the State, the Hellenic Republic has failed to fulfil its obligations under that directive;

2. Orders the Hellenic Republic to pay the costs.

Moitinho de Almeida Schintgen Gulmann

Puissochet Macken

Delivered in open court in Luxembourg on 15 June 2000.

R. Grass

Registrar

J.C. Moitinho de Almeida

President of the Sixth Chamber