Case 32/89 R

Hellenic Republic
v
Commission of the European Communities

(EAGGF, Guarantee Section — Clearance of accounts)

Order of the President of the Court, 26 April 1989 985

Summary of the Order

Application for interim measures — Suspension of operation — Interim measures — Conditions for granting — Serious and irreparable damage to the applicant
(EEC Treaty, Arts 185 and 186; Rules of Procedure, Art. 83(2))

ORDER OF THE PRESIDENT OF THE COURT
26 April 1989 *

In Case 32/89 R

Hellenic Republic, represented by K. Stavropoulos, Legal Assistant at the Department for Community Legal Affairs at the Ministry of Foreign Affairs,

* Language of the case: Greek

F. Spathopoulos, lawyer at the Ministry of the National Economy, I. Laios, Legal Adviser to the Minister for Agriculture and M. Tsotsanis, lawyer at the Ministry of Agriculture, acting as Agents, 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 its Legal Adviser, D. Gouloussis, acting as Agent, assisted by M. Vilaras, a Greek civil servant on secondment to the Commission, with an address for service in Luxembourg at the office of Georgios Kremlis, a member of its Legal Department, Wagner Centre, Kirchberg,

defendant,

APPLICATION for the suspension of the operation of Commission Decision 88/630 of 29 November 1988 on the clearance of the accounts presented by the Member States in respect of the expenditure for 1986 of the Guarantee Section of the European Agricultural Guidance and Guarantee Fund,

THE PRESIDENT OF THE COURT OF JUSTICE
OF THE EUROPEAN COMMUNITIES

makes the following

Order

1 By application lodged at the Court Registry on 6 February 1989, the Hellenic Republic brought an action under the first paragraph of Article 173 of the EEC Treaty for a declaration that Commission Decision 88/630/EEC of 29 November 1988 on the clearance of the accounts presented by the Member States in respect of the expenditure for 1986 of the Guarantee Section of the European Agricultural Guidance and Guarantee Fund (EAGGF) (Official Journal 1988, L 353, p. 30) is void.

2 Article 1 of and the Annex to Decision 88/630/EEC show that, of the expenditure declared by the Greek authorities which is the subject of the clearance in question — a total of DR 168 406 791 240 — the Commission recognized a sum of only DR 161 532 024 085 as chargeable to the EAGGF, leaving a sum of DR 6 874 767 155 chargeable to the Hellenic Republic.

3 Under Article 2 of the decision, the amount remaining chargeable to the Member State must, within one month of the notification of the decision, be paid to the account referred to in Article 1 of Commission Regulation (EEC) No 2776/88 of 7 September 1988 on data to be sent in by the Member States with a view to the booking of expenditure financed under the Guarantee Section of the Agricultural Guidance and Guarantee Fund (EAGGF) (Official Journal 1988, L 249, p. 9), opened by the Member State with its Treasury or any other financial institution, on which the Commission, in accordance with Regulation No 2776/88, places at the disposal of the Member State the funds needed to cover expenditure to be financed by the EAGGF.

4 The decision at issue was notified to the Permanent Representation of the Hellenic Republic on 30 November 1988.

5 By a separate document also lodged at the Court Registry on 6 February 1989, the Hellenic Republic applied pursuant to Articles 185 and 186 of the EEC Treaty and Articles 83 and 84 of the Rules of Procedure for interim relief by way of the suspension of the operation of the abovementioned Commission decision for a period of one year from the date of the interim order and for an immediate interim measure ordering the suspension of the operation of the decision in question until the interim order is made.

6 By telex message of 7 February 1989, the President of the Court requested the Commission to inform him whether it intended, in implementation of the contested decision, to deduct DR 6 874 767 155 from its payments to the Hellenic Republic.

7 By letter of 9 February 1989, sent to the Court on the same day, the Commission pointed out that the payment provided for in Article 2 of the contested decision had been made, since the Greek authorities had entered the sum of

DR 6 874 767 155 as deductions from expenditure in respect of December 1988 in the set of documents which, in accordance with Article 3 of Regulation No 2776/88, cited above, they sent to the Commission on 26 January 1989 for the purpose of establishing the advance against booking of expenditure for the same month. The decision adopted by the Commission on 31 January 1989 on advances to be paid to the Member States against booking of expenditure effected during December 1988, notified to the Permanent Representation of the Hellenic Republic on 2 February 1989, consequently took account of that deduction for the Hellenic Republic and the advance established in this way was paid, in accordance with Article 4 of Regulation 2776, on 3 February 1989.

8 Requested to comment on the particulars supplied by the Commission, the Greek Government pointed out that the competent Greek authorities had been categorically and consistently opposed to any deduction at all from the financial result of the clearance in question. It maintained its application for interim measures and applied, in the alternative, for an interim order that the Commission pay it, by way of payment on account, the amount which was deducted and was still outstanding.

9 The Commission submitted its written observations on 6 March 1989. The parties presented oral argument on 17 April 1989, after a hearing for that purpose, fixed for 13 March 1989, had been postponed at the request of the Hellenic Republic.

10 It should be pointed out first of all that under the fourth paragraph of Article 189 of the EEC Treaty, Commission decisions are binding in their entirety upon those to whom they are addressed and that under the second paragraph of Article 191 of the Treaty, they take effect upon notification to those to whom they are addressed.

11 It should also be pointed out that under Article 185 of the EEC Treaty actions brought before the Court of Justice do not have suspensory effect, but that the Court of Justice may, if it considers that circumstances so require, order that application of the contested act be suspended, just as, under Article 186 of the Treaty, it may in any cases before it prescribe any necessary interim measures.

12 Under Article 83(2) of the Rules of Procedure, a decision ordering such a suspension or such other interim measures is conditional on the existence of circumstances giving rise to urgency and of factual and legal grounds establishing a prima-facie case for the interim measures applied for.

13 Finally, it should be pointed out that, as the Court has consistently held, the urgency of an application for suspension or for other interim measures must be assessed in relation to the need to grant interim relief in order to prevent serious and irreparable damage to the party requesting the interim measure and that it is for that party to prove that he cannot await the outcome of the main proceedings without personally suffering damage which would involve serious and irreparable consequences for him.

14 In that regard, the Government of the Hellenic Republic claims that the non-payment of DR 6 874 767 155 will create extremely serious problems for the implementation of its national budget in the agricultural sector. The national authorities could find it impossible to pay to Greek producers and exporters the aid, refunds and compensatory amounts for which the latter are waiting. This would cause serious and irreparable damage to those producers and exporters who would be forced to abandon certain winter or spring crops or traditional export markets. To try to remedy that situation, the Greek authorities would have to borrow the necessary funds. This would not be easy, since, according to the finance law for the 1989 financial year, the credit requirements needed to cover the budget deficit for that year already amount to DR 1 051 800 000 000, and it would, in any event, entail irreparable damage for the Greek Treasury which would have to pay the considerable interest incurred on any such additional credit.

15 It should first of all be pointed out that the Greek national authorities are under an obligation to pay to economic operators the aid, refunds and compensatory amounts payable under Community regulations, since under the second paragraph of Article 189 of the EEC Treaty those regulations are binding in their entirety and are directly applicable in all the Member States. The authorities of a Member State may not, by reason of cash difficulties, avoid the obligation to make those payments.

16 Moreover, the alleged damage caused to economic operators may not be regarded as damage which the applicant, as a State, suffers 'personally', or as irreparable damage, since it has not been proved or even alleged that those operators could not obtain full compensation for any damage suffered by bringing actions before the national courts.

17 As regards the damage which it is alleged the Greek Treasury will suffer, its seriousness must be evaluated by comparing the sum at issue with certain other sums which appear in the documents before the Court. Thus, it appears that the expenditure recognized in respect of the financial year in question, amounts to more than DR 161 000 million, whereas the contested amount, which is the expenditure which was not recognized, amounts to barely 7 000 million. It is also apparent that, even after the disputed amount has been deducted, the advance payment made by the Commission in respect of December 1988, that is to say for a single month, amounts to nearly DR 16 000 million. Finally, the law ratifying the general budget of the Greek State for the 1989 financial year provides for a budget deficit amounting to nearly DR 1 052 000 million. In those circumstances the sum at issue cannot be described as damage which is sufficiently serious to justify the interim measures applied for.

18 Nor can the fact that the amount at issue is added to an already considerable budget deficit which must be covered by loans upon which interest is payable, be considered as damage which justifies interim measures.

19 Moreover, as the Court has consistently held (see most recently the order of 24 September 1986 in Case 214/86 R *Hellenic Republic* v *Commission* [1986] ECR 2631), the damage suffered by the applicant by reason of the non-payment of such a sum cannot be regarded as irreparable because the Commission would be required to pay it the full amount if, at the end of the main proceedings, the Court were to find in favour of the applicant.

20 Since the applicant has thus not adduced circumstances establishing the urgency of an interim measure, there is no need to consider the more specific submissions put forward by the Commission, to the effect that the application, in the form in which it was originally made by the applicant, is devoid of purpose and that the alternative claim would entail prejudging the decision on the substance of the case.

On those grounds,

THE PRESIDENT,

by way of interim decision,

hereby orders:

(1) The application for interim measures is dismissed.

(2) The costs are reserved.

Luxembourg, 26 April 1989.

J.-G. Giraud
Registrar

O. Due
President