JUDGMENT OF THE COURT
5 April 1990 *

In Case C-132/88

Commission of the European Communities, represented by Georgios Kremlis, a member of its Legal Department, acting as Agent, assisted by S Karalis, a Member of the Simvoulio Epikratias (court of last instance in administrative matters) of the Hellenic Republic, with an address for service in Luxembourg at Mr Kremlis's office, Wagner Centre, Kirchberg,

applicant,

v

Hellenic Republic, represented by M Zorbala and P Milonopoulos, legal officer and legal assistant, respectively, in the Department for Contentious European Matters, 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 under Article 169 of the EEC Treaty that, by establishing and maintaining, in the form of the special consumption tax and the single supplementary special tax, a system of taxation which discriminates against cars with a cylinder capacity in excess of 1 800 cc imported from other Member States, the Hellenic Republic has failed to fulfil its obligations under the first paragraph of Article 95 of the EEC Treaty,

* Language of the case: Greek

THE COURT

composed of: O Due, President, C N Kakouris and M Zuleeg (Presidents of Chambers), R Joliet, J C Moitinho de Almeida, G C Rodríguez Iglesias and F Grévisse, Judges,

Advocate General: J Mischo
Registrar: J A Pompe, Deputy Registrar

having regard to the Report for the Hearing and further to the hearing on 17 January 1990,

after hearing the Opinion of the Advocate General delivered at the sitting on 22 February 1990,

gives the following

Judgment

1 By an application lodged at the Court Registry on 10 May 1988, the Commission brought an action under Article 169 of the EEC Treaty for a declaration that, by establishing and maintaining, in the form of the special consumption tax and the single supplementary special tax, a system of taxation which discriminates against cars with a cylinder capacity in excess of 1 800 cc imported from other Member States, the Hellenic Republic had failed to fulfil its obligations under the first paragraph of Article 95 of the EEC Treaty

2 The Commission objects to two aspects of the Greek system for taxing private cars: the special consumption tax and the single supplementary special tax

3 The arrangements for the levying of the special consumption tax which applied when the present action was brought derive from an amendment made in 1986 by

Article 43 of Law No 1676 (Greek Official Journal A 204) to Law No 363 of 22 June 1976 upon the taxation of private cars (Greek Official Journal A 152) The tax is payable upon the purchase or importation of a new or second-hand car Its amount is a certain percentage of the pre-tax price of the car Owing to the method of calculating the tax, that percentage increases with the cylinder capacity of the car However, the progression of the tax is not constant: first, the increase in the tax is more pronounced above than below the threshold of 1 200 cc and is even greater above than below the 1 800 cc threshold; moreover, the tax rises sharply at 1 201 cc and rises again, even more sharply, at 1 801 cc

4 The arrangements for applying the single supplementary special tax are laid down in Article 3 of the abovementioned Law No 363 of 22 June 1976 This tax is payable upon the first registration of a car, whether new or second-hand Its amount is expressed in drachmas (DR) Like the special consumption tax, it progresses according to the cylinder capacity of the car in question The progression is not constant, in two respects: first, the increase in the tax becomes greater over 1 201 cc and greater still over 1 800 cc; moreover, the tax rises by more than 50% between 1 800 and 1 801 cc

5 By letter of 16 September 1986, the Commission informed the Hellenic Republic that it considered that the system of taxation of private cars, in the form of the two taxes described above, infringed Article 95 of the Treaty

6 In the first place, it pointed out that the only cars produced in Greece were of a cylinder capacity of less than 1 600 cc In the judgment of 9 May 1985 in Case 112/84 *Humblot* v *Directeur des services fiscaux* [1985] ECR 1367, the Court had stated that, in order to be free of any discriminatory or protective effect, a progressive system of taxation of cars had to be based on objective criteria and embody balanced differentials The Commission maintained that neither the special consumption tax nor the single supplementary special tax satisfied those requirements No objective criterion justified the excessive tax charged on cars of a cylinder capacity over 1 800 cc, since all cars were similar products, regardless of their cylinder capacity

7 In the second place, the Commission criticized the Hellenic Republic for favouring the purchase of second-hand cars of domestic manufacture, by means of Law No 363 of 22 June 1976 Under that law, the taxable amount for second-hand cars is determined by deducting from the price of corresponding new cars 5% for each year of the age of the car concerned, subject to a maximum permitted deduction of 20% Since the actual depreciation is much greater than that taken into account by the system providing for a ceiling, the taxable amount for imported second-hand cars is excessive

8 The Commission called on the Hellenic Republic to submit its observations on those various complaints within a period of two months

9 On 15 December 1986, the Hellenic Republic replied that it contested the complaints made by the Commission It contended that both the special consumption tax and the single supplementary special tax affected domestically produced cars and those manufactured abroad without distinction, on the basis of an objective criterion, that of cylinder capacity It stated that in Greece cars of a cylinder capacity over 1 800 cc were regarded as luxury products, exclusively for people with extremely high incomes, and that it was therefore legitimate to subject them to particularly heavy taxation Moreover, in view of the poor infrastructure of the road network and the problems of pollution prevailing in Greece, tax legislation discouraging the purchase of large-engined cars was justified The Hellenic Republic also pointed out the increase in taxes became steeper not only above 1 800 cc but also above 1 200 cc Since most of the cars produced in Greece had a cylinder capacity of 1 300 cc, it was apparent that the taxes in question were not designed to protect domestic production

10 The Commission, in its reasoned opinion of 21 September 1987, and the Hellenic Republic, in its reply thereto of 30 November 1987, maintained their respective positions

11 Reference is made to the Report for the Hearing for a fuller account of the national legislation, the course of the procedure and the submissions and arguments of the parties, which are mentioned or discussed hereinafter only in so far as is necessary for the reasoning of the Court

12 It is first necessary to determine whether the complaint concerning determination of the taxable amount for imported second-hand cars forms part of the subject-matter of these proceedings

13 When questioned on this point at the hearing, the Commission maintained that this complaint, set out in its letter before action and in its reasoned opinion, had been reiterated in its application It referred to paragraph 22 of the application in which it stated that 'the foregoing considerations also apply *mutatis mutandis* to second-hand cars'

14 It must be pointed out in this regard that the considerations set out in the paragraphs preceding paragraph 22 of the application are concerned with the progressive nature of the special consumption tax and the single supplementary special tax They have nothing to do with the determination of the taxable amount for imported second-hand cars

15 Since the Commission has not in any case put forward in its application any argument in support of its complaint concerning the determination of the taxable amount for imported second-hand cars, it is unnecessary to consider the matter The substance of the action is thus confined to the complaint concerning the break in the progression of the special consumption tax and the single supplementary special tax beyond the threshold of 1 800 cc

16 With regard to that complaint, the Hellenic Republic contended in the course of the written procedure that the differential thresholds adopted for the two taxes in question, namely 1 200 cc and 1 800 cc, were objectively justified because they reflected the social circumstances prevailing in Greece and, to some extent, in Europe as a whole: cars of less than 1 200 cc are for people with modest incomes; those with a cylinder capacity of between 1 201 and 1 800 cc are bought by people whose income is in the middle range; and those of above 1 800 cc are, above all in Greece, only for people with very substantial incomes

17 It must be emphasized in this regard that Article 95 of the Treaty does not provide a basis for censuring the excessiveness of the level of taxation which the Member States might adopt for particular products in the light of considerations of social policy As the Court held in particular in *Humblot*, cited above, paragraphs 12 and

13, and in the judgment of 16 December 1986 in Case 200/85 *Commission* v *Italy* [1986] ECR 3953, paragraphs 8 and 10, as Community law stands at present, the Member States are at liberty to subject products such as cars to a system of tax which increases progressively in amount according to an objective criterion, such as cylinder capacity, provided that the system of taxation is free from any discriminatory or protective effect.

18 It must be made clear that a system of taxation cannot be regarded as discriminatory solely because only imported products, in particular those from other Member States, come within the most heavily taxed category (see judgment of 14 January 1981 in Case 140/79 *Chemial Farmaceutici* v *DAF* [1981] ECR 1, paragraph 18).

19 In order to determine whether the special consumption tax and the single supplementary special tax have a discriminatory or protective effect, it is necessary to consider whether they are capable of discouraging consumers from purchasing cars of a cylinder capacity in excess of 1 800 cc, which are all manufactured abroad, in such a way as to benefit domestically produced cars.

20 If it is assumed that the particular features of the system of taxation at issue actually discourage certain consumers from purchasing cars of a cylinder capacity greater than 1 800 cc, those consumers will choose either a model in the range of cars having cylinder capacities between 1 600 and 1 800 cc or a model in the range of cars having cylinder capacities below 1 600 cc. All the models in the first-mentioned range are of foreign manufacture. The second range includes cars of both foreign and Greek manufacture. Consequently, the Commission has not shown how the system of taxation at issue might have the effect of favouring the sale of cars of Greek manufacture.

21 The action must therefore be dismissed.

Costs

22 Under Article 69(2) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs Since the Commission has failed in its submissions, it must be ordered to pay the costs

On those grounds,

THE COURT

hereby:

(1) Dismisses the application;

(2) Orders the Commission to pay the costs

Due Kakouris Zuleeg

Joliet Moitinho de Almeida Rodríguez Iglesias Grévisse

Delivered in open court in Luxembourg on 5 April 1990

J -G Giraud
Registrar

O Due
President