JUDGMENT OF THE COURT
24 June 1992 *

In Case C-137/91,

Commission of the European Communities, represented by Dimitrios Gouloussis, Legal Adviser, and Lian Tan, an official of the Ministry of Justice of the Netherlands seconded to the Commission's Legal Service, acting as Agents, with an address for service in Luxembourg at the office of Roberto Hayder, a representative of the Legal Service, Wagner Centre, Kirchberg,

applicant,

v

Hellenic Republic, represented initially by Nana Dafniou, a legal assistant and scientist in the special department of Community Contentious Matters in the Ministry of Foreign Affairs, and then by Fokion Georgakopoulos, Assistant Legal Adviser in the State Legal Service, acting as Agents, with an address for service in Luxembourg at the Greek Embassy, 117 Val Ste Croix,

defendant,

APPLICATION for a declaration that, by failing to provide the Commission with the information it requested and by requiring undertakings to purchase exclusively electronic cash registers comprising in their manufacture at least 35% value added in Greece, the Hellenic Republic has failed to fulfil its obligations under Articles 5 and 30 of the EEC Treaty,

* Language of the case: Greek.

THE COURT,

composed of: R. Joliet, President of Chamber, acting as President, F. Grévisse and P. J. G. Kapteyn (Presidents of Chambers), C. N. Kakouris, J. C. Moitinho de Almeida, G. C. Rodríguez Iglesias, M. Diez de Velasco, M. Zuleeg and D. A. O. Edward, Judges,

Advocate General: M. Darmon,
Registrar: D. Triantafyllou, Administrator,

having regard to the Report for the Hearing,

after hearing oral argument from the parties at the hearing on 11 March 1992,

after hearing the Opinion of the Advocate General at the sitting on 18 March 1992,

gives the following

Judgment

1 By application lodged at the Court Registry on 24 May 1991, the Commission of the European Communities brought an action under Article 169 of the EEC Treaty for a declaration that, by failing to provide the Commission with the information it requested and by requiring undertakings to purchase exclusively electronic cash registers comprising in their manufacture at least 35% value added in the Hellenic Republic, the latter has failed to fulfil its obligations under Articles 5 and 30 of the EEC Treaty.

2 Reference is made to the Report for the Hearing for a fuller account of the facts of the case, the procedure and the pleas and arguments of the parties, which are mentioned or discussed hereinafter only in so far as is necessary for the reasoning of the Court.

3 The Commission claims that, following a complaint made by the authorities of a Member State relating to the rules in force in the Hellenic Republic concerning electronic cash registers for commercial undertakings, it sent two telexes on 7 December 1988 and 23 February 1989 to the defendant's Permanent Representation to the European Communities requesting information and explanations about the rules. Since the Hellenic Republic never replied to the telexes, the Commission considers that it has infringed Article 5 of the Treaty.

4 The Hellenic Republic disputes this claim. It observes that in September 1990 at a meeting held in Athens, the Greek Government supplied the Commission with all the necessary information on the rules in question. Furthermore, in January 1991 it sent to the Commission the text of Law No 1914/90, which put an end to the defendant's infringement of the Treaty. Since the Commission had received all the information before the action was introduced, it no longer had any interest in applying to the Court for a declaration that Article 5 had been infringed.

5 It should be pointed out in this connection that the defendant did not provide the information in question until almost two years after it had been requested, and in any case after the period provided for in the reasoned opinion had expired.

6 The failure to answer the Commission's questions within a reasonable period made it more difficult for the Commission to carry out its tasks and therefore constitutes an infringement of the obligation to cooperate under Article 5 of the Treaty.

7 The defendant does not dispute the Commission's claim that, by requiring as a condition of approval for electronic cash registers by the Greek authorities that 35% of the cost of the machine in question should consist of value added in Greece, Law No 1809/88 is contrary to Article 30 of the Treaty. It was only after the period allowed by the reasoned opinion had expired that a law was introduced to put an end to the failure to fulfil obligations.

8 It follows that, by failing to provide the Commission with the information it had requested and by requiring undertakings to purchase exclusively electronic cash registers comprising in their manufacture at least 35% value added in the Hellenic Republic, the latter has failed to fulfil its obligations under Articles 5 and 30 of the EEC Treaty.

Costs

9 Under Article 69(2) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs. Since the Hellenic Republic has been unsuccessful, it must be ordered to pay the costs.

On those grounds,

THE COURT

hereby:

1. Declares that by failing to provide the Commission with the information that it had requested and by requiring undertakings to purchase exclusively

electronic cash registers comprising in their manufacture at least 35% value added in the Hellenic Republic, the latter has failed to fulfil its obligations under Articles 5 and 30 of the EEC Treaty;

2. Orders the Hellenic Republic to pay the costs.

Joliet Grévisse Kapteyn Kakouris

Moitinho de Almeida Rodríguez Iglesias

Diez de Velasco Zuleeg Edward

Delivered in open court in Luxembourg on 24 June 1992.

J.-G. Giraud
Registrar

R. Joliet
President of Chamber
acting as President