JUDGMENT OF THE COURT (Fifth Chamber)
29 June 1995 *

In Joined Cases C-109/94, C-207/94 and C-225/94,

Commission of the European Communities, represented by Dimitrios Gouloussis, Legal Adviser, acting as Agent, with an address for service in Luxembourg at the office of Georgios Kremlis, of its Legal Service, Wagner Centre, Kirchberg,

applicant,

v

Hellenic Republic, represented by Michael Apessos, Assistant Legal Adviser to the State Legal Council (C-109/94), Katerina Samoni-Rantou, Assistant Special Legal Adviser to the European Communities Department of the Ministry of Foreign Affairs (C-207/94 and C-225/94), and Nana Dafniou, Secretary to the same Department (C-109/94, C-207/94 and C-225/94) acting as Agents, with an address for service in Luxembourg at the Greek Embassy, 117 Val Sainte Croix,

defendant,

APPLICATION for a declaration that the Hellenic Republic has failed to fulfil its obligations under the EC Treaty by failing, in Case C-109/94, to adopt or to communicate to the Commission within the prescribed period the laws, regulations and administrative provisions necessary to comply with Council Directive 90/618/EEC of 8 November 1990 amending, particularly as regards motor vehicle liability insurance, Directive 73/239/EEC and Directive 88/357/EEC which

* Language of the case: Greek.

concern the coordination of laws, regulations and administrative provisions relating to direct insurance other than life assurance (OJ 1990 L 330, p. 44), and by failing, in Cases C-207/94 and C-225/94, to adopt and, in the alternative, to communicate to the Commission within the prescribed periods the laws, regulations and administrative provisions necessary to comply, respectively, with Second Council Directive 88/357/EEC of 22 June 1988 on the coordination of laws, regulations and administrative provisions relating to direct insurance other than life assurance and laying down provisions to facilitate the effective exercise of freedom to provide services and amending Directive 73/239/EEC (OJ 1988 L 172, p. 1), and Council Directive 90/619/EEC of 8 November 1990 on the coordination of laws, regulations and administrative provisions relating to direct life assurance, laying down provisions to facilitate the effective exercise of freedom to provide services and amending Directive 79/267/EEC (OJ 1990 L 330, p. 50),

THE COURT (Fifth Chamber),

composed of: C. Gulmann, President of the Chamber, P. Jann, J. C. Moitinho de Almeida, D. A. O. Edward and L. Sevón (Rapporteur), Judges,

Advocate General: C. O. Lenz,
Registrar: D. Louterman-Hubeau, Principal Administrator,

having regard to the Report for the Hearing,

after hearing oral argument from the parties at the hearing on 11 May 1995,

after hearing the Opinion of the Advocate General at the sitting on 11 May 1995,

gives the following

Judgment

1 By applications lodged at the Court Registry on 7 April 1994 (C-109/94), 14 July 1994 (C-207/94) and 1 August 1994 (C-225/94), the Commission of the European Communities brought three actions under Article 169 of the EC Treaty for a declaration that the Hellenic Republic has failed to fulfil its obligations under the EC Treaty by failing, in Case C-109/94, to adopt or to communicate to the Commission within the prescribed period the laws, regulations and administrative provisions necessary to comply with Council Directive 90/618/EEC of 8 November 1990 amending, particularly as regards motor vehicle liability insurance, Directive 73/239/EEC and Directive 88/357/EEC which concern the coordination of laws, regulations and administrative provisions relating to direct insurance other than life assurance (OJ 1990 L 330, p. 44; hereinafter 'Directive 90/618'), and by failing, in Cases C-207/94 and C-225/94, to adopt and, in the alternative, to communicate to the Commission within the prescribed periods the laws, regulations and administrative provisions necessary to comply, respectively, with Second Council Directive 88/357/EEC of 22 June 1988 on the coordination of laws, regulations and administrative provisions relating to direct insurance other than life assurance and laying down provisions to facilitate the effective exercise of freedom to provide services and amending Directive 73/239/EEC (OJ 1988 L 172, p. 1; hereinafter 'Directive 88/357') and Council Directive 90/619/EEC of 8 November 1990 on the coordination of laws, regulations and administrative provisions relating to direct life assurance, laying down provisions to facilitate the effective exercise of freedom to provide services and amending Directive 79/267/EEC (OJ 1990 L 330, p. 50; hereinafter 'Directive 90/619').

2 By order of 16 December 1994, the President of the Court decided to join the three cases for the purposes of the oral procedure and the judgment.

3 Article 12 of Directive 90/618, Article 32 of Directive 88/357 and Article 30 of Directive 90/619 provided that the Member States were to bring into effect the laws, regulations and administrative provisions necessary to comply with the directives before, respectively, 20 May 1992, 31 December 1989 and 20 November

1992. Those articles also required the Member States to inform the Commission immediately of the adoption of those measures.

4 Since it had received no notification of the measures transposing those directives into the Greek legal system and possessed no other information which could satisfy it that the Hellenic Republic had complied with its obligations, the Commission decided to initiate the procedure under Article 169 of the Treaty. By letters dated, respectively, 6 August 1992, 4 September 1990 and 21 December 1992, it gave the Greek Government formal notice to submit its observations within a period of two months.

5 In Case C-109/94, the Greek authorities replied to the Commission by letter of 7 December 1992 and sent it a draft presidential decree for the transposition *inter alia* of Directive 90/618. In Cases C-207/94 and C-225/94, the Greek authorities did not reply to the letter of formal notice.

6 On 7 July 1993, 6 August 1992 and 15 February 1994, respectively, the Commission delivered reasoned opinions to the Hellenic Republic, requesting it to adopt the measures necessary to comply therewith within a period of two months. In Case C-109/94, the Hellenic Republic let it be known, by letter of 21 September 1993, that the procedure for the adoption of the aforementioned presidential decree had reached its final stage. In Cases C-207/94 and C-225/94, the Hellenic Republic made no reply. The Commission therefore decided to bring the present actions.

7 On the basis of the first paragraph of Article 5 and the third paragraph of Article 189 of the EC Treaty, and of Articles 12, 32 and 30, respectively, of Directives 90/618, 88/357 and 90/619, the Commission considers that it was incumbent upon the Hellenic Republic to adopt the measures necessary to comply with the directives in question within the periods prescribed therein.

8 Although the Hellenic Republic contends that the applications should be dismissed, it does not deny that the directives were not transposed within the prescribed periods. It admits, moreover, that it was under an obligation to ensure that this was done. In Case C-109/94, however, it maintains that the failure to transpose Directive 90/618 into domestic law does not in practice prevent the effective application of the provisions of that directive. According to the Hellenic Republic, requests made by Community undertakings and based on that directive have been granted.

9 That argument cannot be accepted. It is settled case-law that mere administrative practices, which by their nature are alterable at will by the authorities and are not given the appropriate publicity, cannot be regarded as constituting the proper fulfilment of obligations under the Treaty (see the judgment in Case C-235/91 *Commission* v *Ireland* [1992] ECR I-5917, paragraph 10).

10 In both Case C-109/94 and Case C-225/94, the Hellenic Republic further observes that the Council of State has expressed the view that the promulgation of a presidential decree transposing Directives 90/618, 88/357 and 90/619 is impossible, in so far as the provisions of those directives have meanwhile been amended, replaced or repealed by Council Directive 92/49/EEC of 18 June 1992 on the coordination of laws, regulations and administrative provisions relating to direct insurance other than life assurance and amending Directives 73/239/EEC and 88/357/EEC (third non-life insurance Directive) (OJ 1992 L 228, p. 1; hereinafter 'Directive 92/49'), and by Council Directive 92/96/EEC of 10 November 1992 on the coordination of laws, regulations and administrative provisions relating to direct life assurance and amending Directives 79/267/EEC and 90/619/EEC (third life assurance Directive) (OJ 1992 L 360, p. 1; hereinafter 'Directive 92/96'). In the opinion of the Council of State, such a decree would be likely to contain references to measures which no longer exist. In accordance with that opinion, the competent authorities have taken steps for the issue of a new presidential decree which will transpose all five directives, namely Directives 88/357, 90/618, 90/619, 92/49 and 92/96.

11 The Court has consistently held that a Member State may not rely on circumstances in its internal legal system to justify its failure to comply with obligations

and time-limits laid down in Community directives (see the judgment in Case C-303/92 *Commission* v *Netherlands* [1993] ECR I-4739, paragraph 9).

12 Consequently, it must be held that, by failing to adopt within the prescribed periods the laws, regulations and administrative provisions necessary to comply with Directives 90/618, 88/357 and 90/619, the Hellenic Republic has failed to fulfil its obligations under the EC Treaty.

Costs

13 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. The Commission claimed that the Court should order the Hellenic Republic to pay the costs. Since the latter has been unsuccessful, it must be ordered to pay the costs.

On those grounds,

THE COURT (Fifth Chamber)

hereby:

1. Declares that the Hellenic Republic has failed to fulfil its obligations under the EC Treaty by failing to adopt within the prescribed periods the laws, regulations and administrative provisions necessary to comply with

— Council Directive 90/618/EEC of 8 November 1990 amending, particularly as regards motor vehicle liability insurance, Directive 73/239/EEC and Directive 88/357/EEC which concern the coordination of laws, regulations and administrative provisions relating to direct insurance other than life assurance,

— Second Council Directive 88/357/EEC of 22 June 1988 on the coordination of laws, regulations and administrative provisions relating to direct insurance other than life assurance and laying down provisions to facilitate the effective exercise of freedom to provide services and amending Directive 73/239/EEC,

and

— Council Directive 90/619/EEC of 8 November 1990 on the coordination of laws, regulations and administrative provisions relating to direct life assurance, laying down provisions to facilitate the effective exercise of freedom to provide services and amending Directive 79/267/EEC.

2. Orders the Hellenic Republic to pay the costs.

Gulmann Jann Moitinho de Almeida

Edward Sevón

Delivered in open court in Luxembourg on 29 June 1995.

R. Grass
Registrar

C. Gulmann
President of the Fifth Chamber