JUDGMENT OF THE COURT
11 December 1985 *

In Case 192/84

Commission of the European Communities, represented by Xenophon Yataganas, a member of its Legal Department, acting as Agent, with an address for service in Luxembourg at the office of Georges Kremlis, a member of its Legal Department, Jean Monnet Building, Kirchberg,

applicant,

v

Hellenic Republic, represented by Loukas Stephanou, acting as Agent, with an address for service in Luxembourg at the Greek Embassy, 117 Val-Sainte-Croix,

defendant,

APPLICATION for a declaration that, by granting more favourable credit terms for the purchase of Greek agricultural machinery than are available for machinery of the same type imported from Member States of the Community, the Hellenic Republic has failed to fulfil its obligations under Article 30 of the EEC Treaty, in conjunction with Article 35 of the Act of Accession, and that, by failing to reply to the Commission's repeated requests for information about the machinery affected by the said discriminatory practice, the Hellenic Republic has failed to fulfil its obligations under Article 5 of the Treaty,

THE COURT,

composed of: Lord Mackenzie Stuart, President, U. Everling and K. Bahlmann (Presidents of Chambers), T. Koopmans, O. Due, Y. Galmot and C. Kakouris, Judges,

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

* Language of the Case: Greek.

after hearing the Opinion of the Advocate General delivered at the sitting on 16 October 1985,

gives the following

JUDGMENT

(The account of the facts and issues which is contained in the complete text of the judgment is not reproduced)

Decision

1 By an application lodged at the Court Registry on 20 July 1984, the Commission of the European Communities brought an action under Article 169 of the EEC Treaty for a declaration that, by granting more favourable credit terms for the purchase of Greek agricultural machinery than are available for machinery of the same type imported from Member States of the Community, the Hellenic Republic has failed to fulfil its obligations under Article 30 of the EEC Treaty, in conjunction with Article 35 of the Act of Accession, and that, by failing to reply to the Commission's repeated requests for information about the machinery affected by the said discriminatory practice, the Hellenic Republic has failed to fulfil its obligations under Article 5 of the Treaty.

2 It appears from the documents before the Court that, on 18 September 1970, the former Greek Committee for Coordination of Economic Policy adopted a decision (Decision 749/70) which *inter alia* required the Agricultural Bank of Greece, the main credit institution in the agricultural sector, not to finance purchases of imported agricultural machinery except on presentation of a certificate from the Ministry of Industry certifying that no machinery of that kind was manufactured in Greece.

3 By letter of 22 September 1981 the Monetary Committee of the Hellenic Republic forwarded to all banks an extract of the minutes of its session held on 20 August 1981 according to which it had decided that, 'with effect from publication of this decision, all the decisions on aid for the manufacture in Greece of agricultural

machinery previously adopted by the Committee for the Coordination of Economic Policy shall be repealed' and that, 'subject to the conditions laid down by the provisions in force, the Agricultural Bank of Greece shall offer farmers and cooperatives opportunities for receiving financial aid for the purchase, in cash, of agricultural machinery, whether produced in Greece or in the countries of the European Economic Community'. It further appears from the above decision that it was to be published in the Greek official gazette. In its decision No 1748 of 24 September 1981 the Economic Committee of the Hellenic Republic approved the repeal of Decision 749/70 of the Committee for Coordination of Economic Policy of 18 September 1970.

4 The Commission claims that from the earliest months following the accession of Greece on 1 January 1981 and throughout 1981 and 1982 it received complaints about the discriminatory treatment of agricultural machinery originating within the Community and imported into Greece. The Commission has not specified the content of those complaints beyond stating that the discrimination was due to a series of administrative provisions deriving from Decision 749/70.

5 As a result of those complaints the Commission asked the Greek Government to send it the texts of the measures applicable to the grant of loans for the purchase of agricultural machinery, together with the provisions adopted in order to implement those measures. Although no text on the subject was forwarded by the Government the Commission came into possession of Circular No 96 of 6 May 1982, issued by the Agricultural Bank of Greece, in which the Bank distributed to its relevant departments Memorandum No Ph 5.3/42 from the Ministry of Industry and Energy dated 31 March 1982. In that memorandum the Ministry requests the Bank, 'for as long as Decision 749/70 of the former Committee for Coordination of Economic Policy shall continue to be applied, ... to ensure that the Bank's departments, before granting loans for the purchase of centrifuges and settling-tanks [as equipment for oil mills], ... require applicants to produce a certificate from this Ministry certifying that no machinery of the relevant kind is manufactured in Greece'. In its circular the Bank asks its departments to take the necessary steps to apply the memorandum 'and to do so subject to the instructions given to you concerning the preference to be given to products of Greek manufacture'.

6 After the present action had been brought the Ministry revoked Memorandum No Ph 5.3/42 by a letter to the Bank of 23 September 1984, and the Bank, by Circular No 238 of 24 September 1984, revoked its Circular No 96/82 adding: 'therefore, the Bank shall no longer require applicants to produce a certificate showing that the apparatus . . . for the oil mill is not of a kind manufactured in Greece'.

7 By a letter of 13 September 1983 the Commission gave notice to the Greek Government to submit within one month its observations on the measures described above, which the Commission regarded as contrary to Articles 30 *et seq.* of the Treaty, and also its observations on its failure to supply the Commission with the information needed for appraising the case, which the Commission considered to be contrary to Article 5 of the Treaty. As the Greek authorities did not comply with the Commission's notice, the Commission on 16 March 1984 delivered a reasoned opinion pursuant to the first paragraph of Article 169 of the Treaty, allowing the Greek Government one month in which to comply.

8 By letter of 2 July 1984 the Greek Government replied that Decision 749/70 had been repealed in August 1981 as being contrary to Articles 30 *et seq.* of the Treaty, that no new legislation had been enacted since its repeal, and that the later documents to which the Commission had referred were therefore invalid and were not applied. The Commission was not satisfied with that reply and accordingly brought the present action.

9 The Commission argues that both Memorandum No Ph 5.3/42 from the Ministry of Industry and Energy of 31 March 1982 and Circular No 96/82 of the Agricultural Bank are evidence of a discriminatory practice operating to the detriment of imported machinery intended for oil mills.

10 Such a practice is, it claims, incompatible with Article 30 of the Treaty, which prohibits Member States from applying quantitative restrictions and measures having equivalent effect in trade within the Community. By virtue of Article 35 of the Act of Accession that prohibition also applies to Greece with effect from the date of its accession on 1 January 1981. The measures in question favour the

marketing of machinery made in Greece and discriminate against imported machinery, because purchasers, if not obliged to do so, are at least encouraged to choose Greek machinery in order to qualify for a loan from the Agricultural Bank, the main credit institution in this sector.

11 According to the Commission both the documents which it has produced and the complaints received demonstrate that the discriminatory practice did not terminate on the repeal of Decision 749/70 on 20 August 1981. The ministerial memorandum and the Agricultural Bank's circular are merely instances of a general policy covering every kind of agricultural machinery, which was pursued even after their formal revocation.

12 The Commission admits that, as far as categories of machinery other than oil mill machinery are concerned, it is unable to supply further particulars. However, that was due to the failure on the part of the Greek Government to supply the texts dealing with such other machinery, a failure which constituted a breach of the duty of cooperation arising under Article 5 of the Treaty.

13 The Greek Government concedes that an administrative practice allowing more favourable credit terms for the purchase of Greek agricultural machinery than those available for machinery of the same type imported from other Member States constitutes a measure equivalent in effect to quantitative restrictions on imports. It emphatically denies, however, that such a practice persisted after the repeal of Decision 749/70 by the two decisions adopted on 20 August and 24 September 1981 respectively by the Monetary Committee and the Economic Committee.

14 The Greek Government states that Ministerial Memorandum No Ph 5.3/42 of 31 March 1982 had no legal basis and was therefore invalid. It was never applied and was even revoked at the Commission's request, even though this was not necessary in point of law.

15 Lastly, the Greek Government claims that, in the period after the Commission's inquiry had begun, there were no longer any rules — legislative or other — concerning credit terms which favoured the purchase of Greek agricultural machinery in preference to machinery of the same type imported from other

Member States. For that reason it was unable to supply the Commission with the texts of such rules. Consequently, there was no breach of Article 5 of the Treaty.

16 The Court first of all draws attention to the fact that Decision 749/70 of 18 September 1970, adopted by the Committee for the Coordination of Economic Policy, was still in force on the date of the accession of the Hellenic Republic to the European Economic Community and that it provided for credit terms which favoured the purchase of Greek agricultural machinery rather than machinery imported from the other Member States. As the Greek Government has expressly conceded, such rules constitute a measure having equivalent effect to quantitative restrictions, inasmuch as they encourage the purchaser to give preference to machinery of national manufacture. They therefore fall under the prohibition contained in Article 30 of the Treaty which, under Article 35 of the Act of Accession, was applicable to the Hellenic Republic from the moment of its accession. It appears from the documents before the Court that the decision in question was not repealed until the decision of the Monetary Committee of 20 August 1981 (approved by the Economic Committee on 24 September 1981), entered into force on being published in the Greek official gazette. However, the repeal occurred before the expiry of the period set by the Commission in its reasoned opinion. For that reason the fact that Decision 749/70 remained in force after accession is not included amongst the complaints made in the present application.

17 Next, it should be observed that in its Memorandum No Ph 5.3/42 of 31 March 1982 the Ministry of Industry and Energy requested the Agricultural Bank of Greece, before granting loans for the purchase of imported centrifuges and settling-tanks for use in oil mills, to demand a certificate from the Ministry stating that no machinery of that kind was manufactured by Greek industry. Although the memorandum referred to Decision 749/70 — which had been repealed — and, according to the Greek Government, was invalid, the mere fact that in Circular No 96/82 the Agricultural Bank distributed it to its departments and asked those departments to give effect to it is sufficient to show that the memorandum created an ambiguous and uncertain situation, to the detriment of imported machinery. That situation was not brought to an end until the Ministry's letter of 23 September 1984 revoked the memorandum, and Circular No 238 of the Agricultural Bank of 24 September 1984 revoked Circular No 96/82. Such a situation must be treated as constituting *per se* a measure having equivalent effect to a quantitative restriction on imports within the meaning of Article 30. It must therefore be concluded that Greece failed to comply with its Treaty obligations as regards the machinery mentioned in the memorandum, during the period between the transmission of that memorandum to the Bank and its revocation.

18 On the other hand, the Commission has not furnished sufficient evidence to establish that the memorandum is merely one example of a general policy on the part of the Greek Government designed to enable Greek agricultural machinery to be purchased on more favourable credit terms than are available for the purchase of the same type of machinery imported from other Member states, or indeed to establish that such a policy was pursued after the memorandum had been revoked.

19 As far as the alleged infringement of Article 5 of the Treaty is concerned, it should be stressed that the article places Member States under an obligation to facilitate the achievement of the tasks which the first indent of Article 155 assigned to the Commission, namely to ensure that the provisions of the Treaty and the measures taken by the institutions pursuant thereto are applied. Member States are therefore required to cooperate *bona fide* in any inquiry undertaken by the Commission under Article 169, and to supply the Commission with all the information requested to that end. In this case it should be observed that the pre-litigation procedure discloses misunderstandings, some of which could have been avoided if the Greek Government had supplied the Commission with more information.

20 None the less, the principle remains that the Commission, when bringing an action against a Member State for failure to comply with Article 5, must specify the acts or omissions which, in its opinion, constitute the infringement. During the proceedings before the Court the Commission explained that its objections relate to the failure on the part of the Greek Government to forward to it the text of the provisions governing credit terms for the purchase of agricultural machinery other than that referred to by Memorandum No Ph 5.3/42. However, in view of the Greek Government's statement that by that time there were no longer any credit arrangements, apart from the memorandum itself, favouring Greek agricultural machinery in preference to machinery imported from other Member states, the failure to comply with the Commission's request for the text of such arrangements cannot be regarded as contrary to Article 5 of the Treaty. As the Commission has not adduced any further evidence such as might indicate a serious lack of cooperation on the part of the Greek Government, the application should be dismissed in so far as it is based on Article 5 of the Treaty.

21 It must therefore be concluded that, by not revoking until 23 September 1984 Memorandum No Ph 5.3/42 of the Ministry of Industry and Energy of 31 March 1982 requesting the Agricultural Bank of Greece to ensure that its departments, before granting loans for the purchase of centrifuges and settling-tanks for use in oil mills, required applicants to produce a certificate from the Ministry stating that such machinery was not manufactured in Greece, the Hellenic Republic has failed to fulfil its obligations under Article 30 of the EEC Treaty, in conjunction with Article 35 of the Act of Accession. However, the remainder of the application must be dismissed.

Costs

22 Under Article 69 (2) of the Rules of Procedure the unsuccessful party is to be ordered to pay the costs. However, under the first subparagraph of Article 69 (3), where each party succeeds on some and fails on other heads, the Court may order that the parties bear their own costs in whole or in part. In this case, it is appropriate for the Court to have recourse to that provision and to order each party to bear its own costs.

On those grounds,

THE COURT

hereby:

(1) Declares that, by not revoking until 23 September 1984 Memorandum No Ph 5.3/42 of the Ministry of Industry and Energy of 31 March 1982 requesting the Agricultural Bank of Greece to ensure that its departments, before granting loans for the purchase of centrifuges and settling-tanks for use in oil mills, required applicants to produce a certificate from the Ministry stating that such machinery was not manufactured in Greece, the Hellenic Republic has failed to fulfil its obligations under Article 30 of the EEC Treaty, in conjunction with Article 35 of the Act of Accession;

(2) Dismisses the remainder of the application;

(3) Orders each party to bear its own costs.

Mackenzie Stuart Everling Bahlmann

Koopmans Due Galmot Kakouris

Delivered in open court in Luxembourg on 11 December 1985.

P. Heim
Registrar

A. J. Mackenzie Stuart
President