JUDGMENT OF THE COURT
3 December 1987 *

In Case 194/84

Commission of the European Communities, represented by its Legal Advisers David R. Gilmour and Dimitrios Gouloussis and by Georges Kremlis, a member of its Legal Department, acting as Agents, with an address for service in Luxembourg at the office of Georges Kremlis, Jean Monnet Building, Luxembourg,

applicant,

v

Hellenic Republic, represented by L. Stephanou, Special Adviser at the Ministry of Foreign Affairs, and Giannos Kranidiotis, Special Secretary at the Ministry of Foreign Affairs, with an address for service at the Greek Embassy, 117 Val Sainte-Croix, Luxembourg,

defendant,

APPLICATION for a declaration that, by failing progressively to release funds blocked in Greece belonging to persons resident in the Member States in accordance with the timetable laid down in Article 52 of the Act of Accession of the Hellenic Republic to the European Communities, the Hellenic Republic has failed to fulfil its obligations under that provision,

THE COURT,

composed of G. Bosco, President of Chamber, acting as President, J. C. Moitinho de Almeida, President of Chamber, T. Koopmans, U. Everling, C. Kakouris, R. Joliet and F. Schockweiler, Judges,

Advocate General: M. Darmon
Registrar: B. Pastor, Administrator

* Language of the Case: Greek.

having regard to the Report for the Hearing and further to the hearing on 16 June 1987 at which the Commission of the European Communities was represented by D. Gouloussis and the Hellenic Republic was represented by F. Spathopoulos and S. Kalamitsis,

after hearing the Opinion of the Advocate General delivered at the sitting on 29 September 1987,

gives the following

Judgment

1 By an application lodged at the Court Registry on 24 July 1984, the Commission of the European Communities brought an action under Article 169 of the EEC Treaty for a declaration that by failing progressively to release accounts blocked in Greece belonging to persons resident in the Member States in accordance with the timetable laid down in Article 52 of the Act concerning the conditions of accession of the Hellenic Republic and the adjustments to the Treaties (hereinafter referred to as 'the Act of Accession'), the Hellenic Republic has failed to fulfil its obligations under that provision.

2 Article 52 of the Act of Accession provides that 'funds blocked in Greece belonging to persons resident in the present Member States shall be progressively released by equal annual instalments starting from accession until 31 December 1985; in six stages, the first of which shall begin on 1 January 1981. ... On 1 January 1986 blocked funds belonging to persons resident in the present Member States shall be abolished.'

3 In its application the Commission claims in substance that the Hellenic Republic has failed to comply with Article 52 of the Act of Accession in maintaining in force after 1 January 1981, the date of the Hellenic Republic's accession to the European Communities, Article 13 of Emergency Law No 1704 of 1939 amending and supplementing Emergency Law No 33 of 1936 and the other laws relating to the protection of the national currency (Greek Official Journal, Part I, p. 149). The national provision complained of provides in essence that all debts owed to persons permanently resident abroad which must be paid in Greece and which do not arise from exchange transactions on the free market are considered to be

blocked and that payment by the debtor of the sum owed may be effected only by placing that sum in a blocked account. The release and use of blocked debts are subject to authorization by the Bank of Greece.

4 Reference is made to the Report for the Hearing for a fuller account of the relevant provisions of Community law, the Greek legislation in question 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.

5 The Commission bases its case on the argument that Article 52 of the Act of Accession lays down the obligation to release, within the periods laid down in that provision, all funds blocked in Greece belonging to residents of other Member States so that all assets are rendered convertible and may be freely repatriated. In its view, that interpretation follows from the very concept of 'blocked funds', the meaning of which, being of a Community nature, must be determined in accordance with the essential features of such funds in the international monetary sphere and, more particularly, in the sphere of exchange control. The generally accepted definition of blocked funds is that they are deposits of money belonging to non-residents which, in particular, may not be freely transferred out of the country.

6 The Greek Government contends that Article 52 of the Act of Accession requires funds blocked in Greece belonging to residents of other Member States to be released solely for use in Greece and not for transfer out of the country. The sole object of that provision is the progressive abolition of funds blocked pursuant to Emergency Law No 1704 of 1939. That law is already being applied in such a way that, in accordance with the timetable laid down in Article 52, the assets in question, denominated in drachmas and belonging to residents of other Member States, may be freely used in Greece. The Greek legislation therefore complies with the requirements of Community law.

7 Those arguments of the Greek Government cannot be accepted. Article 52 is to be found in a section of the Act of Accession entitled 'Capital movements'. That article must therefore be interpreted as relating to the release of the funds in question not only for their use in Greece but for their transfer out of the country,

since the mere possibility of being able to dispose of them freely within the country does not involve any movement of capital between Member States.

8 That interpretation is confirmed by an examination of the aim of Article 52 of the Act of Accession. As is clear from Article 49 (1) of that Act, the provisions of Articles 50 to 53 are intended to permit the Hellenic Republic to defer, on the conditions and within the time-limits set out therein, the liberalization of capital movements provided for in the First Council Directive of 11 May 1960 for the implementation of Article 67 of the Treaty (Official Journal, English Special Edition 1959-62, p. 49) in the version contained in the Second Council Directive 63/21/EEC of 18 December 1962 adding to and amending the First Directive for the implementation of Article 67 of the Treaty (Official Journal, English Special Edition 1963-64, p. 5, hereinafter referred to as 'the directive'). Considered in that context, the aim of Article 52 is to lay down, with regard to blocked funds, the rules for progressively bringing Greek legislation into line with the rules of the directive.

9 Article 1 (1) of the directive provides that Member States are to grant all foreign exchange authorizations required for the conclusion or performance of transactions or for transfers between residents of Member States in respect of the capital movements set out in List A of Annex I to that directive. That list includes among the capital movements benefiting from such unconditional liberalization 'annual transfers of blocked funds to another Member State by a non-resident account-holder' (item of nomenclature XL).

10 In that regard, the Greek Government points out that those annual transfers of blocked funds which the Member States must authorize pursuant to the abovementioned directives are expressly limited to an amount or a percentage of the total assets which the Member State concerned may determine by itself. However, Article 52 of the Act of Accession requires the Hellenic Republic to bring about liberalization over a five-year period, the annual tranches being mandatorily fixed by the provision itself. Consequently, it suffers discrimination compared with the Member States of the former Community of Nine since it must abolish blocked funds on 1 January 1986, whereas the Member States of the Community of Nine were able to retain them, even beyond that date, up to the amount or percentage of the assets still not released.

11 In reply to that argument it need only be stated that the defendant may not rely on the difference in liberalization provisions laid down in Article 52 of the Act of Accession and the directive for the implementation of Article 67 of the Treaty. As the Commission emphasized at the hearing, without being contradicted on this point by the Greek Government, none of the Member States of the Community of Nine still retained blocked funds when the Hellenic Republic acceded to the Communities. Since those Member States are likewise no longer entitled to create new blocked funds, having regard to the object and character of the provisions of the directive in question, which are aimed at the progressive abolition of blocked funds, the aim of Article 52 of the Act of Accession is precisely to bring the Hellenic Republic gradually into line with the general system of the directive and does not therefore place Greece in a less favourable situation than the other Member States.

12 The Greek Government then points out that Article 52 of the Act of Accession only relates to personal capital, such as gifts, endowments, dowries and inheritances. That follows from the fact that the blocked funds, for which Article 52 lays down transitional rules, are classified in the annex to the directive under the heading 'Personal capital movements'.

13 Although it would indeed appear from the directive that annual transfers of blocked funds to another Member State by a non-resident account-holder are regarded, for the purposes of the directive, as personal capital movements, it does not, however, follow that only such funds deriving from personal operations are to be liberalized. On the contrary, the use of the general term 'blocked funds' in both Article 52 of the Act of Accession and the directive precludes a narrow interpretation. It should, also, be pointed out in this regard that gifts and endowments as well as dowries and inheritances are mentioned in the directive under items of nomenclature different from that covering blocked funds.

14 It follows from the foregoing that the Hellenic Republic was under a duty to release, within the time-limits laid down in Article 52 of the Act of Accession, all blocked funds belonging to persons resident in other Member States, including such funds arising from operations which were not personal.

15 It must therefore be declared that by failing progressively to release funds blocked in Greece belonging to persons resident in other Member States in accordance with the timetable laid down in Article 52 of the Act of Accession, the Hellenic Republic has failed to fulfil its obligations under that provision.

Costs

16 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 failed in its submissions, it must be ordered to pay the costs.

On those grounds,

THE COURT

hereby:

(1) Declares that by failing progressively to release funds blocked in Greece belonging to persons resident in other Member States in accordance with the timetable laid down in Article 52 of the Act of Accession, the Hellenic Republic has failed to fulfil its obligations under that provision;

(2) Orders the Hellenic Republic to pay the costs.

Bosco Moitinho de Almeida Koopmans

Everling Kakouris Joliet Schockweiler

Delivered in open court in Luxembourg on 3 December 1987.

P. Heim
Registrar

A. J. Mackenzie Stuart
President