Case 111/88 R

Hellenic Republic
v
Commission of the European Communities

(Economic policy — Balance of payments — Protective measures)

Order of the President of the Court, 6 May 1988 2591

Summary of the Order

Application for interim measures — Suspension of the operation of a decision — Conditions for granting — Serious and irreparable damage to the applicant
(EEC Treaty, Art. 185; Rules of Procedure, Art. 83 (2))

ORDER OF THE PRESIDENT OF THE COURT
6 May 1988 *

In Case 111/88 R

Hellenic Republic, represented by S. Zissimopoulos, expert, second grade, at the Ministry of Foreign Affairs, K. Samonis, legal assistant at the same ministry, P. Spathopoulos, an official in the Directorate of Legal Questions concerning the EEC at the Ministry of Economic Affairs, I. Laios, Legal Adviser at the Ministry of Agriculture and L. Tsotsanis, an official of the Directorate of Legal Affairs at the Ministry of Agriculture, with an address for service in Luxembourg at the offices of His Excellency the Greek Ambassador, M. Giannopoulos, 117 Val-Sainte-Croix,

applicant,

* Language of the Case: Greek.

V

Commission of the European Communities, represented by T. Christoforou, a member of its Legal Department and T. F. Cusack, Legal Adviser, acting as Agents, with an address for service in Luxembourg at the office of G. Kremlis, a member of the Commission's Legal Department, Jean Monnet Building, Kirchberg,

defendant,

APPLICATION for the suspension of the operation of Commission Decision 88/438/EEC of 4 February 1988 (Official Journal L 218, p. 19) which amends Commission Decision 86/614/EEC of 16 December 1986 amending Commission Decision 85/594/EEC authorizing Greece to take certain safeguard measures under Article 108 (3) of the EEC Treaty (Official Journal 1986, L 357, p. 28).

THE PRESIDENT OF THE COURT OF JUSTICE
OF THE EUROPEAN COMMUNITIES

makes the following

Order

1 By an application lodged at the Court Registry on 7 April 1988, the Hellenic Republic brought an action under the first paragraph of Article 173 of the EEC Treaty for a declaration that Commission Decision 88/438/EEC of 4 February 1988 which amends Commission Decision 86/614/EEC of 16 December 1986 amending Commission Decision 85/594/EEC authorizing Greece to take certain safeguard measures under Article 108 (3) of the Treaty (Official Journal 1986, L 357, p. 28) was void.

2 By an application for interim relief lodged at the Court Registry on the same day, the applicant sought, pursuant to Articles 185 and 186 of the EEC Treaty and Article 83 of the Rules of Procedure, the suspension of the operation of the

abovementioned Commission Decision of 4 February 1988 until the 30th day following the date of notification of the judgment delivered by the Court in the main proceedings.

3 The defendant submitted its written observations on 29 April 1988. The parties presented oral argument on 2 May 1988.

4 Before examining the merits of this application for interim relief, it would be helpful to describe briefly the factual and legal background to this case.

5 A variety of tree known as the Citrus medica grows in Crete. The fruit of this tree are citrons, whose peel is used in the production of preserves. Since 1983 the Cretan growers of this fruit represented by the Crete Association of Citron Producers have exported these products, in particular to the German market.

6 In March 1983 a Netherlands producer of the same product complained to the Commission that he was exposed to unfair competition on the part of Greek undertakings as a result of the export aid, equivalent to 32% of the fob price, which was granted to them.

7 On 29 April 1987 that producer and the Dutch Fruit and Vegetable Processing Industry Association submitted to the Commission a request for the application of Article 3 of Commission Decision 86/614/EEC of 16 December 1986 with a view to excluding all export aid granted by Greece in the sector in question.

8 By its Decision 86/614/EEC, the Commission amended its Decision 85/594/EEC of 22 November 1985 authorizing Greece to take certain safeguard measures under Article 108 (3) of the EEC Treaty (Official Journal 1986, L 373, p. 9). As one of those measures Greece was authorized to grant, until 31 December 1986, export aid of up to 26.4% of the fob price.

9 Decision 86/614/EEC provides that, in principle, export aid is to be phased out by Greece in accordance with the rules laid down in Article 1 thereof in four equal steps to take effect on 1 January 1987, 1 January 1988, 1 January 1989 and 1 January 1990. Article 3 however contains the following proviso:

'Should evidence be presented to the Commission which, upon examination and after consultation with the interested parties, shows that the grant of the export aid to any particular sector is causing, or threatens to cause, major changes in traditional trade flows and that these changes are causing or threaten to cause serious material injury to an established industry in other Member States to a degree contrary to the common interest, the Commission shall amend this decision so as to reduce or exclude all aid to the sector in question.'

10 The Commission took the view that the conditions laid down in Article 3 of Decision 86/614/EEC were satisfied and accordingly decided to adopt its decision of 4 February 1988, the suspension of the operation of which is sought in these proceedings. The purpose of that decision is to prohibit the Greek Government from granting any export aid for citrons (Nimexe 20.04-30) with effect from 4 February 1988.

11 According to Article 185 of the EEC Treaty, actions brought before the Court of Justice are not to have suspensory effect. The Court may, however, if it considers that circumstances so require, order that application of the contested act be suspended.

12 In order for an interim measure such as that requested to be granted, Article 83 (2) of the Rules of Procedure requires that applications for such measures should state the factual and legal grounds establishing a prima facie case for the interim measure requested and the circumstances giving rise to urgency.

13 In the first place it is necessary to consider the circumstance which the applicant has put forward in order to establish urgency, a matter which, as the Court has consistently held, must be demonstrated by the imminence of serious and irreparable damage.

14 In this respect, the applicant maintains, first, that the Cretan citron producers, numbering 2 000, grouped together in the Crete Citron Producers Association, would suffer serious and irreparable damage as a result of the application of the contested decision of 4 February 1988, which would make it impossible for them to plan their production and the marketing of their products. It states that the contracts for the sale of these products are concluded annually, in the course of the first quarter, so that the amount of aid abolished would have to be borne by the aforementioned association if it wished to honour the contracts concluded with its customers. It argues further that the phasing out of the aid would seriously affect the stability of the balance of payments of the Hellenic Republic because, as a result, inflationary tendencies would become even more pronounced. It stresses finally that if its application in the main action is allowed in two years' time, the transitional period which is accorded to it for the grant of aid by Decision 86/614/EEC, in this case until 1 January 1990, will have expired; the resulting damage to it and to the citron producers would therefore be irreparable.

15 The Court has consistently held that the urgency of an application for interim measures, as referred to in Article 83 (2) of the Rules of Procedure, must be assessed in relation to the necessity for an order granting interim relief in order to prevent serious and irreparable damage to the party seeking interim relief. It therefore falls to the party requesting the suspension of the operation of the contested measure to adduce evidence to show that he cannot await the outcome of the proceedings without having to sustain personally damage which would result in serious and irreparable consequences for him (see in this connection *inter alia* the order of the President of the Court of 15 June 1987 in Case 142/87 R *Kingdom of Belgium* v *Commission* [1987] ECR 2589).

16 With regard to that requirement, it must be observed that only the second submission relied on, concerning the risk to which the stability of the balance of payments is exposed, appears to be capable of establishing the possibility of serious and irreparable damage to the Hellenic Republic. It follows that in the context of the present interlocutory proceedings only this argument falls for consideration.

17 The Commission has pointed out in that connection that, according to Eurostat statistics, the value of citron exports represents only 0.245% of the value of the total volume of Greek exports for 1986.

18 As the Commission has rightly pointed out, such a trifling percentage, less than 1% of the total value of Greek exports, cannot be regarded as liable to cause serious and irreparable damage from the point of view of the stability of the Hellenic Republic's balance of payments (see in this connection the order of the President of the Court of 24 September 1986 in Case 214/86 R *Hellenic Republic* v *Commission* [1986] ECR 2631).

19 It follows from the foregoing that the applicant has failed to show that it would suffer serious and irreparable damage as a result of the Commission decision of 4 February 1988 and that it has therefore not succeeded in establishing circumstances giving rise to urgency, a requirement which must be satisfied for it to be possible to order the suspension of the operation of that decision.

On those grounds,

THE PRESIDENT,

by way of an interim decision,

hereby orders as follows:

(1) The application for interim measures is dismissed.

(2) The costs are reserved.

Luxembourg, 6 May 1988.

J.-G. Giraud
Registrar

Lord Mackenzie Stuart
President