JUDGMENT OF THE COURT
24 March 1988 *

In Case 240/86,

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

applicant,

v

Hellenic Republic, represented by Nikos Frangakis, Legal Adviser at the Permanent Representation of the Hellenic Republic to the European Communities, and Kostas Papakostopolous, Legal Adviser at the Ministry of Commerce, with an address for service in Luxembourg at the Embassy of the Hellenic Republic, 117 Val-Sainte-Croix,

defendant,

APPLICATION for a declaration that by requiring foreign currency permits for the import of cereals and making such permits subject to the obligation to re-export the products, by revoking permits already granted and by failing to communicate to the Commission the information and rules requested, the Hellenic Republic has failed to fulfil its obligations under Articles 5, 30 and 106 (1) of the EEC Treaty and under Council Regulation (EEC) No 2727/75 of 29 October 1975 on the common organization of the market in cereals (Official Journal 1975, L 281, p. 1),

THE COURT,

composed of: Lord Mackenzie Stuart, President, G. Bosco, J. C. Moitinho de Almeida and G. C. Rodríguez Iglesias, Presidents of Chambers, T. Koopmans, U. Everling, Y. Galmot, C. Kakouris and F. Schockweiler, Judges,

Advocate General: C. O. Lenz
Registrar: B. Pastor, Administrator

* Language of the case: Greek

having regard to the Report for the Hearing and further to the hearing on 1 December 1987,

after hearing the opinion of the Advocate General delivered at the sitting on 13 January 1988,

gives the following

Judgment

1 By an application lodged at the Court Registry on 11 September 1986 the Commission of the European Communities brought an action under Article 169 of the EEC Treaty for a declaration that by requiring foreign currency permits for imports of cereals and making such permits subject to the obligation to re-export the products, by revoking permits already granted and by failing to communicate to the Commission the information and rules requested the Hellenic Republic has failed to fulfil its obligations under Articles 5, 30 and 106 (1) of the EEC Treaty and under Council Regulation (EEC) No 2727/75 of 29 October 1975 on the common organization of the market in cereals (Official Journal 1975, L 281, p. 1).

2 It is apparent from the documents before the Court that during February and March of 1984 traders and a Member State informed the Commission of difficulties encountered in the importation of cereals into Greece. Such imports required the grant by the banks of foreign currency permits, which, after the issue of Ministerial Decision No E 6/963 of 21 February 1984, was subject to the approval of the Bank of Greece.

3 On 12 and 15 March 1984 the Commission sent telexes requesting the Hellenic Republic to adopt the measures necessary to remove the barriers described above, but received no reply. On 21 September 1984 the Commission therefore sent the Greek Government a letter of formal notice calling on it to present its observations regarding the allegation that such barriers and the failure to provide the information requested infringed Regulation No 2727/75 and Articles 5, 30 and 106 of the EEC Treaty.

4 On 22 November 1984 the Greek Government replied to that letter, arguing that the measures adopted were necessary in order to prevent clandestine exports of currency which had been observed, and were justified on the basis of Articles 67 and 68 of the EEC Treaty. Such measures did not impede imports since all import applications had been accepted.

5 The Commission consulted the importers and the complainants and then, in a letter of 13 February 1985 from the Director-General for Agriculture, requested the Greek Government to inform it of the text of the regulations in question and to provide a list of the foreign currency applications relating to cereal imports submitted during the first half of 1984. It also requested certain details regarding the course of the procedure (date of the lodging of the application, date of the Bank of Greece's decision, date of importation) and information regarding delays and refusals concerning the granting of foreign currency permits. In reply to those requests, the Greek Government simply communicated the list of import permits granted.

6 The Commission took the view that barriers to cereal imports, whose compatibility with Community law it disputed, continued to exist and on 25 November 1985 it delivered a reasoned opinion in which it stated that the Hellenic Republic had made the foreign currency permit procedure more difficult by providing that in future the Bank of Greece was to give its approval to any permit or certificate concerning the granting of foreign exchange issued by a bank. The Hellenic Republic was invited to adopt the measures necessary to comply with the opinion within a period of two months from its notification.

7 In 1985 the Commission became aware that in certain cases the grant of a foreign currency permit for the importation of wheat was made subject to conditions intended to ensure that the processed product would be re-exported with a greater added value. It also became aware of Ministerial Decision No E 6/2931 of 25 July 1985, which revoked foreign currency permits concerning wheat imports issued before that date but not yet used. The only exceptions concerned imports subject to the condition that the processed product would be re-exported and cases where irrevocable letters of credit had been issued and had not yet expired.

8 The Commission took the view that these measures constituted additional barriers to cereal imports, and by letter of 25 November 1985 it invited the Hellenic Republic to submit its observations regarding the view that such barriers were contrary to Regulation No 2727/75 and Articles 30 and 106 (1) of the EEC Treaty.

9 No reply was received to that letter, and on 15 May 1986 the Commission delivered a second reasoned opinion in which the Hellenic Republic was invited to adopt the necessary measures to comply with the opinion within one month from its notification.

10 The Hellenic Republic did not respond to either of the two reasoned opinions, and the Commission therefore brought this action.

11 Reference is made to the Report for the Hearing for a more thorough account of the facts, the procedure 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.

Admissibility

12 The Greek Government considers that since the barriers to cereal imports were lifted before the action was commenced it is devoid of purpose.

13 At the hearing the Commission acknowledged that the failure to fulfil obligations had been remedied but nevertheless asserted that it had an interest in obtaining a ruling in respect of measures adopted by the Hellenic Republic in the past.

14 As the Court has consistently held (see most recently the judgment of 5 June 1986 in Case 103/84 *Commission* v *Italian Republic* [1986] ECR 1759), the subject-matter of an action brought under Article 169 is established by the Commission's reasoned opinion and even where the default has been remedied after the period

laid down pursuant to the second paragraph of that article has elapsed, an interest still subsists in pursuing the action. That interest may consist in establishing the basis for a liability which a Member State may incur, by reason of its failure to fulfil its obligations, towards those to whom rights accrue as a result of that failure.

15 Since the Hellenic Republic did not comply with the reasoned opinion of 25 November 1985 within the period stipulated by the Commission the action is admissible in so far as it concerns the subject-matter of the dispute as defined by that opinion.

16 On the other hand, since the Hellenic Republic complied with the Commission's demand regarding the barriers which are the subject-matter of the reasoned opinion of 15 May 1986 even before it was delivered, the action is inadmissible in so far as it concerns the subject-matter of the dispute as defined by that later opinion.

17 The subject-matter of the dispute is therefore limited to the questions, first, whether from February 1984 onwards the Hellenic Republic made the import of cereals subject to the two-fold condition that a foreign currency permit be granted by a bank and that the grant of that permit be approved by the Bank of Greece, and whether that procedure is compatible with Articles 30 and 106 of the Treaty, and, secondly, whether the Hellenic Republic failed to fulfil its obligations under Article 5 of the Treaty by failing to communicate to the Commission the information and regulations which it requested.

The compatibility with Articles 30 and 106 of the Treaty of the procedure for the grant of a foreign currency permit

18 What the Commission criticizes in its application is not the foreign currency permit which it maintains is required in the Hellenic Republic for the import of all products but only the additional barrier resulting from the requirement that the Bank of Greece must approve the permits granted by the banks.

19 The Government of the Hellenic Republic argues that the foreign currency permits were never granted according to the two-stage procedure described by the

Commission. The issue of such permits was previously a matter for the commercial banks alone; subsequently, after the adoption of Ministerial Decision No E 6/963/84, only the Bank of Greece had power to grant such permits.

20 In this respect it must be pointed out that the abovementioned Ministerial Decision and Decision No E 6/885 of 16 February 1984 indicate a new procedure for wheat import permits, which were to be issued by the Bank of Greece with the approval of a committee for import questions. It is not apparent either from the wording of those decisions or from other evidence adduced by the Commission that the other banks were to take part in such a procedure.

21 Although that procedure may constitute a barrier to cereal imports whose compatibility with Community law is open to dispute, the Court may not take this aspect into consideration since such a claim is not the subject-matter of the action.

22 This claim by the Commission must therefore be dismissed.

Failure to to cooperate with the Commission

23 The Commission considers that the Greek Government's failure to reply to the two telexes of 12 and 15 March 1984 requesting information on the measures adopted regarding cereal imports and to its letter of 13 February 1985 requesting the text of the applicable provisions and certain information concerning foreign currency permits granted and cereals imported during the first quarter of 1984 constitutes a breach of Article 5 of the EEC Treaty.

24 The Hellenic Republic maintains that it was impossible within a short time to pass on to the Commission all the information concerning trade in cereals which was scattered amongst the 3 000 branches of the competent banks.

25 It must be stressed that the Hellenic Republic has not given any justification for its failure to send the Commission the text of the provisions applicable to cereal imports or, as regards the information requested by the applicant, the reason why the information concerning the period subsequent to the intervention of the Bank of Greece was not communicated. The justification which was given at the hearing, namely that during the first year in which the system was applied the Bank of Greece had not produced any statistics, cannot be accepted since the information requested concerned facts such as the date of the application for a permit, the date of the Bank's decision and the date of importation, which may easily be determined by consulting each file.

26 In any event, even if difficulties encountered by the Greek Government did prevent it from providing the information requested it should have informed the applicant of that fact within a reasonable period. On the contrary, it remained silent until these proceedings were brought.

27 Consequently, the Hellenic Republic's conduct constitutes a failure to fulfil the duty incumbent on every Member State under Article 5 of the Treaty to facilitate the achievement of the Commission's tasks. The Greek Government's refusal to cooperate with the Commission prevented the latter from becoming aware of unpublished regulations which were in force for a long period and from ascertaining whether barriers to the import of cereals resulted from those regulations.

28 It must therefore be held that by deliberately failing to communicate to the Commission the text of the regulations applicable to cereal imports and the information requested by that institution concerning the foreign currency permits granted and cereal imports effected in 1984 the Hellenic Republic has failed to fulfil its obligations under Article 5 of the EEC Treaty.

Costs

29 Under Article 69 (2) of the Rules of Procedure the unsuccessful party is to be ordered to pay the costs if they have been asked for in the successful party's pleadings. Although the applicant has been unsuccessful as regards the subject-

matter of the dispute contained in the reasoned opinion of 15 May 1986, the delivery of that opinion is attributable to the defendant's failure to cooperate and consequently the defendant must be ordered to pay all the costs pursuant to Article 69 (3) of the Rules of Procedure.

On those grounds,

THE COURT

hereby:

(1) Declares that by deliberately failing to communicate to the Commission the text of the regulations applicable to cereal imports and the information requested by that institution concerning the foreign currency permits granted and cereal imports effected in 1984 the Hellenic Republic has failed to fulfil its obligations under Article 5 of the EEC Treaty;

(2) For the rest, dismisses the application;

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

Mackenzie Stuart Bosco Moitinho de Almeida Rodríguez Iglesias

Koopmans Everling Galmot Kakouris Schockweiler

Delivered in open court in Luxembourg on 24 March 1988.

Registrar

J.-G. Giraud

President

A. J. Mackenzie Stuart