OPINION OF MR ADVOCATE GENERAL CRUZ VILAÇA
delivered on 28 April 1988 *

Mr President,
Members of the Court,

1. Having been alerted, by complaints from a number of traders and by reports in the press and on Greek television, to barriers which had been established in Greece to imports and exports of olive oil to and from Member States and non-member countries, the Commission initiated the procedure under Article 169 of the EEC Treaty against that country.

2. Having regard to the replies received from Greece in the pre-litigation phase, the Commission ultimately commenced the present Treaty-infringement proceedings in which it accuses the Hellenic Republic of failing to fulfil its obligations under Articles 30, 34 and 5 of the EEC Treaty and under Regulation No 136/66/EEC of the Council of 22 September 1966 on the establishment of a common organization of the market in oils and fats, [1] in particular Article 3 thereof.

3. The events which gave rise to the action and the pre-litigation phase are described in sufficient detail in the Report for the Hearing, to which I refer in so far as is necessary.

4. The main problem in this case concerns proof of the circumstances which, in the Commission's view, constitute an infringement of Articles 30 and 34 of the Treaty and of Regulation No 136/66/EEC.

5. In fact, the conduct of the Greek authorities throughout this action has not been such as to provide full clarification of the facts. Both in the pre-litigation phase and after commencement of the action, and even after several requests made by the Court, the Government of the Hellenic Republic has been unable to provide either the text of such rules or administrative provisions covering the matters at issue as may exist or any comprehensive explanation regarding the problems referred to in the complaints submitted.

6. For that reason, from the start of the pre-litigation phase, the Commission added infringement by Greece of Article 5 of the Treaty as a further accusation.

7. Accordingly, it is appropriate to begin by defining precisely the accusations made, before going on to analyse the parties' arguments.

8. The Commission makes the following three allegations against the Hellenic Republic:

(a) By prohibiting imports of olive oil from other Member States and from non-member countries, it has infringed Article 30 of the EEC Treaty and Regu-

* Translated from the Portuguese.

1 — OJ, English Special Edition 1966, p. 221.

lation No 136/66/EEC, in particular Article 3 thereof.

(b) By prohibiting exports of olive oil, with the exception of extra and fine quality virgin olive oil in packs not exceeding five litres, it has infringed Article 34 of the Treaty and Regulation No 136/66/EEC, in particular Article 3 thereof.

(c) By failing to provide the Commission with the information requested in that connection, it has failed to fulfil its obligations under Article 5 of the EEC Treaty.

9. It should be noted that the accusations just mentioned, set out in the Commission's application to this Court, coincide with all the accusations made during the pre-litigation phase, in the two letters of formal notice and in the two reasoned opinions addressed by the Commission to the Greek Government. Thus, there is no question of any inadmissibility in that respect which might prevent consideration of the substance of the case.

1. The question of the administrative formalities and the national provisions relating to imports and exports of olive oil

10. The first point to be clarified, regarding the subject-matter of the application, relates to the lack of information as to any provisions or internal instructions on which the contested practices are based.

11. We already know that even in the pre-litigation phase the Commission requested the Greek authorities to provide information concerning the administrative formalities applicable in Greece to the importation of olive oil from other Member States which, according to the complaints made, resulted in the entry of that product into Greek territory being either rendered more difficult or prevented.

12. Despite the Commission's repeated requests, the Greek authorities never provided the information requested, confining themselves to stating — contrary to the assertions of the traders affected — that 'the importation into Greece of olive oil from EEC countries is unrestricted'.

13. With respect to exports, the Greek Government — although admitting that there were restrictions for a certain time — did not send the Commission the text of the applicable provisions and the latter was unable to find out about them in any other way.

14. Consequently, after completion of the written phase of the procedure, the Court asked the Greek Government, in writing, to explain the administrative formalities and produce the national rules applicable to imports and exports of olive oil since 1984.

15. As is explained in the Report for the Hearing, the Government of the Hellenic Republic initially contended that no restrictive measure had been taken since that date, except for restrictions on the exportation of certain grades of olive oil for a certain period, set out in Letter No 95 of

10 January 1985 from the Secretary of State for the Economy to the Bank of Greece.

16. Considering that reply unsatisfactory, the Court reiterated its request on two occasions.

17. The Greek Government initially admitted the existence of an administrative bank practice 'in the framework of the implementation of Regulation No 136/66/EEC', but did not provide copies of the applicable rules.

18. In response to further insistence on the part of the Court, the Greek Government merely explained, in a little more detail, what that bank practice consisted of, but it still did not comply with the Court's request that it produce copies of the applicable rules.

19. At the hearing, the representatives of the Hellenic Republic, when questioned by the Court, insisted that no codified text existed and that the administrative practices in question were 'doubtlessly' laid down in various internal documents of the banks.

20. It is therefore to be concluded that — apart from the letter from the Secretary of State for the Economy mentioned earlier — it was impossible specifically to identify any rules or administrative provisions issued by the competent authorities which served as a basis for the import and export restrictions reported to the Commission.

21. For that reason, the Commission did not, either in its reasoned opinions or in the application, attack any specific provisions which might be declared incompatible with the applicable Community law.

22. It must, however, be borne in mind that the nature of the 'administrative bank practice', as described by the Hellenic Republic in its replies to the Court's questions, inevitably raises the question whether it might be linked with problems of exchange control.

23. In fact, the Greek Government informs us that the procedure adopted involves the submission of an application to the Bank of Greece or to a branch thereof so that the transaction can be examined 'from the point of view of the currency problems which it raises', and so that a check can be made as to due compliance with 'obligations regarding currency' and 'the illegal export of currency' can be avoided.

24. The information provided is, however, clearly insufficient to enable the problem to be analysed from that point of view.

25. For that very reason, the Commission informed the Court at the hearing that for several years it had been trying to establish what provisions were applicable, in order to determine the nature and extent of the exchange controls.

26. Thus, in the absence of conclusive information, it had not included that aspect of the Greek import and export formalities in its action.

27. It must therefore be decided whether or not, on the basis of the other information available, the existence can be proved of restrictions on imports or exports of olive oil into or from Greece as a result of

administrative practices contrary to the Treaty or to secondary law.

28. If it can be proved, no other conclusion can be drawn than that the Hellenic Republic has failed to fulfil its obligations under Community law.

29. The previous decisions of the Court indicate beyond doubt that mere administrative practices, when duly documented, may be regarded as sufficient to justify a declaration, pursuant to Article 169, that a Member State has failed to fulfil its obligations under the Treaty. [2]

2. The import restrictions

30. The Commission accuses the Hellenic Republic of closing its market to exports from other Member States and non-member countries, in breach of the fundamental rules on free movement of goods and those of the common organization of the market in oils and fats.

31. As evidence in support of that allegation, the Commission states (in its reply) that, between the date of the accession of the Hellenic Republic to the European Community (1 January 1981) and the date on which this action was brought (11 November 1986), Greece's only import of olive oil was 2 005 tonnes of refined olive oil from Italy which, moreover, was immediately exported to the Soviet Union.

32. It also cites an article published in the specialist press in which specific reference is made to statements by the Greek Minister for Commerce to the effect that olive oil would not be imported into Greece.

33. Finally, the Commission mentions repeated attempts by traders to import Italian olive oil into Greece, especially in 1984 and 1985. The applications from the undertakings concerned were implicitly rejected, without explanation.

34. In response to the first allegation, the Hellenic Republic took refuge behind the general statement that imports of olive oil into Greece are unrestricted and that the absence of imports (with the exception of the 2 005 tonnes re-exported to the Soviet Union), despite that fact, was attributable to the lack of any need for them, since national production was sufficient to cover domestic demand, and also to the fact, mentioned at the hearing, that prices on the Greek market are lower than those abroad.

35. It must be stated that the virtual absence of imports of olive oil over such a long period is, in itself, liable to raise doubts as to the total propriety of the procedures applied during that period.

36. Such doubts are reinforced by the fact that the Hellenic Republic's defence is, in that respect, largely incompatible with the statement — which it made in order to

2 — See the judgment of 22 March 1983 in Case 42/82 *Commission* v *France* [1983] ECR 1013 *et seq.*, in which the Court condemned various practices, imputable to the French authorities, restricting imports of Italian wine. See also the judgment of 9 May 1985 in Case 21/84 *Commission* v *France* [1985] ECR 1355 *et seq.*, in which there was considered incompatible with Article 30 of the Treaty conduct on the part of the French tax administration which obstructed, delayed and finally withheld, without due explanation, the approval sought by a United Kingdom manufacturer for postal franking machines which it wished to export to France.

justify the prohibition of exports of which it is also accused — that, for part of the period concerned, the Greek market was affected by a slump in production leading to a severe shortage of olive oil. The Greek Government's argument is thus vitiated by its own contradictions.

37. Nevertheless, the existence of a 'doubt' or a 'presumption' of an irregularity underlying the absence of imports is not alone a sufficient basis for concluding that the Community rules have been contravened.

38. A short sentence in a magazine attributing a particular statement to a Greek Minister is likewise not conclusive.

39. But in my view a different conclusion may be drawn from the third fact (or set of facts) relied upon by the Commission in support of its allegation: the existence of specific cases in which, without any explanation, authorization for imports of olive oil from other Member States was not given.

40. At the request of the Court, the Commission produced the documents showing that numerous fruitless attempts had been made in 1984 and 1985 by a trader (the Italian company Alivar) to arrange for various consignments of olive oil to be imported into Greece, in respect of which the Greek authorities gave no explanations to the applicants for its withholding authorization. According to the documents before the Court, the olive oil in question was not released from the customs warehouses.

41. The original reason for these proceedings related to the requirement that an application had to be submitted to a banking establishment which, as the Hellenic Republic itself conceded, 'is designed not only to enable the person concerned to proceed with the import transactions . . . but also to prevent the illegal export of currency'. The actual documents relating to Alivar's complaints expressly mention submission of the application to a bank, a step to be followed by an ill-defined bureaucratic procedure. In no case was any reply to the application received.

42. Those cases of difficulties encountered in import operations were not denied by the Greek Government; the latter merely stated that it considered them exceptional, and its Agents could only say, at the hearing, that the relevant departments had told them that the complaints made to the Commission were without foundation but that they had no evidence to support that assertion. In any event, they admitted that those complaints might have been made as a reaction to the 'inflexibility of the Greek administrative machine'.

43. It might be said that that practice lacks the degree of consistency and generality required by the Court for an administrative practice to be regarded as a measure prohibited by Article 30 (judgment of 9 May 1985 in Case 21/84 *Commission* v *France* [1985] ECR 1355, paragraph 13). But that is only apparently the case.

44. In fact, since only 2 005 tonnes were imported between January 1981 and November 1986 (which, what is more, did not even reach Greek customs territory, having been immediately re-exported to the Soviet Union), one of the following hypotheses must apply:

either Alivar was the only company to apply to import olive oil during that period, which means that (with the exception of the special case of the 2 005 tonnes) all the import transactions applied for were prohibited; or

there were other import applications and all of them were rejected, which means that the other complaints reported by the Commission were well founded.

45. In those circumstances, the proven cases of the obstruction of imports constitute, in my opinion, sufficient grounds for a finding against Greece.

46. Thus, although it is not proved that barriers were placed in the way of imports of olive oil from non-member countries (for which reason the application should be dismissed on that point), the information before the Court shows that the Hellenic Republic, by preventing imports into Greece of olive oil from other Member States, infringed Article 30 of the Treaty and Article 3 of Regulation No 136/66/EEC.

3. The export restrictions

47. In February 1985, the Commission, alerted by the complaints made and information which came to its notice, sent a telex message to the Greek Minister for Agriculture requesting explanations concerning the possible existence of restrictions on bulk exports of extra and fine quality olive oil to other Member States and non-member countries.

48. By letter of 14 February, the Greek Minister informed the Commission that the prolonged drought in the previous year and a late attack of olive-oil fly had given rise to an acute shortage of extra and fine quality olive oil on the Greek market, provoking an excessive increase in prices and disturbing the market to the point where there was evidence of speculative operations. In those circumstances the Greek Government had decided temporarily to prohibit the export of those two qualities of olive oil.

49. It was against that background that the Commission attacked the restrictions placed by the Hellenic Republic in the way of exports of olive oil in its first letter calling for observations and in its first reasoned opinion, dated 21 October 1985.

50. Subsequently, it came to the Commission's notice, as a result of fresh complaints from traders, that the Hellenic Republic not only continued to prohibit exports of extra and fine quality olive oil but had also extended the prohibition to all types of edible olive oil and lampante grade olive oil for industrial use. Only exports of extra and fine quality olive oil in containers not exceeding five litres were allowed.

51. Therefore, on 10 April and 26 June 1986 the Commission sent a further letter calling for observations and a further reasoned opinion, extending its complaints to all the abovementioned grades of olive oil.

52. It was also in those broad terms that, with respect to exports, the Commission defined the subject matter of the present Treaty-infringement proceedings in its application.

53. For the purposes of analysis, it is appropriate to distinguish the two limbs of that complaint, as formulated subsequently.

54. (a) In the first place, it must be borne in mind that the Greek Government admitted that it had temporarily prohibited exports of olive oil of extra and fine quality. The prohibition, initially for four months as from 10 January 1985, was subsequently expressly extended until 10 June of the same year. On 11 July the first export transaction took place, 10 000 tonnes of olive oil being sent to the Soviet Union.

55. The reason given for that measure was, as we know, the acute shortage of olive oil of the grades in question; the Greek Government also defended itself by accusing the Commission of not acting on the request made by the Minister for Agriculture in his letter of 14 February 1985 that the relevant departments of the Commission, in conjunction with the Greek Ministry of Agriculture, should consider the possibility of finding a solution to that exceptional problem.

56. It must be stated that the Greek Government's defence is without foundation.

57. In fact, in order to 'mitigate the effects of harvest fluctuations on the balance between supply and demand and in this way to stabilize consumer prices', Article 13 of Regulation No 136/66/EEC provides for machinery whereby 'the Council, acting in accordance with the voting procedure laid down in Article 43 (2) of the Treaty on a proposal from the Commission, may require intervention agencies to form a buffer stock of olive oil' and may lay down 'the conditions governing the formation, management and disposal of the buffer stock'.

58. No power is given to the national authorities to decide unilaterally — as the Greek Government did — to impose restrictions on exports on the grounds referred to.

59. It is not possible for the Greek Government to justify, by means of the request contained in the letter of 14 February 1985, the unilateral measures restricting exports which it had put into operation with effect from 10 January of that year.

60. At the hearing, the Commission's representative also maintained that application of the measure referred to in Article 12 of the Regulation was not justifiable in view of the existence of surpluses of olive oil in the possession of intervention agencies in other Member States.

61. In any event, the Hellenic Republic is not entitled to adopt, in place of the Council, restrictive or stabilizing measures which only the Council has the authority to adopt.

62. Accordingly, it only remains for me to state that the Hellenic Republic, by prohibiting exports of extra and fine quality olive oil between 10 January and 10 June 1985, has failed to fulfil its obligations under Article 34 of the EEC Treaty and under Regulation No 136/66/EEC, in particular Article 3 thereof.

63. (b) The Commission maintains, however, that, even after the period mentioned in the foregoing paragraph, the Hellenic Republic continued to prohibit exports of olive oil, extending the prohibition to all qualities of the product, with the exception of edible olive oil in packs not exceeding five litres and olive-residue oil in any form.

64. The Commission bases its accusation, in the first place, on a comparison of the statistics provided by Eurostat concerning quantities exported in containers of less than five litres and those relating to exports as a whole.

65. It also asserts that the fact that, during the 1985-86 season, 65 000 tonnes of olive oil in bulk were exported proves that a quota was imposed and that there was State intervention in the olive oil market, particularly since, with the exception of 10 000 tonnes (exported by private traders), all those quantities were exported through the Central Cooperative Association of Olive Oil Producers and, to a large extent, in fulfilment of contracts between States.

66. In the Commission's view, that confirms a number of articles which appeared in a specialized magazine, and the observations of a group of Commission officials who visited Greece in September 1985.

67. In the alternative, the Commission relied upon and produced a list of 12 complaints made between 9 January 1985 and 18 November 1986 by Greek and Italian traders who had tried in vain to export edible olive oil in bulk from the Hellenic Republic.

68. In my opinion, the evidence produced in these proceedings by the Commission does not, unfortunately, enable firm conclusions to be drawn concerning the problem under discussion.

69. The Eurostat statistics, besides not being wholly conclusive when compared with other data relating to the other Member States, say nothing about the causes of the relatively low figures for exports from Greece.

70. The Greek Government has also given its own view of those causes, linking them with the eating habits of the Greek people, who have the highest per capita consumption of olive oil in the Community (20 kg), absorbing nearly all domestic production.

71. As regards the fact that 85% of the exports of olive oil in bulk passed through the Elaiourgiki (cooperative association), the Greek Government explains that it is the largest olive oil producing cooperative and has large stocks which it was able to export without difficulty.

72. Furthermore, the press articles mentioned can be regarded only as serving to sound an alert, not as conclusive evidence; likewise, the reference to the information obtained by the group of Commission officials is not backed by any

evidence to support the impressions obtained, not even a summary report.

73. Finally, the complaints made by the traders are similarly not supported by the necessary firm documentary evidence to show whether or not they are well founded.

74. The foregoing findings reflect the difficulties encountered by the Commission in investigating and proving the infringement of which indications had come to its notice.

75. The fact is that those difficulties were largely caused by a lack of cooperation on the part of the Greek authorities, as we shall see in due course.

76. It is also true that the circumstances surrounding the present application seem to indicate that something is amiss as regards the Hellenic Republic's understanding of the requirements of Community law and compliance therewith.

77. Furthermore, the representatives of the Greek Government admitted that exporters may be entitled to complain about problems connected with the bureaucracy of the Greek administration.

78. But even that admission cannot be relied upon for a declaration of infringement based on mere indicia, supported by evidence whose reliability has yet to be proved. It does not seem to me therefore that, in the present case, there are sufficient grounds for reversing the burden of proof.

79. Hence, as far as the alleged restrictions on exports after 10 June 1985 are concerned, I am of the opinion that the action should be dismissed.

4. Breach of the duty of cooperation laid down in Article 5 of the EEC Treaty

80. The Commission considers that the Greek Government, by refusing or failing to provide the Commission with the information requested, and by excessively delaying the transmission of such information, has failed to fulfil its obligations under Article 5 of the EEC Treaty.

81. In fact — as is already apparent from what I have said so far — the conduct of the Hellenic Republic appears deserving of criticism. It should be borne in mind that on 13 August 1984 the Commission sent to Greece a telex message requesting information on the restrictions on imports of olive oil and, in particular, on the two specific cases of refusal to allow imports, together with details of the administrative formalities on the basis of which the restrictions had been introduced; in the absence of any reply, the request was repeated on 4 October and 28 November 1984.

82. Not until eight months after the first telex message — on 4 April 1985 — did the Greek authorities reply, merely stating that the importation of olive oil into Greece from EEC countries was unrestricted.

83. The lack of a spirit of cooperation on the part of the Greek authorities was again evident when it was asked, repeatedly, by the Court of Justice to explain the adminis-

trative formalities and to provide copies of the national provisions on the importation and exportation of olive oil.

84. Not only did the Greek Government never provide copies of those provisions — it also failed to clarify the origin of the obligations imposed on importers and exporters under the 'administrative bank practice' and the manner in which the persons concerned were made aware of them.

85. The same lack of cooperation was manifest with respect to exports: thus, no explanation was provided regarding the complaints lodged after the period during which the Greek Government acknowledged having prohibited exports, and no copy of any internal regulation or administrative provision was produced to the Commission or the Court with respect to the period mentioned in the second reasoned opinion.

86. Furthermore, the Greek Government's reference to the division of powers between the various departments of State cannot be regarded as sufficient grounds to exonerate it.

87. I therefore propose that, as it did in the judgment of 24 March 1988 in Case 240/86,[3] the Court should declare the conduct of the Hellenic Republic to be in breach of the duty of cooperation laid down in Article 5 of the EEC Treaty, by virtue of which the Member States must facilitate the achievement of the Community's tasks and take all appropriate measures to ensure fulfilment of the obligations arising out of the Treaty or resulting from action taken by the institutions.

5. Conclusion

88. I propose that the Court should declare that the Hellenic Republic has failed to fulfil its obligations under Articles 30, 34 and 5 of the EEC Treaty and under Regulation No 136/66/EEC on the establishment of a common organization of the market in oils and fats, in particular Article 3 thereof, in so far as:

(a) it prevented imports of olive oil from another Member State by requiring, by way of administrative bank practice, the submission of an application which, without giving any explanation, it failed to grant;

(b) it prohibited exports of extra and fine quality olive oil, at least between 10 January and 10 June 1985;

3 — *Commission* v *Hellenic Republic* [1988] ECR 1835.

(c) by omitting to provide full information regarding the alleged facts or to provide copies of the applicable national provisions, it failed in its duty of cooperation with the institutions which is incumbent upon the Member States with a view to the attainment of the objectives of the Treaty.

89. For the rest, the action should be dismissed.

90. Although the applicant has not succeeded in all its submissions, that is due in large measure to a lack of cooperation on the part of the Hellenic Republic, and I therefore propose that the Court should, pursuant to Article 69 (3) of the Rules of Procedure, order the defendant to pay the costs in their entirety.