Case 57/86 R

Hellenic Republic
v
Commission of the European Communities

Summary

Application for interim measures — Suspension of operation — Conditions for granting (Rules of Procedure, Art. 83 (2))

ORDER OF THE PRESIDENT OF THE COURT
30 April 1986 *

In Case 57/86 R

Hellenic Republic, represented by Stelios E. Perrakis, Legal Adviser in the European Communities Department of the Ministry of Foreign Affairs, and Vassilis Zorbas, Advocate, Legal Adviser to the Ministry for Economic Affairs, with an address for service in Luxembourg at the residence of the Greek Ambassador, Mr Giannopoulos, 117 Val-Ste-Croix,

applicant,

v

Commission of the European Communities, represented by Theofanis Christoforou, a member of its Legal Department, and Thomas Cusack, one of its Legal Advisers, 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,

* Language of the Case: Greek.

APPLICATION, under Articles 185 and 186 of the EEC Treaty, for the suspension of the operation of the Commission's decision of 13 November 1985 (C (85) 2087 final) relating to aid granted by Greece in the form of an interest rebate in respect of the exportation of all products except petroleum products,

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 26 February 1986, the Hellenic Republic brought an action under Article 173 of the EEC Treaty for a declaration that Commission Decision No C (85) 2087 of 13 November 1985 relating to aid granted by Greece in the form of an interest rebate in respect of the exportation of all products except petroleum products was void.

2 By a document lodged at the Court Registry on 13 March 1986, the applicant applied, under Article 83 of the Rules of Procedure, for suspension of the operation of the aforesaid Commission Decision No C (85) 2087.

3 The Commission submitted observations on 25 March 1986. The parties presented oral argument on 22 April 1986.

4 It is appropriate to give a brief description of the Commission decision in question. It appears from information furnished to the Commission by the Greek Government that, as a result of a general reform of the credit system set up in April 1983, the following rates were laid down for interest on loans: 21.5% for industrial undertakings, 18.5% for undertakings exporting processed agricultural

products and 14% for craft undertakings. However, an interest rebate is granted to exporters at the rate of 6%, or 3% in the case of a loan bearing interest at 14%, provided that the sums obtained by exporters at the time of sale are rapidly repatriated and converted into drachmas. The interest rebate is applicable to the exportation of all products except petroleum products.

5 During the procedure prior to the adoption of the Commission decision and in the interlocutory proceedings, the Greek Government maintained that the measure in question was purely monetary, in so far as it was intended to encourage Greek exporters to repatriate rapidly the foreign currency which they obtained. The Greek Government also pointed out that, by comparison with the system in force prior to April 1983, under which the interest rate payable by exporters was 10.5%, the general interest rate had doubled, and that the interest rebate was therefore necessary in order not to put Greek exports at a disadvantage.

6 It is observed in the Commission decision that the Greek authorities did not notify the measures to the Commission and implemented them without a Commission decision having been adopted, contrary to Article 93 of the Treaty. According to the decision, the system constitutes a State aid likely to distort competition by favouring Greek exporting undertakings and it is not appropriate to grant a derogation pursuant to Article 92 (3) of the Treaty. The Commission concludes by stating that the decision 'is without prejudice to any action that the Commission may take with regard to recovery of the aforesaid aid from the recipients and to the financing of the Common Agricultural Policy by the European Agricultural Guidance and Guarantee Fund'.

7 The decision orders Greece to inform the Commission, within one month of the notification of the decision, of the measures which it has taken to comply therewith.

8 In its application for interim measures, the Hellenic Republic claims that the Commission has failed to understand the mechanism and the aims of the new system, which is intended to encourage exporters to repatriate foreign currency. The impact of the new system is neutral by comparison with the previous system. The Hellenic Republic maintains that the interest rebate is not financed out of State resources: it is financed by the interest on capital resources invested by the lending banks.

9 As regards the urgency of the need to suspend the operation of the decision, the Hellenic Republic claims that the equilibrium of the banking system is seriously endangered. In particular, it contends that it would be impossible immediately to replace the existing credit system by another adequate system, and that it would be obliged to re-introduce the previous credit system. If that were done, exporters would deliberately delay the repatriation of foreign exchange since they would be receiving loans at reduced rates of interest. The banks would choose to utilize their capital for business other than export transactions, the country's balance of trade would be adversely affected and the interests of the banks would be impaired. If the exporting undertakings were obliged to pay the maximum interest rate on loans received in the past they would be unable subsequently to repay the sums paid by way of interest rebate.

10 Article 83 (2) of the Rules of Procedure provides that applications for interim measures of the kind requested must state the circumstances giving rise to urgency and the factual and legal grounds establishing a *prima facie* case for the interim measures applied for.

11 The Hellenic Republic has put forward no argument establishing a *prima facie* case for suspending the operation of the Commission decision. It became clear at the hearing that the interest rebates accorded to their exporting customers by the commercial banks which granted the loans did not come from those banks' own resources, but that the banks were reimbursed by the Bank of Greece, the central bank of the Hellenic Republic. It appears difficult to conclude, at this stage, that those funds do not come from State resources. What is more, the Hellenic Republic has failed to adduce any conclusive arguments to support its view that the interest rebate must be regarded as being exclusively a matter of monetary policy. In Joined Cases 6 and 11/69 *Commission* v *French Republic* [1969] ECR 523 at pp. 539 to 540, the Court did not accept the argument of the Government of the French Republic to the effect that a preferential discount rate for exports fell within monetary policy, which was a matter in which the Member States alone were competent. The Court considered that a preferential discount rate granted solely in respect of exports constituted a State aid within the meaning of Article 92 of the EEC Treaty. The Hellenic Republic has not put forward any argument establishing that the principle embodied in that judgment should not apply in this case.

12 The Greek Government has also failed to put forward any cogent arguments with regard to urgency. Although it is true that the aim of the interest rebate is to

encourage exporters to repatriate foreign currency and convert it into drachmas, that aim can easily be achieved by other administrative means which do not infringe Article 92 of the Treaty. The damage which Greek exporters will suffer until the Court has delivered its judgment in the main proceedings as a result of their no longer receiving a lower interest rate than the market rates must be balanced against the interests of the industries of other Member States in not having to face competition from Greek importers which has been distorted by that very advantage. Since, at this stage, the Commission has not asked the exporters to repay the aid which they have already received, the difficulties that such repayment could occasion them are not material in these proceedings.

On those grounds,

THE PRESIDENT,

by way of interim decision,

hereby orders:

(1) The application is dismissed.

(2) The costs are reserved.

Luxembourg, 30 April 1986.

P. Heim
Registrar

A. J. Mackenzie Stuart
President