JUDGMENT OF THE COURT (First Chamber)

31 March 2011 *

In Case C-407/09,

ACTION under Article 228 EC for failure to fulfil obligations, brought on 22 October 2009,

European Commission, represented by M. Condou-Durande and A.-M. Rouchaud-Joët, acting as Agents, with an address for service in Luxembourg,

applicant,

v

Hellenic Republic, represented by K. Samoni-Rantou and N. Dafniou, acting as Agents, with an address for service in Luxembourg,

defendant,

* Language of the case: Greek.

THE COURT (First Chamber),

composed of A. Tizzano, President of the Chamber, J.-J. Kasel (Rapporteur), M. Ilešič, M. Safjan and M. Berger, Judges,

Advocate General: J. Mazák,
Registrar: L. Hewlett, Principal Administrator,

having regard to the written procedure and further to the hearing on 16 September 2010,

after hearing the Opinion of the Advocate General at the sitting on 16 December 2010,

gives the following

Judgment

1 By its application, the Commission of the European Communities asks the Court to:

— declare that, by having failed to take the necessary measures to comply with the judgment of 18 July 2007 in Case C-26/07 *Commission* v *Greece*, in which the Court held that, by failing to adopt, within the period prescribed, the laws, regulations and administrative provisions necessary to comply with Council Directive 2004/80/EC of 29 April 2004 relating to compensation to crime victims (OJ 2004 L 261, p. 15) ('the Directive'), the Hellenic Republic had failed to fulfil its obligations under the Directive, that Member State has failed to fulfil its obligations under Article 228(1) of the EC Treaty;

— order the Hellenic Republic to pay to the Commission, into the account 'European Community own resources', a proposed penalty payment in the sum of EUR 72 532,80 for each day of delay in taking the measures necessary to comply with the judgment in Case C-26/07, from delivery of the judgment in the present case until the day on which the judgment in Case C-26/07 has been complied with;

— order the Hellenic Republic to pay to the Commission, into the same account, the lump sum obtained by multiplying the amount of EUR 10 512 by the number of days of delay from the day on which judgment was delivered in Case C-26/07

until the date on which judgment is delivered in the present case, or the date on which the measures necessary to comply with the judgment in Case C-26/07 have been taken if that has occurred earlier, and

— order the Hellenic Republic to pay the costs.

The judgment in Case C-26/07

2 On 25 January 2007, the Commission brought an action for failure to fulfil obligations against the Hellenic Republic, pursuant to Article 226 EC, in view of the fact that the Directive, for which the time-limit for transposition was initially prescribed as being 1 July 2005, had not been transposed into national law by the Hellenic Republic.

3 In paragraph 1 of the operative part of the judgment in Case C-26/07, the Court of Justice held as follows:

'By failing to adopt, within the period prescribed, the laws, regulations and administrative provisions necessary to comply with [the Directive], the Hellenic Republic has failed to fulfil its obligations under that directive.'

The pre-litigation procedure

4 On 29 February 2008, the Commission sent a letter of formal notice to the Hellenic Republic asking it to inform the Commission of the measures it had taken to comply with the judgment in Case C-26/07.

5 In its response of 10 September 2008, that Member State indicated that a draft law intended to put an end to the infringement found was in the final stage of being drawn up.

6 Establishing that the Hellenic Republic still had not complied with the judgment in Case C-26/07, the Commission sent a reasoned opinion to that Member State on 23 September 2008 in which it called upon it to take the necessary measures to comply with that judgment within two months from the date of receipt of the reasoned opinion. In the reasoned opinion, the Commission also drew the Hellenic Republic's attention to the financial penalties that the Court of Justice can impose, under Article 228(2) EC, on a Member State that fails to comply with a judgment of the Court of Justice of the European Union establishing an infringement.

7 On 10 September 2009, following the exchange of several letters, the Hellenic Republic informed the Commission that, because of early parliamentary elections, the Greek Parliament had to suspend on 7 September 2009 the process of adopting the law intended to transpose the Directive into national law. In Greece, the holding of parliamentary elections means that all draft laws that are in the process of adoption must be returned to the administration with a view to reopening the legislative

procedure following the election of the members of the new Parliament, regardless of the stage reached in the adoption of those draft laws.

8 In those circumstances, the Commission decided to bring the present action.

Developments in the course of the present proceedings

9 On 18 December 2009, Law No 3811/2009 (FEK A' 231/18.12.2009) was published in the Official Gazette of the Hellenic Republic. In the view of the defendant Member State, that law ensures complete compliance with the judgment in Case C-26/07.

10 After examining the content of that law, the Commission, in its reply, considered that the Hellenic Republic had brought its legislation into line with the judgment in Case C-26/07.

11 Consequently, the Commission is no longer seeking the imposition of a penalty payment. However, it has maintained its claim regarding payment of a lump sum.

The infringement

Arguments of the parties

12 As regards the alleged infringement, the Commission points out that, under Article 228(1) EC, where the Court finds that a Member State has failed to fulfil an obligation under the EC Treaty, that Member State is to be required to take the necessary measures to comply with the judgment of the Court. With regard to the period within which a judgment must be complied with, the Commission states that it is clear from the case-law of the Court that the importance of immediate and uniform application of European Union law means that the process of compliance must be initiated at once and completed as soon as possible.

13 Since, in the present case, it is not disputed that, upon expiry of the deadline of 23 September 2008 laid down in the reasoned opinion, the Hellenic Republic had not yet adopted the legislative measures necessary to comply with the judgment in Case C-26/07, the alleged infringement is clearly established.

14 The Hellenic Republic does not dispute that it had not adopted the measures in question within the time-limit set out in the reasoned opinion. By way of justification, it argues that it had to deal with unforeseeable circumstances connected, inter alia, with finding the financial resources to pay the compensation provided for by the system established by the Directive and with the calling of early elections. As a result, the draft law, for which the procedure for approval by the Greek Parliament was already

well advanced, had to be returned to the competent administrative departments, to undergo the same procedure once again before the newly elected Parliament.

15 The Hellenic Republic considers that, since the Commission was duly informed both of the progress in the procedure for adoption of the draft law in question and of the organisation of early parliamentary elections, that institution infringed its duty to cooperate in good faith by bringing this action shortly before the adoption of the law bringing an end to the infringement. In those circumstances, the action should be dismissed.

Findings of the Court

16 According to the settled case-law of the Court, the question whether a Member State has failed to fulfil its obligations must be determined by reference to the situation prevailing in the Member State at the end of the period laid down in the reasoned opinion, and the Court cannot take account of any subsequent changes, even if they would constitute a correct transposition of the rule of European Union law that is the subject of the action for failure to fulfil obligations (see, inter alia, Case C-475/08 *Commission* v *Belgium* [2009] ECR I-11503, paragraph 30, and judgment of 9 December 2010 in Case C-340/09 *Commission* v *Spain*, paragraph 39).

17 As the Hellenic Republic has acknowledged, the legislative measures necessary to comply with the judgment in Case C-26/07 were not laid down until the adoption of Law No 3811/2009, published on 18 December 2009, and therefore well after the time-limit of two months prescribed in this regard in the reasoned opinion of 23 September 2008.

18 In those circumstances, it must be held that, by failing to take the measures necessary to comply with the judgment in Case C-26/07 by the date of expiry of the period prescribed in the reasoned opinion that was issued by the Commission on 23 September 2008 pursuant to Article 228 EC, the Hellenic Republic failed to fulfil its obligations under Article 228(1) EC.

The financial penalty

Arguments of the parties

19 The Commission claims that, having regard to the duration and seriousness of the infringement alleged against the Hellenic Republic, an order requiring the latter to pay a lump sum is justified.

20 First, a considerable period of time, that is, 29 months, elapsed between the delivery of the judgment in Case C-26/07 on 18 July 2007 and the adoption of the national measures necessary to comply with it, on 18 December 2009. Secondly, the alleged infringement was particularly serious as it concerned the failure to transpose a directive that, due to the purpose and nature of its provisions, has cross-border implications, covering both persons residing in Greece and the citizens of other Member States who are victims of criminal acts while exercising their right to free movement in Greece.

21 The Commission adds that, in the present case, there are aggravating circumstances that should also be taken into account when determining the amount of the lump sum payment.

22 Thus, first, both the provisions of the Directive and the operative part of the judgment in Case C-26/07 are very clear and do not present any difficulty of interpretation. Secondly, there is no particular problem connected with the procedure of transposing the Directive into national law. Finally, the Hellenic Republic reacted to the reasoned opinion after a delay of seven months.

23 At the hearing, the Commission proposed to reduce the amount of the daily lump sum, which it had initially set at EUR 10 512, to EUR 10 248. This amount is stated to be obtained, in accordance with Commission Communication SEC(2005) 1658 of 13 December 2005 concerning the application of Article 228 EC, by multiplying the standard flat-rate amount of EUR 200 by a coefficient for seriousness of 12 and the 'n' factor which, in the case of the Hellenic Republic, is now 4.27 and no longer 4.38. It is appropriate moreover, according to the Commission, to apply this daily lump sum over the whole period of non-compliance referred to in paragraph 20 of the present judgment.

24 The Hellenic Republic argues that, in the present case, it should not be ordered to pay any lump sum. In support of its claims, it points out, first, that it complied with the judgment in Case C-26/07 establishing the infringement before delivery of the judgment by the Court under Article 228(2) EC and, in any event, within a reasonable period considering the economic difficulties that it has experienced recently and is still facing. Furthermore, the Hellenic Republic claims that, in the present case, there is no risk of repeated infringement. Finally, it adds that the infringement alleged cannot be considered particularly serious since the consequences of the non-compliance with the judgment in Case C-26/07 for public and private interests were only indirect and were not real and actual in nature.

25 In the alternative, should the Court nevertheless hold the action to be well founded and order the Hellenic Republic to pay a lump sum, the latter points out that it is for the Court to determine that sum in such a way that it is proportionate, inter alia, 'to the ability to pay' of that Member State as it currently stands.

26 In this regard, it argues that the factor of 4.27 used by the Commission to express the payment capacity of the Hellenic Republic, which was determined on the basis of the economic data relating to the year 2008, does not correspond to the current economic reality as the gross domestic product of Greece decreased significantly again in the course of 2009 and 2010. Furthermore, a Member State's ability to pay cannot be correctly assessed without taking into consideration, inter alia, the public deficit and the public debt of that State or the rate of inflation recorded there.

27 Having regard to these considerations, the Hellenic Republic considers that the lump sum payment should be reduced to the minimum amount provided for by the Commission in its Communication SEC(2005) 1658, that is, EUR 2 190 000. Furthermore, at the hearing the Hellenic Republic requested permission to pay in instalments, and without interest, any lump sum imposed on it by the judgment to be delivered in the present case.

Findings of the Court

28 The Court has already held that, while the imposition of a penalty payment seems particularly suitable for the purpose of inducing a Member State to put an end as soon as possible to a breach of obligations which, in the absence of such a measure, would be liable to persist, the imposition of a lump sum is prompted, essentially, by the assessment of the consequences for public and private interests of the failure of the Member State concerned to comply with its obligations, in particular where the breach has persisted for a long period after the judgment initially establishing it was

delivered (see, inter alia, Case C-121/07 *Commission* v *France* [2008] ECR I-9159, paragraph 58).

29 It is for the Court, in each case, in the light of the circumstances of the case before it and the degree of persuasion and deterrence which appears to it to be required, to determine the financial penalties appropriate for making sure that the judgment which previously established the breach is complied with as swiftly as possible and preventing similar infringements of European Union law from recurring (see *Commission* v *France*, paragraph 59).

30 As to whether a lump sum payment should be imposed, it should also be pointed out that this must, in each individual case, depend on all the relevant factors pertaining to both the particular nature of the infringement established and the individual conduct of the Member State involved in the procedure instigated pursuant to Article 228 EC (see, inter alia, *Commission* v *France*, paragraph 62).

31 In any event, if the Court decides to impose a lump sum payment, it must, in exercising its discretion, do so in a manner that is, first, appropriate to the circumstances and, secondly, proportionate both to the breach that has been established and the ability to pay of the Member State concerned (Case C-568/07 *Commission* v *Greece* [2009] ECR I-4505, paragraph 47).

32 Consequently, for the purpose of ruling on the request that the Hellenic Republic be ordered to pay a lump sum, account must be taken of all the circumstances of the infringement with which it has been charged and, in particular, of its conduct and the duration and seriousness of the infringement.

33 Thus, with regard, first, to the conduct of that Member State, it should be pointed out that the Greek authorities responded with substantial delays both to the letter of formal notice and to the reasoned opinion. Furthermore, as is apparent from the letter from the Hellenic Republic of 22 June 2009, it is common ground that, on that date, the draft law necessary to comply with the judgment in Case C-26/07 had not yet been submitted to the Greek Parliament for adoption, whereas the action required to eliminate completely the infringement established by that judgment did not involve any particular difficulty.

34 With regard, secondly, to the duration of the infringement with which this action is concerned, it should be recalled that, although Article 228 EC does not specify the period within which a judgment must be complied with, it is, nevertheless, beyond dispute that the action required to give effect to a judgment must be set in motion immediately and be completed as soon as possible (see, inter alia, Case C-568/07 *Commission* v *Greece*, paragraph 51).

35 In the present dispute, 29 months elapsed from the delivery of the judgment in Case C-26/07, on 18 July 2007, until the publication, on 18 December 2009, of Law No 3811/2009 which brought the national legislation into line with the operative part of that judgment.

36 The justifications put forward by the Hellenic Republic in this regard, namely that the delay in complying with that judgment was attributable to internal difficulties connected with the legislative procedure and the holding of early elections, cannot be accepted. As the Court has repeatedly held, a Member State cannot plead provisions, practices or situations prevailing in its domestic legal order to justify failure to observe obligations arising under European Union law (see, inter alia, Case C-568/07 *Commission* v *Greece*, paragraph 50).

37 Clearly, therefore, the infringement alleged against the Hellenic Republic persisted for a significant period of time.

38 As regards, thirdly, the seriousness of the infringement, it should be noted that the infringement alleged adversely affected the realisation of a fundamental freedom, in this case the free movement of persons in a single area of freedom, security and justice.

39 Indeed, as the Advocate General has observed in point 43 of his Opinion by referring to recital 2 in the preamble to the Directive, the European Union legislature considers that the protection from harm of a national of the European Union going from one Member State to another is the corollary of the right to free movement of persons and that the measures set out in the Directive to facilitate compensation to victims of crimes contribute to the realisation of that freedom.

40 Having regard to the foregoing, the Court considers that, in the present case, it is justifiable to order the Hellenic Republic to pay a lump sum.

41 As regards the amount of that lump sum payment, it is appropriate, first, to point out that, notwithstanding the considerations referred to in paragraphs 33 to 39 of this judgment, the Hellenic Republic brought an end to the infringement in question.

42 Secondly, it is appropriate to take into account that Member State's ability to pay as it stands in the light of the latest economic data submitted for appraisal by the Court.

43 In view of all the foregoing considerations, the circumstances of the case are fairly assessed by setting the amount of the lump sum which the Hellenic Republic will have to pay, under the third subparagraph of Article 228(2) EC, at EUR 3 million.

44 The Hellenic Republic must, therefore, be ordered to pay to the Commission, into the account 'European Union own resources', a lump sum of EUR 3 million.

Costs

45 Under Article 69(2) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings. Since the Commission applied for costs and the Hellenic Republic has been unsuccessful, the latter must be ordered to pay the costs.

On those grounds, the Court (First Chamber) hereby:

1. **Declares that, by failing to take the measures necessary to comply with the judgment of 18 July 2007 in Case C-26/07 *Commission* v *Greece* by the date of expiry of the period prescribed in the reasoned opinion that was issued by the Commission of the European Communities on 23 September 2008 pursuant to Article 228 EC, the Hellenic Republic failed to fulfil its obligations under Article 228(1) EC;**

2. Orders the Hellenic Republic to pay to the European Commission, into the account 'European Union own resources', a lump sum of EUR 3 million;

3. Orders the Hellenic Republic to pay the costs.

[Signatures]