

JUDGMENT OF THE COURT

21 September 1989 *

In Case 68/88

Commission of the European Communities, represented by J. Forman and D. Gouloussis, Legal Advisers, and X. A. Yataganas, a member of its Legal Department, with an address for service in Luxembourg at the office of Georgios Kremlis, a member of its Legal Department, Wagner Centre, Kirchberg,

applicant,

v

Hellenic Republic

defendant,

APPLICATION for a declaration that, by failing to establish and pay to the Community own resources fraudulently withheld from the Community budget when certain consignments of Yugoslav maize were declared to be of Greek origin on their exportation to another Member State and by refusing to take certain other appropriate measures, the Hellenic Republic has failed to fulfil its obligations under Community law,

THE COURT

composed of: O. Due, President, T. Koopmans, R. Joliet and F. Grévisse (Presidents of Chambers), Sir Gordon Slynn, C. N. Kakouris, J. C. Moitinho de Almeida, G. C. Rodríguez Iglesias and M. Diez de Velasco, Judges,

Advocate General: G. Tesaurò
Registrar: B. Pastor, Administrator

* Language of the case: Greek.

having regard to the Report for the Hearing and further to the hearing on 16 May 1989,

after hearing the Opinion of the Advocate General delivered at the sitting on 30 June 1989,

gives the following

Judgment

- 1 By an application lodged at the Court Registry on 7 March 1988, the Commission of the European Communities brought an action under Article 169 of the EEC Treaty for a declaration that, by failing to establish and pay to the Community own resources fraudulently withheld from the Community budget when certain consignments of maize imported from Yugoslavia into Greece without a levy being collected were declared to be of Greek origin on their exportation to another Member State and by refusing to take certain other appropriate measures, the Hellenic Republic has failed to fulfil its obligations under Community law.
- 2 At the end of 1986, after carrying out a detailed investigation prompted by certain information which came to its notice, the Commission came to the conclusion that two consignments of maize exported from Greece to Belgium in May 1986 by a company called ITCO in fact comprised maize imported from Yugoslavia, although they had been officially declared by the Greek authorities as comprising Greek maize. For that reason the agricultural levy payable to Community own resources had not been collected. According to the Commission that fraud had been committed with the complicity of certain Greek civil servants and, at a later stage, a number of senior civil servants had uttered false documents and made false statements to conceal it.
- 3 On 21 January 1987 the Commission informed the Greek Government of the conclusions of its investigation and called on it to take the following measures:

- (i) payment to the Commission of the agricultural levies on the imports of Yugoslav maize, together with default interest;
- (ii) recovery of the unpaid sums from the authors of the fraud;
- (iii) the institution of criminal or disciplinary proceedings against the authors of the fraud and their accomplices;
- (iv) an investigation into certain import, export and transit operations involving cereals carried out since the beginning of 1985.

The Greek authorities were given a period of two months in which to inform the Commission of the measures which they had taken.

- 4 The Greek authorities replied that an administrative inquiry had been ordered and that the matter had been placed in the hands of an examining magistrate, and that it was necessary to await the conclusions of the judicial authorities before taking the measures indicated by the Commission.
- 5 After a further exchange of correspondence without any positive outcome, on 27 July 1987 the Commission initiated the procedure under Article 169 of the EEC Treaty, calling upon the Hellenic Republic to submit its observations. The Hellenic Republic replied by letter of 27 August 1987 in which it repeated, essentially, that it was necessary to await the outcome of the pending administrative and judicial inquiries.
- 6 On 9 October 1987 the Commission issued a reasoned opinion, to which the Greek Government's only — and belated — response was to repeat its previous observations.
- 7 The Commission then brought the present action. The Hellenic Republic, having been duly notified of the proceedings, did not submit any pleadings within the prescribed period. The Commission asked the Court to give judgment by default pursuant to Article 94(1) of the Rules of Procedure.

- 8 Reference is made to the Report for the Hearing for a fuller account of the course of the procedure and the Commission's submissions and arguments, which are mentioned or discussed hereinafter only in so far as is necessary for the reasoning of the Court.
- 9 Before the Commission's submissions are examined, it is appropriate to point out that, in the terms of Article 94(2) of the Rules of Procedure, where, as in the present case, the Court gives judgment by default it need only, in considering the merits of the application, verify 'whether the applicant's submissions appear well founded'.

The first submission

- 10 The Commission maintains that, by failing to establish and make available to the Community own resources in the form of the agricultural levies due on certain consignments of maize imported from a non-member country, the Hellenic Republic has failed to fulfil its obligations.
- 11 Under Article 13(1) of Regulation (EEC) No 2727/75 of the Council of 29 October 1975 on the common organization of the market in cereals (Official Journal 1975, L 281, p. 1), a levy 'equal . . . to the threshold price less the cif price' is payable on every import of maize into the Community. That agricultural levy is one of the resources which, by virtue of Council Decision 70/243 of 21 April 1970 on the replacement of financial contributions from Member States by the Communities' own resources (Official Journal, English Special Edition 1970 (I), p. 224) constitute own resources entered in the budget of the Communities. Finally, Council Regulation No 2891/77 of 19 December 1977 implementing the abovementioned decision of 21 April 1970 (Official Journal 1977, L 336, p. 1) provides that own resources are to be established by the Member States and made available to the Commission by being credited to an account in the name of the Commission no later than the 20th day of the second month following the month during which the entitlement was established.
- 12 It is apparent from the detailed statements made by the Commission, which are not contradicted by any evidence before the Court, that the maize, which was shipped to Belgium aboard the vessels *Alfonsina* and *Flamingo* and declared by the

Greek authorities on exportation to be of Greek origin, was in fact Yugoslav maize which had earlier been imported from Yugoslavia.

- 13 It is not necessary for the Court to express any view concerning the circumstances in which the official documents were drawn up or the liability of the persons responsible for doing so. It need merely be stated that payment was thereby evaded of the agricultural levies payable on the Yugoslav maize imported into Greece in May 1986 in the sum of DR 447 053 406, a figure which has not been challenged.
- 14 By failing to establish the entitlements in respect of Community own resources and to make them available to the Commission by 20 July 1986 at the latest, the Hellenic Republic has failed to fulfil its obligations under Regulations Nos 2727/75 and 2891/77.
- 15 The Commission's first submission must therefore be upheld.

The second submission

- 16 The Commission claims that the Greek authorities' delay in crediting the abovementioned sum to the Commission's account must give rise to the payment of interest pursuant to Article 11 of Regulation No 2891/77.
- 17 It must be recalled that, as is apparent from the judgment of 20 March 1986 in Case 303/84 *Commission v Federal Republic of Germany* [1986] ECR 1171, there is an inseparable link between the obligation to establish the Community's own resources, the obligation to credit them to the Commission's account within the prescribed time-limit and the obligation to pay default interest. It is apparent from the same judgment that the interest is payable 'regardless of the reason for the delay in making the entry in the Commission's account'.

18 Accordingly, it must be held that the Hellenic Republic has failed to fulfil its Community obligations by not paying default interest on the sums which it failed to credit to the Commission's account.

19 The Commission's second submission must therefore be upheld.

The third submission

20 The Commission claims that the Greek authorities took no action to recover the agricultural levies not collected when the Yugoslav maize was imported into Greece and that they thus failed to fulfil the obligations incumbent on them under Council Regulation No 1697/79 of 24 July 1979 on the post-clearance recovery of import duties or export duties which have not been required of the person liable for payment on goods entered for a customs procedure involving the obligation to pay such duties (Official Journal 1979, L 197, p. 1).

21 This submission must also be upheld since there is no evidence before the Court which contradicts the Commission's statements.

The fourth submission

22 According to the Commission, the Member States are required by virtue of Article 5 of the EEC Treaty to penalize any persons who infringe Community law in the same way as they penalize those who infringe national law. The Hellenic Republic failed to fulfil those obligations by omitting to initiate all the criminal or disciplinary proceedings provided for by national law against the perpetrators of the fraud and all those who collaborated in the commission and concealment of it.

23 It should be observed that where Community legislation does not specifically provide any penalty for an infringement or refers for that purpose to national laws, regulations and administrative provisions, Article 5 of the Treaty requires the Member States to take all measures necessary to guarantee the application and effectiveness of Community law.

- 24 For that purpose, whilst the choice of penalties remains within their discretion, they must ensure in particular that infringements of Community law are penalized under conditions, both procedural and substantive, which are analogous to those applicable to infringements of national law of a similar nature and importance and which, in any event, make the penalty effective, proportionate and dissuasive.
- 25 Moreover, the national authorities must proceed, with respect to infringements of Community law, with the same diligence as that which they bring to bear in implementing corresponding national laws.
- 26 In the present case, it does not appear from the file on the case that the Greek authorities have instituted criminal or disciplinary proceedings against the persons who took part in the commission and concealment of the fraud denounced by the Commission or that there was any impediment to the institution of such proceedings.
- 27 In the pre-litigation phase the Greek Government contended that the matter had been placed in the hands of the national judicial authorities and that it was necessary to await the outcome of the judicial inquiries. However, the Commission quite properly refutes that argument, observing that, according to the information in its possession, the legal proceedings in question, which in fact were commenced not by the national authorities but by a competitor of ITCO, relate only to the fraud connected with the consignment carried by the vessel *Alfonsina*.
- 28 In those circumstances, the Commission's submission must be upheld.

The fifth submission

- 29 The Commission claims that by failing to carry out the appropriate verifications and inquiries and the additional inspection measures requested by the Commission the Hellenic Republic has failed to fulfil its obligations under Articles 1 and 18 of Council Regulation No 2891/77.

30 According to Article 18 of that regulation:

‘(1) Member States shall carry out the verifications and inquiries concerning the establishment and the making available of own resources . . .

(2) Accordingly, the Member States shall:

(i) carry out any additional inspection measures the Commission may ask for in a reasoned request . . .’

31 It must be noted on the one hand that in the pre-litigation phase the Greek authorities claimed that an administrative inquiry had been put in hand by the Ministry of Finance regarding the two maize export transactions at issue. However, in the absence of precise information as to its nature, scope and results, the Court cannot conclude that such an inquiry can properly be regarded as one of the ‘verifications and inquiries’ prescribed by Article 18(1) of Regulation No 2891/77.

32 It must also be noted that in its letter of 21 January 1987 the Commission asked the Greek authorities to ‘carry out detailed post-clearance checks on all import, export and transit operations involving cereals since the beginning of 1985 carried out by ITCO or through the ports of Salonica or Kavala’. It does not appear from the documents before the Court that the Hellenic Republic has fulfilled that request for additional inspection measures, even though it was justified by the fact that the investigation conducted by the Commission into the two operations at issue prompted it to call in question the propriety of other operations of the same kind carried out by ITCO or dealt with by the customs authorities at Salonica and Kavala.

33 The Court must therefore uphold the Commission’s last submission.

Costs

34 Under Article 69(2) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs. Since judgment is being entered against the defendant, it must be ordered to pay the costs.

On those grounds,

THE COURT

hereby declares that:

- (1) By failing to establish as Community own resources agricultural levies due on certain consignments of maize imported from a non-member country in May 1986, in the amount of DR 447 053 406, and to make that sum available to the Commission on 20 July 1986 at the latest the Hellenic Republic has failed to fulfil its obligations under Council Regulation No 2727/75 of 29 October 1975 on the common organization of the market in cereals and Council Regulation No 2891/77 of 19 December 1977 implementing the Decision of 21 April 1970 on the replacement of financial contributions from Member States by the Communities' own resources.
- (2) By failing to pay default interest on the abovementioned sum of DR 447 053 406 the Hellenic Republic has failed to fulfil its obligations under Council Regulation No 2891/77 of 19 December 1977 implementing the Decision of 21 April 1970 on the replacement of financial contributions from Member States by the Communities' own resources.
- (3) By failing to effect post-clearance recovery of the abovementioned agricultural levies the Hellenic Republic has failed to fulfil its obligations under Council Regulation No 1697/79 of 24 July 1979 on the post-clearance recovery of import duties or export duties which have not been required of the person liable for payment on goods entered for a customs procedure involving the obligation to pay such duties.
- (4) By failing to institute criminal or disciplinary proceedings against the persons who took part in and helped conceal the transactions which made it possible to evade the abovementioned agricultural levies the Hellenic Republic has failed to fulfil its obligations under Article 5 of the EEC Treaty.
- (5) By failing to carry out the necessary verifications and inquiries and the additional checks requested by the Commission the Hellenic Republic has failed to fulfil its obligations under Council Regulation No 2891/77 of 19 December

1977 implementing the Decision of 21 April 1970 on the replacement of financial contributions from Member States by the Communities' own resources.

(6) The Hellenic Republic shall pay the costs.

Due	Koopmans	Joliet	Grévisse	Slynn
Kakouris	Moitinho de Almeida	Rodríguez Iglesias	Diez de Velasco	

Delivered in open court in Luxembourg on 21 September 1989.

J.-G. Giraud
Registrar

O. Due
President