

JUDGMENT OF THE COURT
27 November 1990*

In Case C-200/88,

Commission of the European Communities, represented by D. Gouloussis, Legal Adviser, acting as Agent, with an address for service in Luxembourg at the office of Guido Berardis, a member of the Commission's Legal Department, Wagner Centre, Kirchberg,

applicant,

v

Hellenic Republic, represented by N. Frangakis, Legal Adviser at the Permanent Representation of Greece to the European Communities, I. Galanis-Maran-goudakis, Legal Assistant in the Community Legal Affairs Department at the Ministry of Foreign Relations, and I. Laïos, Legal Adviser to the Minister for Agriculture, acting as Agents, with an address for service in Luxembourg at the Greek Embassy, 117 Val Sainte-Croix,

defendant,

APPLICATION for a declaration that by omitting to forward within the stipulated periods certain information relating to the market in fish, the Hellenic Republic has failed to fulfil its obligations under a number of provisions of Council Regulation (EEC) No 3796/81 on the common organization of the market in fishery products and of the Commission's implementing Regulations (EEC) Nos 3191/82 and 3598/83,

THE COURT,

composed of: O. Due, President, G. F. Mancini, T. F. O'Higgins, G. C. Rodríguez Iglesias and M. Díez de Velasco (Presidents of Chambers), C. N. Kakouris, R. Joliet, F. A. Schockweiler and P. J. G. Kapteyn, Judges,

Advocate General: J. Mischo
Registrar: H. A. Rühl, Principal Administrator,

* Language of the case: Greek.

having regard to the Report for the Hearing and further to the hearing on 19 September 1990,

after hearing the Opinion of the Advocate General delivered at the sitting on 9 October 1990,

gives the following

Judgment

- 1 By an application lodged at the Court Registry on 20 July 1988, the Commission of the European Communities brought an action under Article 169 of the EEC Treaty for a declaration that by omitting to notify within the periods stipulated certain information relating to the market in fishery products, Greece had failed to fulfil its obligations under Articles 11(1) and (3), 15(2) and 21(3) of Council Regulation (EEC) No 3796/81 of 29 December 1981 on the common organization of the market in fishery products (Official Journal 1981 L 379, p. 1), under Article 2 of Commission Regulation (EEC) No 3191/82 of 29 November 1982 laying down detailed rules for the application of the reference price system for fishery products (Official Journal 1982 L 338, p. 13) and under Articles 1 to 3 of Commission Regulation (EEC) No 3598/83 of 20 December 1983 on the notification of prices and fixing the list of representative wholesale markets and ports for fishery products (Official Journal 1983 L 357, p. 17).
- 2 The Commission has made four complaints against the Hellenic Republic.
- 3 The first complaint concerns Article 11(1) of Regulation No 3796/81, as implemented by Article 1 of Regulation No 3598/83. With a view to fixing the guide price for the products listed in Annex I(A) and (D), Article 11(1) of Regulation No 3796/81 requires Member States to notify the Commission of the prices recorded for those products on representative wholesale markets or in represen-

tative ports. Article 1 of Regulation No 3598/83 stipulates that this information must relate to the average price on the market day and that it must be sent on a bi-monthly basis.

- 4 The second complaint relates to Article 11(3) of Council Regulation No 3796/81 and to Article 2 of Commission Regulation No 3598/83. Member States are required under Article 11(3) of Regulation No 3796/81 to notify the Commission every quarter of wholesale prices during the previous quarter for the products listed in Annex IV(B) frozen on board and frozen on land. Under Article 2 of Regulation No 3598/83, that information must be sent by telex not later than the end of the sixth week following the quarter concerned. The Commission, in reply to a question put to it by the Court, explained that notification of these prices was necessary to enable it to establish the guide price for products imported from non-member countries, in accordance with Article 21 of Regulation No 3796/81. Following its finding that there was no wholesale market in Greece for products frozen on land, the Commission limited the scope of its application, in so far as it related to Article 11(3) of Regulation No 3796/81, to products frozen on board.
- 5 The third complaint which the Commission makes against Greece relates to Article 15(2) of Regulation No 3796/81 and Article 3 of Regulation No 3598/83. In order to make it possible for the Commission to fix the guide price for the products listed in Annex II, Article 15(2) of Regulation No 3796/81 requires Member States to notify it of the prices recorded on representative wholesale markets or in representative ports for those products. Article 3 of Regulation No 3598/83 adds that this information must relate to the average price established for two given weeks and that it must be sent to the Commission by telex on the first working day following the weeks concerned.
- 6 In its fourth complaint, the Commission alleges that the Hellenic Republic has failed to comply with the obligations arising under Article 21(3) of Regulation No 3796/81 and under Article 2 of Regulation No 3191/82. Member States are required under those provisions to notify the Commission, by telex and without any delay, of the free-at-frontier prices on each market day of products imported from non-member countries.

- 7 Reference is made to the Report for the Hearing for a fuller account of the course of the procedure and the submissions and arguments of the parties, which are mentioned hereinafter only in so far as is necessary for the reasoning of the Court.
- 8 The Greek Government acknowledges that it failed to fulfil the obligations which have just been outlined. However, it has some doubts as to the advisability of continuing the present proceedings which, since they are in its opinion devoid of any legal significance and relate only to matters of fact, can only place an unnecessary burden on the functioning of the Court.
- 9 On this point, it suffices to point out that, under the scheme established by Article 169 of the Treaty, the Commission enjoys a discretionary power in deciding whether to institute proceedings for a declaration that a Member State has failed to fulfil obligations and that it is not for the Court to decide whether that discretion was wisely exercised.
- 10 The Greek Government also states that its efforts to implement the rules were hindered by technical shortcomings, failures on the part of producers and structural difficulties caused by the organization of its administrative services. With regard to notification of the free-at-frontier prices, it pleads in particular the faulty operation of the computer which was intended to collate, process and communicate the information in question.
- 11 It should be noted in this regard that it is well established in the case-law of the Court that a Member State may not plead internal circumstances in order to justify failure to comply with obligations and time-limits resulting from Community law (see, for example, the judgment in Case 254/83 *Commission v Italy* [1984] ECR 3395).
- 12 Finally, the Greek Government points to the efforts which its administration has made since the lodging of the application to comply with its Community obligations, and it also expresses its willingness to adopt such measures as are still necessary.

- 13 It should be stressed in this regard that the question whether there has been a failure to fulfil obligations must be examined on the basis of the position in which the Member State found itself at the end of the period laid down in the reasoned opinion and that the Court cannot take account of any subsequent changes.
- 14 In those circumstances, it must be held that by omitting to forward within the stipulated periods certain information relating to the market in fish, the Hellenic Republic has failed to fulfil its obligations under Articles 11(1) and (3), 15(2) and 21(3) of Regulation No 3796/81, under Article 2 of Regulation No 3191/82 and under Articles 1 to 3 of Regulation No 3598/83.

Costs

- 15 Article 69(2) of the Rules of Procedure provides that the unsuccessful party is to be ordered to pay the costs. Since the Hellenic Republic has failed in its submissions it must be ordered to pay the costs.

On those grounds,

THE COURT

hereby:

- (1) Declares that by omitting to forward within the stipulated periods certain information relating to the market in fish, the Hellenic Republic has failed to fulfil its obligations under Articles 11(1) and (3), 15(2) and 21(3) of Council Regulation (EEC) No 3796/81 of 29 December 1981 on the common organization of the market in fishery products, under Article 2 of Commission Regulation

(EEC) No 3191/82 of 29 November 1982 laying down detailed rules for the application of the reference price system for fishery products and under Articles 1 to 3 of Commission Regulation (EEC) No 3598/83 of 20 December 1983 on the notification of prices and fixing the list of representative wholesale markets and ports for fishery products;

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

Due	Mancini	O'Higgins	Rodríguez Iglesias	
Díez de Velasco	Kakouris	Joliet	Schockweiler	Kapteyn

Delivered in open court in Luxembourg on 27 November 1990.

J.-G. Giraud
Registrar

O. Due
President