

JUDGMENT OF THE COURT

30 June 1988 \*

In Case 226/87

**Commission of the European Communities**, represented by Xenophon Yataganas and Luis Antunes, members of its Legal Department, with an address for service in Luxembourg at the office of G. Kremlis, a member of its Legal Department, Jean Monnet Building, Kirchberg,

applicant,

v

**Hellenic Republic**, represented by Asteris Pliakos, Special Adviser at the Ministry of Trade, N. Frangakis and I. Galani-Maragoudaki, 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 failing to take within the prescribed period the measures necessary to comply with Commission Decision 85/276/EEC of 24 April 1985 concerning the insurance in Greece of public property and loans granted by Greek State-owned banks (Official Journal 1985, L 152, p. 25) the Hellenic Republic has failed to fulfil its obligations under the EEC Treaty,

THE COURT,

composed of: Lord Mackenzie Stuart, President, G. Bosco, J. C. Moitinho de Almeida and G. C. Rodríguez Iglesias (Presidents of Chambers), T. Koopmans, U. Everling, Y. Galmot, C. Kakouris and F. Schockweiler, Judges,

Advocate General: G. F. Mancini  
Registrar: B. Pastor, Administrator

\* Language of the Case: Greek.

having regard to the Report for the Hearing and further to the hearing on 24 May 1988,

after hearing the Opinion of the Advocate General delivered at the same sitting,  
gives the following

### Judgment

- 1 By an application lodged at the Court Registry on 20 July 1987, the Commission of the European Communities brought an action under Article 169 of the EEC Treaty for a declaration that by failing to take within the prescribed time-limit the measures necessary to comply with Commission Decision 85/276 of 24 April 1985 concerning the insurance in Greece of public property and loans granted by Greek State-owned banks (Official Journal 1985, L 152, p. 25), the Hellenic Republic has failed to fulfil its obligations under the EEC Treaty.
- 2 Article 13 of Greek Law No 1256/82 of 28 to 31 May 1982 provides that all public property, including the assets of Greek public undertakings, must be insured exclusively with Greek public sector insurance companies and requires the staff of State-owned banks to recommend to their customers that they take out insurance with an insurance company owned and controlled by the public banking sector.
- 3 By decision of 24 April 1985, adopted under Article 90 (3) of the Treaty, the Commission declared those legislative provisions incompatible with Article 90 (1) of the Treaty read in conjunction with Article 52, Article 53, the second paragraph of Article 5 and Article 3 (f) of the Treaty. Article 2 of that decision, of which the Greek Government was notified by letter of 30 May 1985, required Greece to inform the Commission within two months of the date of notification of the decision of the measures it had taken to comply therewith.

- 4 The Commission received no information within the prescribed time-limit; it therefore sent a reminder to the Greek Government, which informed it, by letter of 29 October 1985, that Article 13 of Law No 1256/82 was to be amended in the near future.
- 5 The legislation was not amended, and on 8 April 1986 the Commission initiated the procedure provided for under Article 169 of the Treaty by calling upon the Hellenic Republic to submit its observations.
- 6 There was then an exchange of correspondence during which the Greek authorities simply announced the imminent submission to Parliament of a draft law intended to adapt the existing legislation in order to comply with the Commission Decision of 24 April 1985.
- 7 Finally, after delivering a reasoned opinion to the Greek Government on 17 February 1987, to which no reply was received, the Commission brought this action.
- 8 Reference is made to the Report for the Hearing for a fuller account of the national legislation, the course of the procedure and the submissions and arguments of the parties, which are mentioned or discussed hereinafter only in so far as is necessary for the reasoning of the Court.
- 9 In support of its application, the Commission claims that the Hellenic Republic was required to comply with its decision of 24 April 1985 and cannot, in these proceedings, contend that it was unlawful.
- 10 For its part, the Greek Government contends that, in reality, the abovementioned Commission decision must be regarded as a mere opinion. The fact that it did not contest that decision in the manner provided for in Article 173 cannot be regarded

as an admission that it is binding and valid. The Greek Government is therefore entitled to contest the lawfulness of that alleged decision in these proceedings. It contends that, contrary to what is stated in the decision, Article 13 of Law No 1256/82 is not contrary to the Treaty.

- 11 Under Article 90 (3) of the EEC Treaty, 'the Commission shall ensure the application of the provisions of this article and shall, where necessary, address appropriate directives or decisions to Member States'. It can be seen from the judgment of the Court of 6 July 1982 (Joined Cases 188 to 190/80 *France, Italy and United Kingdom v Commission* [1982] ECR 2545) that although the powers thus conferred on the Commission operate in a specific field of application and under conditions defined by reference to the particular objective of that article, that does not prevent the 'directives' and 'decisions' referred to in that provision of the Treaty from falling within the general category of directives and decisions referred to in Article 189.
- 12 Consequently, the Commission decision of 24 April 1985 was, by virtue of the fourth paragraph of Article 189, 'binding in its entirety' upon the Hellenic Republic, to which it was addressed. The latter was therefore required to comply with the provisions of the decision unless and until it obtained from the Court of Justice either an order suspending its operation or its annulment. It is common ground that in this case the Greek Government did not apply to the Court for such measures or obtain them subsequently from it.
- 13 The Hellenic Republic cannot in any event plead the unlawfulness of the decision of 24 April 1985 as a ground for arguing that it has not failed to fulfil its obligations.
- 14 The system of remedies set up by the Treaty distinguishes between the remedies provided for in Articles 169 and 170, which permit a declaration that a Member State has failed to fulfil its obligations, and those contained in Articles 173 and 175, which permit judicial review of the lawfulness of measures adopted by the Community institutions, or the failure to adopt such measures. Those remedies

have different objectives and are subject to different rules. In the absence of a provision of the Treaty expressly permitting it to do so, a Member State cannot therefore plead the unlawfulness of a decision addressed to it as a defence in an action for a declaration that it has failed to fulfil its obligations arising out of its failure to implement that decision.

- 15 The Hellenic Republic argued at the hearing that in this case, in order to meet a fundamental requirement of the Community legal order, the Court should none the less, by way of exception, exercise its power of judicial review in regard to the decision of 24 April 1985. That decision, it says, infringes the fundamental principle of the division of powers between the Community and the Member States and therefore lacks any legal basis in the Community legal order.
- 16 That objection could be upheld only if the measure at issue contained such particularly serious and manifest defects that it could be deemed non-existent (judgment of 26 February 1987 in Case 15/85 *Consorzio Cooperative d'Abruzzo v Commission* [1987] ECR 1005). However, the arguments put forward by the Hellenic Republic contain no precise factor of such a kind as to permit the Commission's decision to be so described. Indeed, it itself considered that the decision of 24 April 1985 was not non-existent when it stated, throughout the pre-litigation stage, that it intended to comply with that decision.
- 17 It follows from all the foregoing that the Commission's application must be upheld, and it is not necessary to rule on the lawfulness of the contested decision.

### Costs

- 18 Under Article 69 (2) of the Rules of Procedure 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 failing to take within the prescribed period the measures necessary to comply with Commission Decision 85/276/EEC of 24 April 1985 concerning the insurance in Greece of public property and loans granted by Greek State-owned banks (Official Journal 1985, L 152, p. 25) the Hellenic Republic has failed to fulfil its obligations under the EEC Treaty;
- (2) Orders the Hellenic Republic to pay the costs.

Mackenzie Stuart Bosco Moitinho de Almeida Rodríguez Iglesias

Koopmans            Everling            Galmot            Kakouris            Schockweiler

Delivered in open court in Luxembourg on 30 June 1988.

J.-G. Giraud

Registrar

A. J. Mackenzie Stuart

President