

JUDGMENT OF THE COURT (Fifth Chamber)  
2 May 1996 \*

In Case C-311/95,

**Commission of the European Communities**, represented by Dimitrios Goulousis, Legal Adviser, acting as Agent, with an address for service in Luxembourg at the office of Carlos Gómez de la Cruz, of its Legal Service, Wagner Centre, Kirchberg,

applicant,

v

**Hellenic Republic**, represented by Ioanna Galani-Maragkoudaki, special assistant legal adviser in the Community Legal Department of the Ministry of Foreign Affairs, and Dimitra Tsagkaraki, adviser to the Deputy Minister of Foreign Affairs, 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 adopt or to communicate to the Commission within the prescribed period the necessary laws, regulations and administrative provisions to comply with Council Directive 92/50/EEC of 18 June 1992 relating to the coordination of procedures for the award of public service contracts (OJ 1992 L 209, p. 1), the Hellenic Republic has failed to fulfil its obligations under the EC Treaty,

\* Language of the case: Greek.

THE COURT (Fifth Chamber),

composed of: D. A. O. Edward, President of the Chamber, J.-P. Puissechet, P. Jann (Rapporteur), L. Sevón and M. Wathelet, Judges,

Advocate General: C. O. Lenz,  
Registrar: R. Grass,

having regard to the report of the Judge-Rapporteur,

after hearing the Opinion of the Advocate General at the sitting on 14 March 1996,

gives the following

**Judgment**

1 By application received at the Court Registry on 29 September 1995, the Commission of the European Communities brought an action under Article 169 of the EC Treaty for a declaration that, by failing to adopt or to communicate to the Commission within the prescribed period the necessary laws, regulations and administrative provisions to comply with Council Directive 92/50/EEC of 18 June 1992 relating to the coordination of procedures for the award of public service contracts (OJ 1992 L 209, p. 1, hereinafter 'the Directive'), the Hellenic Republic had failed to fulfil its obligations under the EC Treaty.

2 Under the first subparagraph of Article 44(1) of the Directive, Member States were to bring into force the laws, regulations and administrative provisions necessary to comply with the Directive before 1 July 1993, and were to inform the Commission thereof forthwith.

- 3 Since the Commission had not been informed of the measures adopted by the Hellenic Republic to comply with the Directive, on 9 August 1993 it gave the Greek Government formal notice to submit its observations within two months.
  
- 4 No response to the letter of formal notice having reached it, on 6 May 1994 the Commission sent the Greek Government a reasoned opinion inviting it to take the necessary measures to comply within two months.
  
- 5 No response to the reasoned opinion was forthcoming and the Commission brought the present action.
  
- 6 The Greek Government does not dispute that it failed to transpose the Directive into national law within the prescribed period. It nevertheless asks for the application to be dismissed. It submits firstly that in November 1994 a committee to carry out the preparatory legislative work was set up by a decision of the Ministry of the National Economy, in order to transpose the Directive. Secondly, the Ministry of the Environment, Planning and Public Works sent all the public sector bodies concerned the text of the Directive, by means of a ministerial circular of 27 August 1993 containing instructions for the provisional application of the Directive. Finally, that ministry produced a draft presidential decree for the transposition into the national legal order of all the provisions of the Directive.
  
- 7 It has consistently been held that mere administrative practices, which by their nature are alterable at will by the administration and are not given the appropriate publicity, cannot be regarded as constituting the proper fulfilment of a Member State's obligations under the Treaty (see *inter alia* Case C-242/94 *Commission v Spain* [1995] ECR I-3031, paragraph 6). The Greek Government's argument based on the distribution of the ministerial circular cannot therefore be accepted.

8 Since transposition of the Directive did not take place within the prescribed period, the Commission's application in that respect must be regarded as well founded.

9 Consequently, it must be held that, by failing to adopt within the prescribed period the necessary laws, regulations and administrative provisions to comply with the Directive, the Hellenic Republic has failed to fulfil its obligations under Article 44(1) of the Directive.

### Costs

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

On those grounds,

THE COURT (Fifth Chamber)

hereby:

1. Declares that, by failing to adopt within the prescribed period the necessary laws, regulations and administrative provisions to comply with Council Directive 92/50/EEC of 18 June 1992 relating to the coordination of procedures for the award of public service contracts, the Hellenic Republic has failed to fulfil its obligations under Article 44(1) of that directive;

**2. Orders the Hellenic Republic to pay the costs.**

Edward

Puissochet

Jann

Sevón

Wathelet

Delivered in open court in Luxembourg on 2 May 1996.

R. Grass

D. A. O. Edward

Registrar

President of the Fifth Chamber