

JUDGMENT OF THE COURT (Fourth Chamber)

4 July 2002 *

In Case C-173/01,

Commission of the European Communities, represented by M. Condou-Durande, acting as Agent, with an address for service in Luxembourg,

applicant,

v

Hellenic Republic, represented by N. Tsiros and N. Dafniou, acting as Agents, with an address for service in Luxembourg,

defendant,

* Language of the case: Greek.

APPLICATION for a declaration that, by failing to adopt within the period prescribed the laws, regulations and administrative provisions necessary to comply with Council Directive 1999/20/EC of 22 March 1999 amending Directives 70/524/EEC concerning additives in feedingstuffs, 82/471/EEC concerning certain products used in animal nutrition, 95/53/EC fixing the principles governing the organisation of official inspections in the field of animal nutrition and 95/69/EC laying down the conditions and arrangements for approving and registering certain establishments and intermediaries operating in the animal feed sector (OJ 1999 L 80, p. 20), the Hellenic Republic has failed to fulfil its obligations under the EC Treaty and that directive.

THE COURT (Fourth Chamber),

composed of: S. von Bahr, President of the Chamber, D.A.O. Edward and C.W.A. Timmermans (Rapporteur), Judges,

Advocate General: A. Tizzano,
Registrar: R. Grass,

having regard to the report of the Judge-Rapporteur,

after hearing the Opinion of the Advocate General at the sitting on 2 May 2002,

gives the following

Judgment

- 1 By application lodged at the Court Registry on 20 April 2001, the Commission of the European Communities brought an action under Article 226 EC for a declaration that, by failing to adopt within the period prescribed the laws, regulations and administrative provisions necessary to comply with Council Directive 1999/20/EC of 22 March 1999 amending Directives 70/524/EEC concerning additives in feedingstuffs, 82/471/EEC concerning certain products used in animal nutrition, 95/53/EC fixing the principles governing the organisation of official inspections in the field of animal nutrition and 95/69/EC laying down the conditions and arrangements for approving and registering certain establishments and intermediaries operating in the animal feed sector (OJ 1999 L 80, p. 20, 'the Directive'), the Hellenic Republic has failed to fulfil its obligations under the EC Treaty and the Directive.

- 2 In accordance with Article 5(1) of the Directive, the Member States were to adopt and publish the laws, regulations and administrative provisions necessary to comply with the Directive by 30 September 1999 and forthwith to inform the Commission.

- 3 Since it had received no notification from the Greek Government of any measures to implement the Directive in Greek law and since there was, furthermore, no

other information available to it to suggest that the Hellenic Republic had fulfilled its obligations in that regard, the Commission put the Greek Government on formal notice, by letter of 18 February 2000, to submit its observations on that point within two months.

- 4 That letter of formal notice went unanswered by the Greek authorities. In those circumstances the Commission, by letter of 18 September 2000, sent a reasoned opinion to the Hellenic Republic, requesting it to fulfil its obligations under the Directive within two months of notification of the opinion.

- 5 Since it had received no information that could establish that the laws, regulations and administrative provisions implementing the Directive had been adopted, the Commission decided to bring this action.

- 6 In its defence, the Hellenic Republic does not deny that it has, as alleged, failed to fulfil its obligations. It merely states that the measures necessary to implement the Directive in national law have been drafted by the competent department and that the draft presidential decree enacting them will, as soon as it is published, be forwarded to the Court and the Commission in its definitive version.

- 7 It must be borne in mind that, according to settled case-law, 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 that the Court cannot take account of any

subsequent changes (see, in particular, Case C-69/99 *Commission v United Kingdom* [2000] ECR I-10979, paragraph 22; Case C-147/00 *Commission v France* [2001] ECR I-2387, paragraph 26, and Case C-110/00 *Commission v Austria* [2001] ECR I-7545, paragraph 13).

- 8 In the present case, it is common ground that the Hellenic Republic has not adopted the measures necessary to comply with the reasoned opinion within the period prescribed for that purpose, since its own pleadings make it clear that, six months after that opinion was notified, no provision had yet been definitively adopted by the Greek authorities in order to implement the Directive.
- 9 In those circumstances, it must be held that the action brought by the Commission is well founded.
- 10 It must therefore be declared that, 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.

Costs

- 11 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 (Fourth Chamber)

hereby:

1. Declares that, by failing to adopt within the period prescribed the laws, regulations and administrative provisions necessary to comply with Council Directive 1999/20/EC of 22 March 1999 amending Directives 70/524/EEC concerning additives in feedingstuffs, 82/471/EEC concerning certain products used in animal nutrition, 95/53/EC fixing the principles governing the organisation of official inspections in the field of animal nutrition and 95/69/EC laying down the conditions and arrangements for approving and registering certain establishments and intermediaries operating in the animal feed sector, the Hellenic Republic has failed to fulfil its obligations under that Directive.
2. Orders the Hellenic Republic to pay the costs.

von Bahr

Edward

Timmermans

Delivered in open court in Luxembourg on 4 July 2002.

R. Grass

S. von Bahr

Registrar

President of the Fourth Chamber