

Opinion of Advocate General Federico Mancini (25 May 1988)

Caption: Extract from the Opinion of Advocate General Federico Mancini, delivered on 25 May 1988, on Case 204/86, Hellenic Republic v Council.

Point 5 concerns the scope of the jurisdiction of the Court of Justice and the Court of Auditors to review budgetary measures. The Advocate General moves away from the interpretation given by the Court of Justice in the 'Les Verts' judgment on the scope of the power of the Court of Auditors to review legality. The examination of legality would not be limited to reference to the basic legal measure, but it would also extend to any secondary provision belonging to the Community legal order in so far as it has an effect on expenditure.

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Opinion of Mr Advocate General Mancini delivered on 25 May 1988 *

Mr President,
Members of the Court,

[...]

5. The second procedural problem which emerged during the hearing concerns the scope of the jurisdiction of the Court of Justice and the Court of Auditors to review budgetary measures. On a general level, this subject has been studied above all by French legal writers. In France, the rules governing accounts are not in fact considered to be rules of law and there is a separation between the powers of authorizing authorities and auditors which is reflected strongly in the jurisdiction of the administrative courts and that of the Court of Auditors. It is therefore clear that likewise 'la violation des règles budgétaires et comptables ne peut, sans texte formel contraire, être invoquée à l'appui d'un recours pour excès de pouvoir' (Odent: *Contentieux administratif*, Paris, 1981, Vol. VI, p. 1923).

The question has already been raised before the Court of Justice, only to be immediately rejected. It is stated in the judgment in Case 294/83 *Les Verts v Parliament* that 'the argument that the Court of Auditors' power of review under Article 206a of the Treaty precludes any review by the Court of Justice must be rejected. The Court of Auditors only has power to examine the legality of expenditure with reference to the budget and the secondary provision on which the expenditure is based (commonly called "the basic measure"). Its review is thus ... distinct from that exercised by the Court of Justice, which concerns the legality of the basic measure' (paragraph 28).

The conclusion contained in that passage leaves me perplexed, not because of the consequences which it entails — the admissibility of the action — but because of the reasoning upon which it is based. For the rest, the argument put forward during the hearing by the Agent of the Commission, according to which the Court of Auditors is concerned, *inter alia*, with sound management from the point of view of appropriateness, and hence performs a function which is rather more political in nature, does not appear any more convincing. As for the view that the power of review of the Court of Auditors is confined to supervising 'l'observation des règles de la comptabilité publique dans l'exécution du budget communautaire' (Sacchetti: 'Dispositions financières' in *Le droit de la Communauté économique européenne*, Brussels, 1982, Vol. 11, pp. 89 and 90), that seems to me to be too reductionist.

The fact is that the Court of Auditors has the power/duty to verify not only that the provisions relating to the budget which are contained in the Treaties or in the Financial Regulation are complied with, but also any provision belonging to the Community legal order in so far as it has an effect on expenditure. How then is it possible to distinguish between that power of review and that of the Court of Justice?

It has been observed, very appositely, that in the Community system the differences between the two functions result from a series of phenomena and, primarily, from the nature of the effects to which the exercise of those functions gives rise. Unlike the power of review of the Court of Auditors, the power of review of the Court of Justice is characterized by the binding effect and final nature of the judgment. Moreover, whereas the intervention of the Court of Justice presupposes the existence of a claim or, in any event, of a dispute, that of the Court of Auditors does not. Thus, in concrete terms, the work of the Court of Justice consists in the specific and individual consideration of measures or relations which are in dispute: that of the Court of Auditors consists in the systematic and general examination of the activity of management (see Palmieri: *La Corte dei conti delle Comunità europee*, Padua, 1983, p. 78, No 26; Goletti: 'La Corte dei conti delle Comunità europee nel quadro normativo comunitario', in *Foro amministrativo*, 1986, p. 2948 *et seq.*).

[...]

14. In view of the foregoing, I propose that the Court should dismiss the action brought by the Hellenic Republic on 4 August 1986 against the Council of the European Communities.

The unsuccessful party should be ordered to pay the costs, including the costs of the intervener.

* Translated from the Italian.