

Case C-155/09

European Commission

v

Hellenic Republic

(Failure of a Member State to fulfil obligations – Articles 12 EC, 18 EC, 39 EC and 43 EC – Articles 4, 28 and 31 of the Agreement on the European Economic Area – Tax legislation – Conditions for exemption from transfer tax on the first purchase of immovable property – Exemption granted solely to persons residing in Greece and to persons of Greek origin not residing in Greece at the date of purchase)

Summary of the Judgment

1. *Citizens of the European Union – Right to move and reside freely within the territory of the Member States – Transfer tax on immovable property*

(Arts 18 EC, 39 EC and 43 EC; EEA Agreement, Arts 28 and 31)

2. *Citizens of the European Union – Equal treatment – Discrimination on grounds of nationality – Prohibition – National transfer tax on immovable property*

(Arts 12 EC, 18 EC, 39 EC and 43 EC; EEA Agreement, Arts 4, 28 and 31)

1. A Member State that grants exemption from a tax on the transfer of immovable property solely to persons permanently resident in the national territory, whilst non-residents who intend to settle in that State in the future are not granted exemption from the tax, fails to fulfil its obligations under Articles 18 EC, 39 EC and 43 EC and under Articles 28 and 31 of the Agreement on the European Economic Area.

The rules regarding equal treatment forbid not only overt discrimination by reason of nationality but also all covert forms of discrimination which, by the application of other criteria of differentiation, lead in fact to the same result. That is true of a measure under which a distinction is drawn on the basis of residence or ordinary residence, in that that requirement is liable to operate mainly to the detriment of nationals of other Member States, inasmuch as persons who are not resident or ordinarily resident in the national territory are in the majority of cases foreigners. A requirement of permanent residence of that kind is not such as to justify the objectives, relied on by the Member State in question, of facilitating the purchase of a first home, preventing all property speculation and supporting middle or lower-income families and is not necessary for the purpose of restricting tax evasion and preventing abuse arising from circumvention of the objective of the exemption.

(see paras 45-46, 59, 63, operative part 1)

2. A Member State that grants, on certain conditions, exemption from a tax on the transfer of immovable property solely to its own nationals or to persons of that national origin fails to fulfil its obligations under Articles 12 EC, 39 EC and 43 EC and under Articles 4, 28 and 31 of the Agreement on the European Economic Area.

That different treatment as between its own nationals and nationals of other Member States who

intend to settle in the Member State concerned, which is expressly and solely based on nationality, constitutes direct discrimination prohibited by those provisions. Objectives intended, first, both to make it easier for nationals of the Member State concerned who have emigrated and persons having the same national origin to purchase a home and to encourage their return, given that that Member State has experienced a sharp decrease in its population because of massive emigration abroad, and, second, to preserve links between persons who have emigrated and their country of origin do not establish that there are objective circumstances, independent of the nationality of the persons concerned, capable of justifying discrimination such as that resulting from the exemption, for their very foundation is the nationality of the persons concerned.

(see paras 69-71, 75, operative part 1)

JUDGMENT OF THE COURT (First Chamber)

20 January 2011 (*)

(Failure of a Member State to fulfil obligations – Articles 12 EC, 18 EC, 39 EC and 43 EC – Articles 4, 28 and 31 of the Agreement on the European Economic Area – Tax legislation – Conditions for exemption from transfer tax on the first purchase of immovable property – Exemption granted solely to persons residing in Greece and to persons of Greek origin not residing in Greece at the date of purchase)

In Case C-155/09,

ACTION under Article 226 EC for failure to fulfil obligations, brought on 4 May 2009,

European Commission, represented by R. Lyal and D. Triantafyllou, acting as Agents, with an address for service in Luxembourg,

applicant,

v

Hellenic Republic, represented by P. Mylonopoulos and V. Karra, acting as Agents, with an address for service in Luxembourg,

defendant,

THE COURT (First Chamber),

composed of A. Tizzano, President of the Chamber, J.-J. Kasel, E. Levits, M. Safjan and M. Berger (Rapporteur), Judges,

Advocate General: J. Mazák,

Registrar: R. ?ere?, Administrator,

having regard to the written procedure and further to the hearing on 20 May 2010,
having decided, after hearing the Advocate General, to proceed to judgment without an Opinion,
gives the following

Judgment

1 By its application, the Commission of the European Communities requests the Court to declare that:

- by granting exemption from the tax on the transfer of immovable property ('the tax') solely to persons permanently resident in Greece but not to non-residents who intend to settle in Greece in the future, and
- by granting, on certain conditions, exemption from the tax solely to Greek nationals on the purchase of a first home in Greece, expressly discriminating against persons resident abroad who are not Greek nationals,

the Hellenic Republic has failed to fulfil its obligations under Articles 18, 39 and 43 EC, in the light of Article 12 EC, and under Articles 4, 28 and 31 of the Agreement on the European Economic Area of 2 May 1992 (OJ 1994 L 1, p. 3; 'the EEA Agreement'), inasmuch as it is impeding the exercise of fundamental freedoms deriving from those provisions.

Legal context

European Union law

2 The first paragraph of Article 12 EC provides:

'Within the scope of application of this Treaty, and without prejudice to any special provisions contained therein, any discrimination on grounds of nationality shall be prohibited.'

3 Article 18(1) EC provides:

'Every citizen of the Union shall have the right to move and reside freely within the territory of the Member States, subject to the limitations and conditions laid down in this Treaty and by the measures adopted to give it effect.'

4 Paragraphs 1 to 3 of Article 39 EC are worded as follows:

'1. Freedom of movement for workers shall be secured within the Community.

2. Such freedom of movement shall entail the abolition of any discrimination based on nationality between workers of the Member States as regards employment, remuneration and other conditions of work and employment.

3. It shall entail the right, subject to limitations justified on grounds of public policy, public security or public health:

- (a) to accept offers of employment actually made;
- (b) to move freely within the territory of Member States for this purpose;

(c) to stay in a Member State for the purpose of employment in accordance with the provisions governing the employment of nationals of that State laid down by law, regulation or administrative action;

(d) to remain in the territory of a Member State after having been employed in that State, subject to conditions which shall be embodied in implementing regulations to be drawn up by the Commission'.

5 Article 43 EC provides as follows:

'Within the framework of the provisions set out below, restrictions on the freedom of establishment of nationals of a Member State in the territory of another Member State shall be prohibited. Such prohibition shall also apply to restrictions on the setting-up of agencies, branches or subsidiaries by nationals of any Member State established in the territory of any Member State.

Freedom of establishment shall include the right to take up and pursue activities as self-employed persons and to set up and manage undertakings, in particular companies or firms within the meaning of the second paragraph of Article 48, under the conditions laid down for its own nationals by the law of the country where such establishment is effected, subject to the provisions of the Chapter relating to capital.'

6 The provisions referred to in paragraphs 2 to 5 of this judgment, with the exception of Article 18 EC, correspond to those set out in Articles 4, 28 and 31 of the EEA Agreement.

National legislation

7 Article 1(1) of Law 1078/1980 provides :

'Contracts concerning the purchase of immoveable property, in its entirety and with full ownership, by a married person shall be exempt from the tax on the transfer of immovable property where the purchaser, his spouse or any children who are minors have no rights of full ownership, usufruct or residence in relation to another house or apartment meeting the family's housing needs and no right of full ownership over building land or over a share in land equal to the surface area of a building meeting their housing needs and situated in a municipality or village with a population of more than three thousand (3 000) residents.'

8 Article 1(3) of Law 1078/1980 is worded as follows:

'This Article shall not apply to contracts for the transfer of immovable property for consideration where the purchaser does not reside permanently in Greece.

By way of exception, an exemption shall be granted on the purchase of a house, an apartment or land by Greek nationals or persons of Greek origin who have worked abroad for at least six (6) years and who are entered on a municipal registry in Greece, even though their place of permanent residence is not in Greece at the time of the purchase.'

9 Article 1(7) of Law 1078/1980 provides that the grant of the exemption is subject to the condition that the purchaser retains ownership of the property for at least five years.

10 Under the enabling power conferred by Article 1(12) of Law 1078/1980, a ministerial decision of 7 April 2005 set at 1 year the minimum continuous period of residence in Greece required of any persons concerned.

The pre-litigation procedure

11 On 6 December 2007, the Commission sent the Hellenic Republic a letter of formal notice in which it maintained that, by granting exemption from the tax, first, solely to persons permanently resident in Greece but not to non-residents who intend to settle in Greece in the future and, second, on certain conditions, solely to Greek nationals on the purchase of a first home in Greece, thereby expressly discriminating against persons resident abroad who are not Greek nationals, Greece was in breach of its obligations under Articles 12 EC, 18 EC, 39 EC and 43 EC and under Articles 4, 28 and 31 of the EEA Agreement.

12 On 13 February 2008, the Hellenic Republic replied to that letter rejecting the Commission's complaints in their entirety.

13 As it did not find that reply persuasive, the Commission sent the Hellenic Republic a reasoned opinion on 23 September 2008, calling upon it to comply with its obligations within a period of two months from receipt of the opinion. Greece replied to the reasoned opinion on 21 November 2008, reiterating what it had said in its reply to the letter of formal notice.

14 Since it was not convinced by the explanations provided by the Hellenic Republic, the Commission decided to bring the present action.

The action

First complaint, alleging restriction of certain fundamental freedoms

Arguments of the parties

15 The Commission, referring in particular to Case C-330/91 *Commerzbank* [1993] ECR I-4017, maintains, in the first place, that, although the requirement for permanent residence laid down in the first subparagraph of Article 1(3) of Law 1078/1980 does not necessarily entail discriminatory treatment with regard to European Union ('EU') nationals, since it applies irrespective of the nationality of the persons concerned, the fact remains that permanent residents in Greece are, in the great majority, Greek nationals, from which the discriminatory nature of the provision at issue can be seen.

16 The Commission submits in that regard that the provision concerned excludes from entitlement to the tax exemption non-residents who are purchasing a first home in Greece with a view to settling there in the future. That difference in treatment thus entails discriminatory treatment as between current and future residents.

17 In the second place, referring inter alia to Case C-464/02 *Commission v Denmark* [2005] ECR I-7929 and Case C-209/01 *Schilling and Fleck-Schilling* [2003] ECR I-13389, the Commission submits that the general wording of Article 18 EC, which establishes the right of every EU citizen to move and reside freely within the territory of the Member States, finds specific expression in Articles 39 EC and 43 EC. In its submission, in accordance with the settled case-law of the Court, the provisions of the EC Treaty on freedom of movement for persons are intended to facilitate the pursuit by EU nationals of occupational activities of all kinds and they preclude measures which might place at a disadvantage persons who wish to pursue an economic activity in the territory of another Member State. It asserts that provisions preventing or deterring a national of a Member State from leaving his country of origin in order to exercise his right to freedom of movement constitute an obstacle to that freedom, even if they apply without regard to the nationality of the workers concerned. Relying on that case-law, the Commission submits that it

is clear that the Greek legislation at issue is contrary to Articles 18 EC, 39 EC and 43 EC, since it renders the situation of persons not yet residing permanently in Greece but hoping to settle there permanently less attractive than that of permanent residents to whom the tax exemption is granted.

18 In that regard, the Commission explains that there is infringement of Articles 39 EC and 43 EC in the case of persons who are active. Article 18 EC, by contrast, applies directly to persons having no economic activity or links with Greece, which, in this instance, concerns in particular persons who have retired.

19 Following the same line of reasoning, the Commission submits that Article 1(1) and (3), first subparagraph, of Law 1078/1980 are contrary to Articles 28 and 31 of the EEA Agreement.

20 In relation to the justification for the restriction established by the provisions concerned, the Commission argues that the restriction cannot be justified by any of the objectives in the public interest which the Hellenic Republic puts forward and that, in any event, it is contrary to the principle of proportionality.

21 As regards the objective of making it easier for residents to purchase a home and of preventing all property speculation in that respect, the Commission submits, first, that that objective can also be pursued in relation to persons who are buying a first home with a view to subsequently settling in Greece. Second, the Commission argues that Law 1078/1980 does not require the purchaser to use the immovable property he has purchased as a permanent residence and does not prohibit him from renting it out or selling it. In the absence of any such obligation, that objective cannot be attained and thus cannot be relied on by the Greek Government.

22 The Commission further submits that the objectives concerned may be achieved by less restrictive methods of control, such as, for example, the registration with the competent Greek authority of persons who settle in Greece, the inclusion of those persons on the tax register, the verification of their tax declarations and, subject to certain conditions being satisfied, the grant of favourable tax treatment. Such a monitoring system could also be supplemented by 'signed statements'. Consequently, the refusal to grant that tax exemption to persons who are not yet resident in Greece on a permanent basis, but who are purchasing immovable property in Greece with the intention of settling there, goes far beyond what is necessary to achieve the objective of preventing any property speculation in Greece.

23 The Commission denies that, in the absence of all tax information concerning the purchaser, it is impossible to discover whether the latter owns other immovable property in Greece: consequently the national provision at issue cannot be regarded as seeking to prevent circumvention of the law. It argues in that regard that, so far as persons who come to settle in Greece are concerned, ascertaining whether they already own immovable property in Greece is no more difficult in their case than it is in the case of persons who already reside in Greece. If the tax declaration cannot be regarded as a very reliable instrument, there is nothing to prevent the Greek authorities from asking purchasers whether they already own immovable property in Greece. The Commission refers in that regard to the possibility of entry on the appropriate registers, such as the recently established land register, and to the possibility of introducing checking mechanisms to prevent abuse.

24 Finally, the Commission also disputes the Hellenic Republic's argument that EU law does not remove the national legislature's right to make the grant of tax concessions and advantages subject to certain conditions. It argues in that regard that the Treaty prohibits not only direct discrimination but also, and more generally, restrictions on the fundamental freedoms in the sphere of direct taxation. The first subparagraph of Article 1(3) of Law 1078/1980 undoubtedly

amounts to a restriction on the freedom of movement of persons, since it deters persons living in other Member States who are, in the majority, nationals of those States, rather than Greek nationals, from settling in Greece.

25 The Hellenic Republic disputes all claims that it has failed to fulfil its obligations, contending, first of all, that, although it is true that both Article 12 EC and Article 39 EC expressly prohibit all discrimination based on nationality, it is clear from the body of provisions adopted at various times by the national legislature, and from the absence of any requirement for Greek nationality among the conditions for the grant of the tax exemption at issue, that the legislature's intention has consistently been to grant the exemption not only to Greek nationals but more generally to all natural persons having their permanent residence in Greece, irrespective of their nationality.

26 In that regard, the Hellenic Republic draws attention to the fact that a circular issued in 1992, following an opinion of the Council of State, to assist the administration in the correct application of Law 1078/1980 does indeed state that the provisions of that law at issue also apply to nationals of other Member States, on exactly the same conditions as those applying to Greek nationals. Furthermore, pursuant to a ministerial decision of 21 June 2004, provision is made that, for the purpose of entitlement to the exemption, the permanent residence and professional activity of EU nationals may be proved by the production of tax declarations, attestations from social security bodies, employment contracts, documents relating to the taking up of an activity, tenancy agreements, etc.

27 Next, as regards the principle of equality of treatment as between EU nationals exercising their right of free movement and Greek nationals in a comparable situation, as it results from Articles 12 EC and 18 EC, the Hellenic Republic entertains some doubts as to whether the restrictions imposed, in relation to exemption from tax, on EU nationals must be the same as those concerning Greek nationals. In Greece's submission, EU law does not require that, in order to satisfy the obligation for full integration of EU nationals in the host Member State, those nationals must be exempt from tax on conditions which are the same as those applying to nationals of the host State. The Hellenic Republic states that, to be entitled to the exemption from the tax on the purchase of a first home, Greek nationals must show that a number of conditions are met and must lodge tax declarations. If the Commission's reasoning were applied, the result would be that nationals of Member States other than Greece would be entitled, merely on the strength of a declaration, to the same advantage as that granted to Greek nationals, which cannot be correct.

28 Finally, as regards justification for the first subparagraph of Article 1(3) of Law 1078/1980, the Hellenic Republic explains that it applies only to the purchase of a first home and thus to a very restricted category of transfers which respond to a need in the public interest.

29 Moreover, in its submission, that provision is justified on account of the fact that it is intended to facilitate the purchase of a home by individuals and thus to support families. It forms part of the State's more general social policy, by which the State makes plain its concern for persons of middle and lower incomes to whom it gives assistance with housing consisting in a socially-orientated tax advantage.

30 Furthermore, the ministerial decision of 7 April 2005 set at one year the minimum continuous period of residence required of all interested persons. That requirement is proportionate, appropriate and necessary given that the period of time is a reasonable one, which allows an EU national to familiarise himself with the country, to adapt to it and to its way of life and to review the market prior to purchasing a property. That requirement is a guarantee that the purchaser will acquire a first home in order to use it and that he will not seek to purchase properties for speculative or other purposes. In the absence of more reliable criteria, the minimum residence period was deemed appropriate for limiting tax evasion and for preventing abuse. In any

event, it is not long enough to cause difficulties for persons hoping to reside in Greece or to deter them from putting into action their plans to settle in Greece in the future.

31 In that regard, the Hellenic Republic disputes the conclusions which the Commission draws from the fact that no obligation is imposed on the purchaser to use the property he has bought as a permanent residence and that accordingly he is not prohibited from renting it out or selling it. So far as the sale of the property is concerned, Greece submits that the Commission's contention is erroneous since Article 1(7) of Law 1078/1980 provides that the exemption is granted on condition that the purchaser retains ownership of the property for at least five years. The national legislature, adopting a realistic approach, did not lay down strict conditions concerning the use of the first home, given that both the purchaser's centre of economic activity and his family situation may change.

32 The Hellenic Republic also contends that the Commission's proposals for less restrictive measures to achieve the objectives sought by Law 1078/1980, namely an obligation to be entered on municipal or tax registers or an obligation to file a tax declaration, are ineffective. It submits in that regard that EU nationals who settle in Greece are not required to register with the local administration or to obtain a tax registration number or to make tax declarations as long as they have not purchased immovable property. Furthermore, sales of immovable property have not yet been included in the computerised system of the land register, as the establishment of the latter is still at a very early stage.

33 The Hellenic Republic concludes that removal of the permanent residence requirement would thus make it much more difficult to check the conditions required for entitlement to the tax exemption and would ultimately result in the relevant provisions being circumvented since, in the absence of any tax information concerning the purchaser, it would be impossible to ascertain whether or not the purchaser owned other property in Greece.

34 Similarly, the Hellenic Republic dismisses as inappropriate the Commission's suggestion that the purchaser should merely be required to make a declaration in order to establish whether he already owns immovable property in Greece, as such a declaration provides no guarantee to the tax authorities.

35 Finally, the Hellenic Republic maintains that, although the provisions of EU law relating to the removal of discrimination on the basis of nationality entail restrictions on the exercise of the Member States' competence in the area of taxation, those provisions do not, however, remove the power of the national legislature to lay down specific conditions for the grant of tax advantages, in particular when tax exemptions are established. Referring to *Commission v Denmark* and to Case C-190/98 *Graf* [2000] ECR I-493, the Hellenic Republic maintains that even provisions applicable without distinction which prevent or deter a national of a Member State from leaving his country of origin to exercise his right to freedom of movement constitute obstacles to that freedom only if they make the access of workers to the labour market subject to conditions.

36 In the reply, the Commission stands by all the arguments which it advanced in the application.

37 However, the Hellenic Republic, in the rejoinder, contends that the Commission has not taken account of its arguments concerning the social aspect of the provisions of Law 1078/1980 at issue. It submits that if social advantages were granted, without consideration or control, to all EU citizens exercising their right of freedom of movement, that would result in existing national social rules being circumvented and would negate the social nature of the objectives which those rules pursue, since the grant of such advantages would be based solely on the fact that the persons to have exercised their right of freedom of movement have EU citizenship.

38 Thus, the Hellenic Republic, referring to Case C-343/92 *Roks and Others* [1994] ECR I-571) and Case C-280/94 *Posthuma-van Damme and Oztürk* [1996] ECR I-179, maintains that national practices relating to the implementation of social objectives are within the discretion which the Member States retain in determining their social policy, with regard to the nature and extent of social protection which they apply, provided that their actions are proportionate to the objective pursued. Accordingly, the Hellenic Republic maintains that paragraph 1 and the first subparagraph of paragraph 3 of Article 1 of Law 1078/1980 are not contrary to EU law and insists that the objectives pursued by those provisions cannot be achieved by less restrictive measures.

Findings of the Court

39 It should be recalled at the outset that, according to settled case-law, although direct taxation falls within their competence, the Member States must none the less exercise that competence consistently with EU law (see, inter alia, Case C-334/02 *Commission v France* [2004] ECR I-2229, paragraph 21; Case C-104/06 *Commission v Sweden* [2007] ECR I-671, paragraph 12, and Case C-152/05 *Commission v Germany* [2008] ECR I-39, paragraph 16).

40 It is appropriate, therefore, to consider whether, as the Commission maintains, Article 1(1) and (3), first subparagraph, of Law 1078/1980 constitute a restriction on the freedom of movement of persons as embodied in Articles 18 EC, 39 EC and 43 EC and Articles 4, 28 and 31 of the EEA Agreement.

41 Article 18 EC, which sets out in general terms the right of every EU citizen to move and reside freely within the territory of the Member States, finds specific expression in Article 39 EC with regard to freedom of movement for workers and in Article 43 EC with regard to freedom of establishment (Case C-345/05 *Commission v Portugal* [2006] ECR I-10633, paragraph 13; *Commission v Sweden*, paragraph 15, and *Commission v Germany*, paragraph 18).

42 Consideration should be given, in the first place, to whether Articles 39 EC and 43 EC preclude provisions of national law such as Article 1(1) and (3), first subparagraph, of Law 1078/1980.

43 The provisions of the Treaty on freedom of movement for persons are intended to facilitate the pursuit by EU nationals of occupational activities of all kinds throughout the European Union, and they preclude measures which might place those nationals at a disadvantage when they wish to pursue an economic activity in the territory of another Member State (*Commission v Denmark*, paragraph 34; *Commission v Portugal*, paragraph 15; *Commission v Sweden*, paragraph 17, and *Commission v Germany*, paragraph 21).

44 In this instance, the Hellenic Republic argues that the provisions at issue do not include, so far as conditions for the grant of the tax exemption are concerned, any requirement for Greek nationality, the only requirement being that of permanent residence in Greece.

45 On that point it is sufficient to recall that the Court has consistently held that the rules

regarding equal treatment forbid not only overt discrimination by reason of nationality but also all covert forms of discrimination which, by the application of other criteria of differentiation, lead in fact to the same result (see, inter alia, Case 152/73 *Sotgiu* [1974] ECR 153, paragraph 11; *Commerzbank*, paragraph 14, and Case C-103/08 *Gottwald* [2009] ECR I-9117, paragraph 27).

46 That is true, in particular, of a measure under which a distinction is drawn on the basis of residence or ordinary residence, inasmuch as that requirement is liable to operate mainly to the detriment of nationals of other Member States, since persons who are not resident or ordinarily resident on the national territory are in the majority of cases foreigners (see, inter alia, Case C-224/97 *Ciola* [1999] ECR I-2517, paragraph 14; Case C-388/01 *Commission v Italy* [2003] ECR I-721, paragraph 14, and *Gottwald*, paragraph 28).

47 In the present case, Article 1(3), first subparagraph, of Law 1078/1980 is based precisely on that type of requirement, given that the provision reserves entitlement to the tax exemption solely to permanent residents in Greece. In that regard, it should be observed that, although it applies irrespective of the nationality of the purchaser of immovable property, the requirement that a person be resident in Greece in order to be eligible for the tax exemption is liable to operate particularly to the detriment of persons who are not Greek nationals – the reason being that in most cases those are the persons whose residence will be outside Greece.

48 The provision concerned therefore places at a disadvantage persons not residing in Greece who purchase a first home with a view to settling in Greece in the future, since it does not admit that such persons are entitled to the exemption from the tax due on the purchase of a first home, whereas persons already residing in Greece who purchase a first home there may benefit from the exemption.

49 In those circumstances, the abovementioned provision has a deterrent effect in relation to persons not residing in Greece who, exercising the right of freedom of movement deriving from Articles 39 EC and 43 EC, wish to purchase a first home there.

50 It follows that, by reserving entitlement to the exemption from the tax arising on the purchase of a first home to persons who are resident in Greece on a permanent basis, paragraph 1 and the first subparagraph of paragraph 3 of Article 1 of Law 1078/1980 are liable to impede the freedom of movement of workers and the freedom of establishment, as guaranteed by Articles 39 EC and 43 EC.

51 According to well-established case-law, however, national measures which are liable to hinder or make less attractive the exercise of fundamental freedoms guaranteed by the Treaty may nevertheless be allowed provided that they pursue an objective in the public interest, are appropriate for attaining that objective and do not go beyond what is necessary to attain the objective pursued (*Commission v Portugal*, paragraph 24; *Commission v Sweden*, paragraph 25, and *Commission v Germany*, paragraph 26).

52 In that regard, the Hellenic Republic maintains that the permanent residence requirement is justified inter alia by objectives consisting, on the one hand, in facilitating the purchase of a first home by individuals and preventing any property speculation and, on the other, in restricting tax evasion and preventing abuse. Furthermore, it argues that such a requirement is part of the more general context of Greece's social policy, in relation to which the national practices pertaining to the implementation of social objectives are covered by the discretion which Member States retain in determining their social policy, with regard to the nature and extent of social protection which they apply, provided that their actions are proportionate to the objective pursued.

53 Even supposing that such arguments may be relied on to justify an obstacle to the freedom

of movement of persons, the requirement for residence on Greek territory laid down by Article 1(3), first subparagraph, of Law 1078/1980 does not, in any event, secure the objectives which that law purportedly pursues and, in addition, goes beyond what is necessary to attain those objectives.

54 As regards, first, whether the national rule at issue is appropriate, if the provision does indeed seek to prevent the purchaser of immovable property from making a profit from it and, accordingly, to discourage speculation, it is clear that the requirement laid down by the provision does not attain the objective pursued, inasmuch as Law 1078/1980 imposes no obligation on the purchaser of immovable property to use the property as a permanent residence and does not prohibit him from renting out the property. In the absence of such an obligation, the Hellenic Republic's argument relating to countering speculation cannot succeed.

55 That finding is also true with regard to the argument based on social policy, expressly advanced by the Hellenic Republic, which concerns the need to support families on low or middle incomes. Given the absence of any obligation of the kind mentioned in the preceding paragraph, it does not appear that Law 1078/1980 is appropriate to attain that objective, since the tax advantage afforded on the purchase of a first home is granted to all persons meeting the residence requirement irrespective of whether they are middle or lower-income families. In those circumstances, it cannot be presumed that the non-selective grant of that tax advantage meets the allegedly socio-political objective of Law 1078/1980. Moreover, the Hellenic Republic has not shown that the exemption from the tax on the purchase of a first home constitutes a socially-orientated tax advantage applying only to persons within the most disadvantaged social classes.

56 As regards, second, the assessment which must be made of whether the legislation at issue is necessary, the arguments put forward by the Hellenic Republic concerning the objective of restricting tax evasion and preventing abuse consisting in circumvention of the objective of the exemption – for example by claiming entitlement to the exemption in respect of a number of purchases of immovable property – do not establish that the provisions at issue are necessary for the attainment of that objective. The latter can, however, just as well be attained if the purchaser does not have a permanent residence in Greece.

57 Indeed, as the Commission rightly maintains, there are other less restrictive methods which would allow the Greek authorities to ensure that a purchaser of immovable property complies with all the conditions for entitlement to the tax exemption by satisfying themselves that he does not own another property in Greece. They include entry on the tax register or the land register, a requirement for declarations as to tax or accommodation or the implementation of checks by the tax authorities, supplemented by statements under oath by purchasers, the latter being criminally liable for the content and accuracy of their statements.

58 It follows that a national rule such as that provided for in Article (1) and (3), first subparagraph, of Law 1078/1980 goes beyond what is necessary to attain the objective pursued.

59 In view of those considerations, it must be found that the requirement for permanent residence laid down in Article 1(1) and (3), first subparagraph, of Law 1078/1980, first, is not such as to justify the objectives of facilitating the purchase of a first home, preventing all property speculation and supporting middle or lower-income families and, second, is not necessary for the purpose of restricting tax evasion and preventing abuse arising from circumvention of the objective of the exemption, so that it must be concluded that such a requirement is contrary to Articles 39 EC and 43 EC.

60 In the second place, as regards persons who are not resident in Greece and who are not carrying out any economic activity there, the same conclusion applies, for the same reasons, to the complaint relating to Article 18 EC (see Case C-522/04 *Commission v Belgium* [2007] ECR

175701, paragraph 72, and *Commission v Germany*, paragraph 30).

61 The Commission also asserts that, because of those provisions, the Hellenic Republic has failed to fulfil its obligation under Articles 28 and 31 of the EEA Agreement concerning freedom of movement for workers and freedom of establishment.

62 It is to be noted in that regard that the rules prohibiting restrictions on freedom of movement and freedom of establishment laid down in Articles 28 and 31 of the EEA Agreement correspond to those established in Articles 39 EC and 43 EC respectively.

63 Consequently, by granting the exemption from the tax, under Article 1(1) and (3), first subparagraph, of Law 1078/1980, solely to persons permanently resident in Greece, whilst non-residents who intend to settle in Greece in the future are not granted exemption from the tax, the Hellenic Republic has failed to fulfil its obligations under Articles 18 EC, 39 EC and 43 EC and under Articles 28 and 31 of the EEA Agreement.

Second complaint, discrimination based on nationality

Arguments of the parties

64 The Commission maintains that Article 1(3), second subparagraph, of Law 1078/1980 establishes express discrimination based on nationality, since only Greek nationals and persons of Greek origin are eligible for the tax exemption, that being the case even if they do not fulfil the general requirement for permanent residence in Greece. Nationals of Member States other than Greece are in no case entitled to any such exemption.

65 In accordance with the general principle stated in the first paragraph of Article 12 EC, any distinction based on nationality constituting discrimination in favour of Greek nationals to the detriment of nationals of other Member States is specifically forbidden. Nationals of other Member States who hope to purchase a first residence in Greece thus have to pay a tax which is not applied in the case of purchases by Greek nationals, which renders the acquisition of a first residence in Greece less attractive to foreigners and consequently impedes their freedom of establishment in Greece.

66 The Hellenic Republic argues that the fact that the status of Greek citizen or person who is of Greek origin is a ground for exemption from the requirement for permanent residence in Greece shows that the essential requirement for entitlement to the tax exemption is the place of permanent residence, which is the most objective and appropriate condition possible. The provision at issue was added to Law 1078/1980 following abolition of the tax exemption applicable to currency imports and its purpose is to facilitate the purchase of a home by persons of Greek origin and Greeks who have emigrated and to encourage them to return to Greece. Given that the Hellenic Republic is among those States which have experienced a significant decline in population because of massive emigration abroad, it was deemed appropriate to provide incentives, by means of tax exemptions, to attract Greek nationals established abroad to return to Greece. That specific and ad hoc exception serves clear social-policy objectives in order to preserve links between Greeks established outside the national territory and their country of origin. In view in particular of the social aspect of the provision at issue and the objective which it pursues, the restriction to which the Commission objects does not exceed what is proportionate and appropriate.

Findings of the Court

67 As regards the Commission's second complaint concerning the fact that the tax exemption

is granted only to Greek nationals or persons of Greek origin, it is clear that Article 1(3), second subparagraph, of Law 1078/1980 draws a distinction based on the criterion of nationality.

68 In that regard, it is settled case-law that the principle of non-discrimination, whether it has its basis in Article 12 EC or Articles 39 EC or 43 EC, requires that comparable situations must not be treated differently and that different situations must not be treated in the same way. Such treatment may be justified only if it is based on objective considerations independent of the nationality of the persons concerned and is proportionate to the objective being legitimately pursued (see, to that effect, Case C-164/07 *Wood* [2008] ECR I-4143, paragraph 13, and Case C-524/06 *Huber* [2008] ECR I-9705, paragraph 75).

69 In the present case, Greek nationals and nationals of Member States other than the Hellenic Republic who intend to settle in Greece are, so far as the purchase of a first residence in that Member State is concerned, in a comparable situation. Under Article 1(3), second subparagraph, of Law 1078/1980, the only factor liable to give rise to a distinction between the situation of Greek nationals or persons of Greek origin and nationals who are not Greeks, so far as their right to exemption from the tax is concerned, is their nationality. Only Greek nationals or persons of Greek origin are entitled to the exemption. Thus, that different treatment, expressly and solely based on nationality, constitutes direct discrimination.

70 The Hellenic Republic maintains that that distinction is justified in this instance by objectives intended *inter alia*, first, both to make it easier for Greeks who have emigrated and persons of Greek origin to purchase a home and to encourage their return, given that Greece has experienced a sharp decrease in its population because of massive emigration abroad. Second, the exemption provided for in that provision is also justified on grounds of social policy, in that it seeks to preserve links between Greeks who have emigrated and their country of origin.

71 However, such considerations do not establish that there are objective circumstances, independent of the nationality of the persons concerned, which are capable of justifying discrimination such as that resulting from the exemption provided for in Article 1(3), second subparagraph, of Law 1078/1980, as their very foundation is the nationality of the persons concerned.

72 It follows that the difference in treatment between Greek nationals or persons of Greek origin and EU citizens who are not nationals of Greece, which consists in the latter's exclusion by Article 1(3), second subparagraph, of Law 1078/1980 from entitlement to the exemption provided for in that provision, constitutes discrimination prohibited by the first paragraph of Article 12 EC and by Articles 39 EC and 43 EC.

73 The Commission also asserts that, because of those provisions, the Hellenic Republic has failed to fulfil its obligation under Articles 4, 28 and 31 of the EEA Agreement concerning the prohibition on discrimination, freedom of movement for workers and freedom of establishment.

74 It is to be noted in that regard that the prohibition on discrimination on grounds of nationality, laid down in Article 4 of the EEA Agreement, as well as the rules prohibiting restrictions on freedom of movement and freedom of establishment laid down in Articles 28 and 31 thereof, are identical to those established in Articles 12 EC, 39 EC and 43 EC respectively.

75 Consequently, by granting, on certain conditions, exemption from the tax solely to Greek nationals or persons of Greek origin on the purchase of a first residence in Greece, the Hellenic Republic has failed to fulfil its obligations under Articles 12 EC, 39 EC and 43 EC and under Articles 4, 28 and 31 of the EEA Agreement.

Costs

76 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 has applied for costs to be awarded against the Hellenic Republic and the latter has been unsuccessful, the Hellenic Republic must be ordered to pay the costs.

On those grounds, the Court (First Chamber) hereby

1. Declares that,

- **by granting exemption from the tax on the transfer of immovable property, under Article 1(1) and (3), first subparagraph, of Law 1078/1980, solely to persons permanently resident in Greece, whilst non-residents who intend to settle in Greece in the future are not granted exemption from the tax, and**
- **by granting, on certain conditions, exemption from the tax solely to Greek nationals or persons of Greek origin on the purchase of a first residence in Greece,**

the Hellenic Republic has failed to fulfil its obligations under Articles 12 EC, 18 EC, 39 EC and 43 EC and under Articles 4, 28 and 31 of the Agreement on the European Economic Area of 2 May 1992.

2. Orders the Hellenic Republic to pay the costs.

[Signatures]

* Language of the case: Greek.