OPINION OF ADVOCATE GENERAL JACOBS
delivered on 13 April 1989 *

My Lords,

1. The single article of the Greek Presidential Decree of 22 to 24 June 1927 provides that the acquisition by foreign natural or legal persons of ownership of real estate or other real property rights, with the exception of mortgages, in respect of property situated in the border regions of the country is prohibited on pain of penalties and absolute nullity of the legal transaction in question. The penalties are fines and/or imprisonment, as well as removal from office in the case of notaries involved. The same penalties are laid down in respect of the prohibition against letting or any other form of assignment to such persons of the right to use urban real property situated in the border regions of the country for a period of more than three years. Under that article it is also prohibited, subject to the penalties specified, to let or to assign in any form whatsoever the use of agricultural real property of any sort, including pasture, forests, lakes and fish reserves. That prohibition may only be lifted by a decision of the Ministers for the Interior, Agriculture and National Defence, supported by an opinion given by a special commission. The regions regarded as border regions are those designated as such by decree.

2. Articles 1, 2, 3, 4 and 5 of the Greek Emergency Law No 1366 of 2 to 7 September 1938, as amended, prohibit the execution of any deed relating to real estate or intangible property situated in the border regions or on an island or islet of Greece, or in a coastal area or an area in the interior of the country designated as a border region by decree, that is to say any deed by which the ownership or other real property right is transferred or a letting relationship or other relationship of obligation established with a natural or legal person, with the exception of the State or urban or rural districts. In order for the execution of such a deed to be valid, and only in respect of a natural person of Greek nationality or legal person under the management of Greek nationals, the person concerned must produce an attestation from the Minister for Agriculture issued subject to a proposal by a special commission, certifying that there are no reasons of security to preclude the transaction. Foreigners are not permitted to execute such deeds unless the decree designating the area as a border region is revoked by a fresh decree.

3. By various decrees, areas amounting to approximately 55% of Greek territory were designated border regions for the purposes of the Presidential Decree of 1927 and the Emergency Law of 1938.

* Original language: English.

4. By an application lodged at the Court Registry on 5 October 1987, the Commission claims a declaration that, by maintaining in force and applying certain provisions of its legislation, in particular the single article of the Presidential Decree of 22 to 24 June 1927 and Articles 1, 2, 3, 4 and 5 of Emergency Law No 1366/1938, in relation to transactions by foreigners who are nationals of Member States in respect of real estate situated in border regions, the Hellenic Republic has failed to fulfil its obligations under the EEC Treaty, in particular Articles 7, 48, 52 and 59 thereof.

5. The Commission divides the Greek legislation described above into two categories: the first (Presidential Decree of 22 to 24 June 1927) applicable only to foreigners; the second (Emergency Law No 1366 of 2 to 7 September 1938) applicable on its face to foreigners and Greek nationals alike, but providing for the possibility for Greek nationals nevertheless to acquire land by going through the necessary administrative control procedure. The Commission argues that both regimes constitute discrimination on the basis of nationality, contrary to Article 7 of the Treaty, and create an obstacle to the free movement of persons and services (Articles 48, 52 and 59). The Commission expressly declines to take a position on whether the provisions are also incompatible with the provisions of the Treaty relating to the free circulation of capital (Articles 67 *et seq.*).

6. The Greek Government has not seriously contested the alleged infringements. In its written submissions, it contents itself with observing that a bill is before Parliament, states that the existence of that bill does not necessarily mean that Greece admits that the Commission's argument is well founded and suggests that the Court should find against the Commission. It does not, however, put forward any argument to rebut the Commission's claims. At the hearing, for the first time, the Greek Government sought to argue that the contested provisions might be justified on security grounds in particular under Article 224 of the Treaty. In my view that argument does not fall to be considered by the Court because it was raised much too late in the proceedings: Article 42(2) of the Rules of Procedure. In any event, however, the argument was not made good as to its substance by the vague references advanced at the hearing. The Greek Government also referred at the hearing to the efforts it had made and the difficulties it had encountered in amending the contested provisions in line with Community law. However, it is well established that such difficulties may not be relied on by a Member State in order to excuse a failure to comply with Community law.

7. It should be said that in response to the Commission's letter of enquiry in 1984 and its reasoned opinion in 1985, the Greek Government already stated that amending legislation was on the way. Indeed the hearing in the present case, originally fixed for 6 December 1988, was postponed to 14 March 1989 at the Greek Government's request in order to allow time for the amending legislation to be adopted. However, such legislation still has not been adopted.

8. The Treaty provisions most clearly infringed by the two types of restriction imposed by the Greek legislation on

dealings with immovable property are the provisions on freedom of establishment, in particular Article 52. The right to own or rent immovable property in another Member State is plainly an indispensable adjunct to the right of establishment there if that right is to have any practical substance. Moreover the right to own or rent such property must also, if it is to be meaningful, comprise the right to use and deal freely with the property. That such is the purport of Article 52 is confirmed by the wording of Article 54(3)(e) of the Treaty, as well as by the terms of the 1961 General programme for the abolition of restrictions on freedom of establishment (Official Journal, English Special Edition, Second Series IX, p. 7). Accordingly I consider that both categories of Greek legislation impugned in this case are contrary to Article 52 of the Treaty.

9. The right to own or deal with immovable property appears less immediately associated with freedom to provide services than it is with the right of establishment. Nevertheless it is plain that the national provisions in question may seriously restrict the right of nationals of other Member States to provide services in Greece which would involve acquiring or dealing with immovable property. Indeed the 1961 General programme for the abolition of restrictions on freedom to provide services (Official Journal, English Special Edition, Second Series IX, p. 3) included among the restrictions to be removed provisions which, in respect of foreigners only, excluded or limited the power to acquire, use or dispose of immovable property or rights therein; and Council Directive No 67/43 (Official Journal, English Special Edition 1967, p. 3) required Member States to abolish restrictions on freedom of establishment and freedom to provide services in respect of activities of self-employed persons dealing in immovable property in the course of their trade. Since the end of the transitional period laid down by Article 8 of the Treaty, such restrictions must be regarded as prohibited by virtue of the direct effect of Article 59. Moreover Article 59 is wider in scope: the Greek restrictions on owning or renting immovable property might also hinder a person wishing to come to Greece temporarily in order to provide a service of any other kind, as he is entitled to under the third paragraph of Article 60 of the Treaty. In this connection the Court has held that persons providing services could not be excluded from the principle of equal treatment with a Member State's own nationals in matters of housing: paragraph 19 of the judgment of 14 January 1988 in Case 63/86 *Commission* v *Italy*. Accordingly I consider that the national measures in question are contrary to Article 59 of the Treaty.

10. The Commission also claims that Article 48 of the Treaty is infringed. Article 48 has applied in Greece since 1 January 1981, subject to the transitional provisions laid down in Articles 45 to 47 of the Act of Accession (Official Journal 1979, L 291, p. 17). Those transitional provisions do not refer directly to Article 48 but only to certain Community legislation, in particular Regulation (EEC) No 1612/68 on freedom of movement for workers within the Community (Official Journal, English Special Edition 1968 (II), p. 475). Article 45(1) of the Act of Accession provides that Articles 1 to 6 and 13 to 23 of Regulation No 1612/68 'shall only apply . . . in Greece with regard to nationals of the present Member States as from 1 January 1988', and Article 45(2) defers the application of Article 11 of the regulation, but the transitional provisions make no mention of Article 9(1) of the regulation which provides:

'A worker who is a national of a Member State and who is employed in the territory of another Member State shall enjoy all the rights and benefits accorded to national workers in matters of housing, including ownership of the housing he needs.'

11. Application of Article 9(1) was thus not suspended by the aforesaid transitional provisions. It has therefore applied in Greece since 1 January 1981, with the effect that workers from other Member States who were already in regular employment in Greece by 1 January 1981 or who are already present in Greece in regular employment after that date may benefit from the provisions of Article 9(1). The restrictions which the Greek legislation in question imposes on the ownership and renting of immovable property by foreigners are plainly incompatible with the provisions of Article 9(1), and the Commission would have been entitled to a declaration to that effect; but the Commission seeks a declaration of infringement not of those provisions but of Article 48 of the Treaty.

12. Since none of the legislation mentioned in the transitional provisions relates to housing matters, the application of Article 48 of the Treaty, in so far as it relates to housing and the ownership and renting of immovable property, was not suspended in relation to Greece by the transitional provisions in the Act of Accession. (In any event Article 48 has applied in full to Greece since 1 January 1988, the date when the last of the transitional provisions laid down in Articles 45 to 47 of the Act of Accession expired.)

13. I consider that Article 48 of the Treaty does relate to housing and the ownership and renting of immovable property. Regulation No 1612/68, Article 9(1) of which relates to housing, was adopted pursuant to Article 49 of the Treaty, which requires the Council to adopt directives or regulations 'setting out the measures required to bring about . . . freedom of movement for workers, as defined in Article 48'. This is an indication, at the very least, that equal treatment with a Member State's own nationals in housing matters is required in order to bring about freedom of movement for workers as defined in Article 48. Paragraphs 15 and 16 of the Court's judgment of 14 January 1988 in Case 63/86 *Commission* v *Italy* [1988], although they concern the right of establishment, also confirm the view that the right of free movement for workers entails a right of access to housing on the same terms as nationals of the host State. Furthermore, under the third paragraph of Article 48 itself freedom of movement for workers entails the right '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'. Because the Greek restrictions on the ownership and renting of immovable property by foreigners in practice impede the right of a worker from another Member State to stay in Greece for the purpose of employment, they can be said to contravene Article 48. Therefore I consider that the Commission is entitled to a declaration of infringement of Article 48 of the Treaty.

14. The Commission also asks for a declaration that the Greek legislation in question infringes Article 7 of the Treaty. That legislation plainly discriminates on grounds of nationality, but I doubt whether it is appropriate for the Court to find an infringement of Article 7 if, as I propose, it finds an infringement of Articles 48, 52 and 59 of the Treaty. As is well established, those articles are specific manifestations, in the areas they deal with, of the general principle of non-discrimination stated in Article 7: see, e.g. paragraph 12 of the judgment in Case 63/86 *Commission* v *Italy*. If a declaration of infringement of the specific rules is granted, it would seem otiose to grant in addition a declaration of infringement of the general principle; all the more so as Article 7 is expressed to be 'without prejudice to any special provisions' contained in the Treaty. A declaration of infringement of Article 7 appears to be appropriate where no more specific basis is available (as for example in Case 293/83 *Gravier* v *Liège* [1985] ECR 593) but serves no useful purpose where a more specific basis is available (see the judgment of 14 July 1988 in Case 38/87 *Commission* v *Greece*, where Article 7 was relied on in argument but the form of order sought and the declaration granted were confined to Articles 52 and 59). A declaration under Article 7 might be appropriate in the case of discrimination against persons not covered by a more specific provision of Community law. However, the Commission has expressly refrained from arguing that point in this case and has submitted only that Article 7 is infringed inasmuch as Articles 48, 52 and 59 are infringed. Therefore I would not consider it appropriate in the present case to grant a declaration of infringement of Article 7.

15. Nevertheless the Commission has succeeded on the bulk of its submissions. Accordingly, in my opinion, the Court should declare that, by maintaining in force and applying the single article of the Presidential Decree of 22 to 24 June 1927 and Articles 1, 2, 3, 4 and 5 of Emergency Law No 1366/1938 in relation to transactions by foreigners who are nationals of Member States in respect of real estate situated in border regions, the Hellenic Republic has failed to fulfil its obligations under Articles 48, 52 and 59 of the EEC Treaty, and should award the Commission the costs.