JUDGMENT OF THE COURT (Fifth Chamber)

14 September 1999 *

In Case C-401/98,

Commission of the European Communities, represented by Maria Condou-Durande, of its Legal Service, acting as Agent, with an address for service in Luxembourg at the office of Carlos Gómez de la Cruz, also of its Legal Service, Wagner Centre, Kirchberg,

applicant,

v

Hellenic Republic, represented by Nana Dafniou and Dimitra Tsagkaraki, of the Special Legal Service for the European Communities of the Ministry 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 the laws, regulations and administrative provisions necessary to comply with Directive 94/47/EC of the European Parliament and the Council of 26 October 1994 on the protection of purchasers in respect of certain aspects of contracts relating to the purchase of the

* Language of the case: Greek.

right to use immovable properties on a timeshare basis (OJ 1994 L 280, p. 83), the Hellenic Republic has failed to fulfil its obligations under that directive,

THE COURT (Fifth Chamber),

composed of: J.-P. Puissochet, President of the Chamber, P. Jann, C. Gulmann (Rapporteur), D.A.O. Edward and L. Sevón, Judges,

Advocate General: A. Saggio,

Registrar: R. Grass,

having regard to the report of the Judge-Rapporteur,

after hearing the Opinion of the Advocate General at the sitting on 17 June 1999,

gives the following

Judgment

1 By application lodged at the Court Registry on 10 November 1998, the Commission of the European Communities brought an action under Article 169 of the EC Treaty (now Article 226 EC) in which it sought a declaration that, by failing to adopt the laws, regulations and administrative provisions necessary to

comply with Directive 94/47/EC of the European Parliament and the Council of 26 October 1994 on the protection of purchasers in respect of certain aspects of contracts relating to the purchase of the right to use immovable properties on a timeshare basis (OJ 1994 L 280, p. 83, hereinafter 'the Directive'), the Hellenic Republic has failed to fulfil its obligations under that directive.

2 Under Article 12(1) of the Directive, Member States were required to bring into force the laws, regulations and administrative provisions necessary to comply with the Directive by no later than 30 months after its publication in the *Official Journal of the European Communities*, and immediately to inform the Commission thereof.

3 Given that the Directive was published on 29 October 1994, Member States were required to adopt the measures necessary to implement it before 30 April 1997.

4 Having received from the Greek Government no notification concerning the measures taken to transpose the Directive into Greek law, and in the absence of any other information from which it could conclude that the Hellenic Republic had fulfilled its obligation to do so, the Commission gave formal notice to that State by letter of 9 September 1997, in accordance with the procedure laid down in Article 169 of the Treaty, calling on it to submit its observations within a period of two months.

5 The Greek Government replied by letter of 11 November 1997, saying that a proposal for transposing the Directive had been drawn up in the form of a ministerial decree and had been sent to the Greek Tourist Board for comment.

6 In view of the fact that, by 16 January 1998, the Greek authorities had still not sent a copy of the decree, the Commission sent a reasoned opinion to the Hellenic Republic, requesting it to adopt the necessary measures to fulfil its obligations under the Directive within two months of notification of the opinion.

7 Having received no further information regarding the transposition of the Directive, the Commission decided to bring the present action.

8 In its defence, the Greek Government does not deny that the measures necessary to transpose the Directive were not taken within the prescribed period. It states, however, that the Ministry for Development has prepared a draft presidential decree to which all the necessary signatures ought to be affixed shortly and which will then be sent to the Council of State for assessment, and that it is endeavouring to complete the procedure to bring its national law into line with the Directive as quickly as possible.

9 As the Commission has pointed out, it is settled case-law that a Member State may not plead provisions, practices or circumstances existing in its internal legal system in order to justify a failure to comply with the obligations and time-limits laid down in a directive (see, in particular, Case C-214/96 *Commission* v *Spain* [1998] ECR I-7661, paragraph 18).

10 Since the Directive has not been transposed within the period prescribed therein, the action brought by the Commission must be held to be well founded.

11 It must therefore be held that, by failing to adopt, within the prescribed period, the laws, regulations and administrative provisions necessary to comply with the Directive, the Hellenic Republic has failed to fulfil its obligations under the Directive.

Costs

12 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 (Fifth Chamber),

hereby:

1. **Declares that, by failing to adopt within the prescribed period the laws, regulations and administrative provisions necessary to comply with Directive 94/47/EC of the European Parliament and the Council of 26 October 1994 on the protection of purchasers in respect of certain aspects of contracts relating to the purchase of the right to use immovable properties on a timeshare basis, the Hellenic Republic has failed to fulfil its obligations under that directive;**

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

Puissochet Jann Gulmann

Edward Sevón

Delivered in open court in Luxembourg on 14 September 1999.

R. Grass J.-P. Puissochet

Registrar President of the Fifth Chamber