JUDGMENT OF THE COURT (Third Chamber)

1 December 2005 *

In Case C-213/04,

REFERENCE for a preliminary ruling under Article 234 EC from the Oberster Gerichtshof (Austria), by decision of 29 April 2004, received at the Court on 19 May 2004, in the proceedings

Ewald Burtscher

v

Josef Stauderer,

THE COURT (Third Chamber)

composed of A. Rosas, President of Chamber, J. Malenovský, J.-P. Puissochet (Rapporteur), S. von Bahr and U. Lõhmus, Judges,

* Language of the case: German.

Advocate General: F.G. Jacobs,
Registrar: K. Sztranc, Administrator,

having regard to the written procedure and further to the hearing on 5 July 2005,

after considering the observations submitted on behalf of:

— Mr Burtscher, by G. Lins and T. Lins, Rechtsanwälte,

— Mr Stauderer, by W. Weh, Rechtsanwalt,

— the Austrian Government, by E. Riedl and S. Pfanner, acting as Agents,

— the Spanish Government, by E. Braquehais Conesa, acting as Agent,

— the Commission of the European Communities, by G. Braun and H. Støvlbaek, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 29 September 2005,

gives the following

Judgment

1 This reference for a preliminary ruling concerns the interpretation of Article 56 EC.

2 The reference was made in an action brought by Mr Burtscher, the owner of a dwelling and land situated in the municipality of Sonntag, to obtain the eviction of Mr Stauderer, who holds a long lease on that immovable property and claims a right to acquire title to it.

Relevant provisions

Community law

3 Article 56(1) EC provides:

'Within the framework of the provisions set out in this chapter, all restrictions on the movement of capital between the Member States and between Member States and third countries shall be prohibited.'

Austrian law

4 The Law amending the Federal Constitution (Bundes-Verfassungsgesetznovelle, BGBl. 276/1992) of 5 June 1992 authorised the Länder to introduce administrative controls on property transactions relating to built-on land.

5 Pursuant to Paragraph VII of the Law of 1974 amending the Federal Constitution (Bundes-Verfassungsgesetznovelle 1974, BGBl. 444/1974), the Länder were also authorised to introduce administrative restrictions on property transactions in the public interest of maintaining, increasing or creating of a viable agricultural population.

6 As regards the Land of Vorarlberg, the Vorarlberg Land Transfer Law (Vorarlberger Grundverkehrsgesetz, LGBl. 61/1993) of 23 September 1993, as amended (LGBl. 29/2000) ('the VGVG'), provides in Paragraph 7, entitled 'Acquisitions not subject to authorisation, declaration':

'1. Acquisitions of built-on land under Paragraph 6(1) are not subject to authorisation by the competent land transfer authority if the purchaser provides a written declaration in accordance with subparagraphs (2) to (4) to the Land committee responsible for land transfer or to the municipality in which the land is situated.

2. The purchaser shall declare that:

(a) the land is built-on;

(b) he is an Austrian citizen or, in respect of non-natural persons, that it is not regarded as foreign under Paragraph 2(4)(b) to (d) or that it satisfies one of the conditions referred to in Paragraph 3(1) and (2), and that

(c) the acquisition is or is not for holiday purposes.

3. In his/its declaration, the purchaser shall provide information proving identity and citizenship or evidence that it is not regarded as a foreigner under Paragraph 2(4)(b) to (d), or that it is so treated under Paragraph 3. Certificates shall be submitted where possible.

...'

7 Paragraph 17 of the VGVG reads as follows:

'1. The application for authorisation from the competent land transfer authority shall be made in writing. The request shall include the information and documents necessary for reaching a decision, in particular those concerning the purpose for which the right is acquired and a certified copy of the documents attesting to the legal basis of the right acquired.

2. The application may be lodged even before the conclusion of the underlying contract subject to authorisation. In that case it shall contain the main points of the transaction contemplated and shall be signed by all the parties. If the acquisition is founded on a contract, the application for authorisation shall be made or the declaration provided within three months of the conclusion of the contract.

...'

8 Paragraph 29 of the VGVG provides:

'1. As long as the authorisation or the declaration required under this law has not been granted or provided, the transaction in question may not be executed; in particular, the right may not be registered in the land register. That transaction shall nevertheless bind the parties.

2. If the authorisation is refused or authorisation has not been sought or the declaration under Paragraph 7 has not been provided within two years of the expiry of the period stated in the last sentence of Paragraph 17(2), the transaction becomes retroactively invalid.'

9 Under Paragraph 32 of the VGVG:

'1. If a transaction relating to acquisition of property is invalid on account of the refusal of authorisation or expiry of the period laid down in Paragraph 29(2), the

seller may refuse to make restitution to the purchaser if he neither knew nor was required to know that the transaction was subject to authorisation or declaration under Paragraph 7 or that the conditions concerning authorisation or issue of the declaration had not been fulfilled.

2. If the transaction is cancelled, the seller may require cancellation of the rights registered which were not acquired in good faith regarding the effect of the right to be cancelled in accordance with Paragraph 31(5), in particular after notification under Paragraph 31(2).

...'

The main proceedings and the question referred for a preliminary ruling

10 Mr Burtscher owns a parcel of built-on land in the municipality of Sonntag, which his mother transferred to him in 1995.

11 In 1974 Mr Stauderer, a German national, agreed with the parents of Mr Burtscher, who were then owners of that land, to buy the land for ATS 250 000. From that date Mr Stauderer began extensive renovation work. Since then he has used the property as a holiday home.

12 In 1975, the parents of Mr Burtscher and Mr Stauderer signed two agreements simultaneously. First, a 'lease' was signed for a term of 99 years without the possibility to terminate. That contract, which stated that the rights and obligations

therein were to pass to the successors in title of the parties, provided for the payment of a monthly rent of ATS 291 and advance rent of ATS 350 000. By the same agreement, the lessee assumed responsibility for all the expenses, including tax, associated with the use of the property. Secondly, an agreement was concluded under which if it were to become possible for the lessee to purchase that property, which the legislation then in force prohibited, the lessors undertook to sell the property to the latter at a price of ATS 350 000.

13 At the time of the transfer of the property to Mr Burtscher in 1995, the latter declared that he assumed all of the rights and obligations contained in the lease concluded between his parents and Mr Stauderer.

14 By a decision of 12 July 1994, the municipality of Sonntag prohibited Mr Stauderer from using the property in question as a holiday home. Relying on the provisions of the Law amending the Town Planning Law of the Land of Vorarlberg (Vorarlberger Raumplanungsgesetznovelle, LGBl. 27/1993), it took the view that the aforementioned lease had the same effect as a contract of sale and that it had been concluded to circumvent legislation governing the acquisition of real property by foreigners.

15 Mr Stauderer lodged an objection against that decision, which was dismissed by the Bezirkshauptmannschaft (district authority). The appeal brought by the party concerned before the Verwaltungsgerichtshof was also dismissed.

16 On 11 September 2000 Mr Burtscher applied to the Bezirksgericht Bludenz (District Court of Bludenz) for an order against Mr Stauderer to vacate the land concerned, claiming that the agreements concluded in 1975 were fraudulent and void *ab initio*. The defendant asked for the application to be dismissed, relying on the rights deriving from those agreements.

17 That application for possession was dismissed by the Bezirksgericht but, on appeal by the applicant, the Landesgericht Feldkirch set aside the judgment at first instance and referred the case back to the Bezirksgericht. The Oberster Gerichtshof dismissed the appeal brought against the decision of the Landesgericht.

18 Both the Landesgericht and the Oberster Gerichtshof took the view that transactions designed to circumvent the law had to be subject to the rules applicable to the transaction actually intended and their legal effects suspended until those rules were complied with. The new provisions governing the acquisition of built-on land, adopted following the signing of the Agreement on the European Economic Area of 2 May 1992 (OJ 1994 L 1, p. 3) no longer require purchasers to obtain prior authorisation from the competent land transfer authority. Since the VGVG in the version published in the LGBl. 61/1993 came into force, purchasers need merely make a declaration to that authority within a period of two years in accordance with Paragraph 7(2) of the VGVG, failing which the transaction will be retroactively invalid.

19 The Landesgericht and the Oberster Gerichtshof inferred in this case that, in the absence of a declaration provided by Mr Stauderer within a period of two years, which began to run at the latest from the entry into force of the VGVG in the version published in the LGBl. 29/2000, the agreements of 1975 must be regarded as void and that therefore Mr Stauderer had to vacate the premises.

20 In the second set of proceedings the Bezirksgericht determined the amount of Mr Stauderer's expenditure on the property at EUR 38 280.57 and ordered the latter to vacate the property on payment of that sum. The Landesgericht upheld that judgment and declared that an ordinary appeal on a point of law did not lie against its judgment. It took the view that the second set of proceedings was concerned only with the amount of the claim for restitution of the unjustified enrichment, which did not give rise to any significant issues of law.

21 Mr Stauderer filed a special appeal on a point of law before the Oberster Gerichtshof. He claimed that the view of the law taken by that court in its first judgment was not binding in the light of the recent case-law of the Court of Justice. The Court had ruled in its judgment in Case C-300/01 *Salzmann* [2003] ECR I-4899 that the prior authorisation procedure set up by the VGVG was contrary to the free movement of capital guaranteed by Article 56(1) EC. The same conclusion had to be reached with regard to the penalty of invalidity attached to the prior authorisation procedure provided for in Paragraph 7(2) of the VGVG.

22 The Oberster Gerichtshof states that the Law amending the VGVG and published in the BGBl. 29/2000 made it possible, so far as concerns holiday homes, to acquire built-on land by way of declaration. It considers that that procedure, unlike the prior authorisation procedure, is designed to notify the competent authorities of property acquisitions. It points out, however, that Mr Stauderer did not provide the necessary declaration until January 2003, after expiry of the period of two years allowed to him, and that the penalty of invalidity of the transaction also applies if declarations are merely submitted after the due date. There is no evidence to indicate that the Austrian legislature intended to restrict the penalty of invalidity to cases of refusal of authorisation or failure to apply to the competent authorities.

23 The national court states that it took the view in the first set of proceedings that, in the light of the judgment in Case C-302/97 *Konle* [1999] ECR I-3099, legislation such as the VGVG providing for a declaration procedure coupled with penalties which might include prohibition of the transaction, was not contrary to the free movement of capital, in so far as the conditions governing such prohibition were sufficiently determined by that law to preclude the risk of discrimination against a foreign purchaser.

24 However, that court considers that the subsequent judgment of the Court in *Salzmann* must be taken into consideration and could call that view into question. In particular it expresses concerns as to the proportionality of the provisions of Paragraph 29(2) of the VGVG, which penalise infringement of a procedural rule with the loss of a right.

25 It is in those circumstances that the Oberster Gerichtshof decided to stay the proceedings and refer the following question to the Court for a preliminary ruling:

'Should Article 56 EC be interpreted as precluding national legislation [the VGVG] by which, in the case of a land purchase transaction that does not require the authorisation of the land transfer authority, failure by the acquirer to declare by the due date that the land is built on, that the acquisition is not for holiday purposes, and that he is, or should be treated as, an Austrian national, results in the retrospective invalidity of the transaction?'

Admissibility

Arguments of the defendant in the main proceedings

26 Mr Stauderer submits that the question referred for a preliminary ruling is inadmissible in several respects.

27 First, the Austrian courts do not have jurisdiction to decide the main proceedings since Article 16 of the Convention of 27 September 1968 on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters (OJ 1978 L 304, p. 36), as amended by the Convention of 9 October 1978 on the Accession of the Kingdom of Denmark, Ireland and the United Kingdom of Great Britain and Northern Ireland (OJ 1978 L 304, p. 1, and — amended version — p. 77), by the Convention of 25 October 1982 on the Accession of the Hellenic Republic (OJ 1982 L 388, p. 1), by the Convention of 26 May 1989 on the Accession of the Kingdom of Spain and the Portuguese Republic (OJ 1989 L 285, p. 1) and by the Convention of 29 November 1996 on the Accession of the Republic of Austria, the Republic of Finland and the Kingdom of Sweden (OJ 1997 C 15, p. 1) ('the Brussels Convention'), cannot apply to the present case.

28 Next, that question is irrelevant. The procedure for declaring acquisitions provided for in Paragraph 7(2) of the VGVG, extended in 2000 to holiday homes, does not apply to foreign purchasers. Paragraph 3(2) of the VGVG provides that 'where the acquisition is made for holiday purposes, no exception to the rules regulating transfers of land to which foreign nationals are party results from the provisions on the free movement of capital'. Mr Stauderer could not therefore have used the declaration procedure and provided the requisite declaration.

29 Finally, that procedure was repealed from 1 June 2004. Since the national court must rule on the basis of the law in force on the date on which it delivers judgment in the main proceedings, the question is devoid of purpose.

Findings of the Court

30 As regards the alleged lack of jurisdiction of the national court, it must be pointed out that it is not for the Court to determine whether the decision whereby a matter is brought before it was taken in accordance with the rules of national law governing the organisation of the courts and their procedure (see Case 65/81 *Reina* [1982] ECR 33, paragraphs 7 and 8; Case C-10/92 *Balocchi* [1993] ECR I-5105, paragraphs 16 and 17; and Case C-39/94 *SFEI and Others* [1996] ECR I-3547, paragraph 24).

31 Nor is it for the Court to examine whether the matter was brought before the national court in compliance with the rules on jurisdiction laid down by the Brussels Convention, unless the conditions for applying those rules are the actual subject of the reference for a preliminary ruling (see, to that effect, Case C-105/94 *Celestini* [1997] ECR I-2971, paragraph 20).

32 The Court must abide by the decision of a court of a Member State requesting a preliminary ruling in so far as that decision has not been overturned in any appeal procedures provided for by national law (*Reina*, paragraph 7; *Balocchi*, paragraph 17; and *SFEI and Others*, paragraph 24).

33 So far as concerns the other grounds for inadmissibility pleaded by Mr Stauderer, deriving from national law, it should be pointed out, first, that under Article 234 EC the Court is to have jurisdiction to give preliminary rulings concerning questions of Community law referred to it by a court or tribunal of one of the Member States. That procedure is not concerned with the interpretation of national laws or regulations. Any inaccuracies in the description of the relevant national provisions given by the national court in its judgment requesting a preliminary ruling cannot

have the effect of depriving the Court of jurisdiction to reply to the question referred to it by the national court (see, in particular, Joined Cases 209/84 to 213/84 *Asjes and Others* [1986] ECR 1425, paragraph 12).

34 Secondly, as the Court has consistently held, in principle it is for the national courts alone to determine, having regard to the particular features of each case, both the need to refer a question for a preliminary ruling and the relevance of that question (see, to that effect, in particular Joined Cases C-515/99, C-519/99 to C-524/99 and C-526/99 to C-540/99 *Reisch and Others* [2002] ECR I-2157, paragraph 25, and *Salzmann*, paragraph 30).

35 It follows that, in the factual and legislative context which the national court is responsible for defining and the accuracy of which is not a matter for the Court to determine, the questions submitted by the national court enjoy a presumption of relevance (See Case C-355/97 *Beck and Bergdorf* [1999] ECR I-4977, paragraphs 22 to 24, and *Salzmann*, paragraph 31).

36 In the present case, it is not manifestly clear that the interpretation of Community law requested is irrelevant for the national court.

37 It follows from the foregoing considerations that the question referred for a preliminary ruling is admissible.

38 It must therefore be determined whether Article 56(1) EC preludes the application of national legislation such as that at issue in the main proceedings, under which submission after the due date of the requisite declaration of acquisition results in the retroactive invalidity of the transaction.

Substance

39 As the Court has already held, legislation such as the VGVG at issue in the main proceedings the aim of which is to prohibit or make subject to specific conditions the acquisition of land for the purposes of establishing secondary residences, must comply with the provisions of the EC Treaty on the free movement of capital (see, to that effect, *Konle*, paragraph 22; *Reisch and Others*, paragraph 28; and *Salzmann*, paragraph 39).

40 The scope of the national measure at issue in the main proceedings must be examined, as the national court requests, in the light of the provisions of Article 56 (1) EC.

41 According to the explanations given by the Austrian Government, under the procedure for acquiring real property set up by the VGVG, the efficacy of transactions is made dependent on the submission of the declaration provided for in Paragraph 7(2) of the VGVG. The automatic nature of the penalty of retroactive invalidity of the transaction is intended to limit the legal effect of the declaration to the competent authority in time to that of a 'suspensive condition' in respect of the transaction in question.

42 It follows from those explanations that that declaration, even though it does not affect the actual carrying out of the transaction, constitutes nevertheless a mandatory formality prior to legal registration of the contract of sale in the land register, which alone can guarantee the effectiveness of that contract with regard to the public authority and third parties. Moreover, under the first sentence of Paragraph 12(1) of the VGVG, that declaration is coupled with the obligation not to use the land for purposes other than those declared.

43 Such a declaration system, by its very purpose, therefore has the effect of restricting the free movement of capital (see, to that effect, regarding a prior notification/authorisation system for the acquisition of immovable property, *Reisch*, cited above, paragraph 32).

44 Such restrictions may nevertheless be permitted provided that the national measures concerned pursue an objective in the public interest, are applied in a non-discriminatory manner and comply with the principle of proportionality, that is to say, are appropriate for securing the attainment of that objective and do not go beyond what is necessary in order to attain it (see, to that effect, *Konle*, cited above, paragraph 40; Case C-390/99 *Canal Satélite Digital* [2002] ECR I-607, paragraph 33; *Reisch and Others*, paragraph 33; and *Salzmann*, paragraph 42).

45 In respect, first, of the condition relating to fulfilling a purpose in the public interest, the Austrian Government submits that, by introducing the aforementioned declaration procedure, the Landtag Vorarlberg is pursuing a town and country planning objective, the most judicious use of housing land entailing restrictions on the establishment of second homes, and is seeking to reconcile the requirements of supervision by the competent authorities of compliance with planning rules with the requirement of legal certainty in respect of property transactions.

46 In that regard, it is settled case-law that restrictions on the establishment of second homes in a particular geographical area introduced by a Member State in order to maintain, with a view to town and country planning, a permanent population and economic activity independent of the tourist sector, may be regarded as contributing to objectives in the public interest (see *Konle*, paragraph 40; *Reisch and Others*, paragraph 34; and *Salzmann*, paragraph 44). Nor can there be any doubt that the concern of national authorities to ensure the application of planning rules in compliance with the requirement of legal certainty of transactions is an objective in the public interest.

47 As regards, next, the condition of non-discriminatory application of the national rules concerned, which in this case must be examined in the light of the declaration procedure as a whole, Mr Stauderer contends that the VGVG is discriminatory, since it precludes nationals from another Member State from acquiring a second home. The Spanish Government likewise considers that the VGVG is discriminatory in form, inasmuch as it obliges purchasers who are nationals of another Member State to state their nationality, without however explaining what the consequences of that statement are for the examination of the merits of the declaration.

48 It is clear from the observations of the Austrian Government, however, as well as from the decision making the reference, that in the main proceedings the national rules on second homes apply without distinction to Austrian nationals and nationals of the other Member States or the European Economic Area ('EEA').

49 Nationals of another Member State of the Union, such as Mr Stauderer, like those of a State of the EEA, are subject to the declaration procedure and may acquire immovable property by complying with the same formalities with which Austrian nationals are required to comply.

50 Moreover, the obligation on the purchaser to state his nationality in the declaration provided by him is designed to distinguish the situation of nationals of a Member State of the Union or of the EEA, whose acquisition rights are identical to those of Austrian nationals, from the situation of nationals of third countries, who may not acquire immovable property under the same conditions. That obligation to state nationality and to state in the declaration, where appropriate, that the land will be used as a holiday home is not therefore intended to prohibit the acquisition of second homes by nationals of the other Member States but only, as the Austrian Government pointed out, to ensure that the special conditions for establishing such homes are complied with.

51 As regards, finally, the condition of proportionality, the Austrian Government asserts that the declaration referred to in Paragraph 7(2) of the VGVG, contrary to what was indicated by the national court, is only of a formal nature. It appears from the drafting history of the VGVG, as published in the LGBl. 61/1993 (and as published in the LGBl. 29/2000), that the declaration is not only intended to notify the competent authorities of a proposed acquisition but is also designed to ensure that the built-on land will be used for the purposes stated in that declaration, in particular that any use as a holiday home fulfils the specific conditions for that type of use. The controls carried out subsequently by those authorities do not affect the proposed acquisition from going ahead, since registration in the land register follows once the declaration has simply been submitted. As for the penalty of invalidity provided for in the absence of a declaration within a period of two years, that serves, by dint of its automatic nature, to ensure that the competent authorities are properly informed of the acquisition of built-on land and puts those authorities in a position to take the necessary control measures within a reasonable period. That penalty is

therefore proportionate to the objective of preventing the unlawful use of land for holiday homes. An administrative penalty to replace the penalty of invalidity of the contract would not necessarily be less severe for the purchaser, since it could be imposed on expiry of a period of three months and would be less effective.

52 In that respect, it is true that a prior declaration system, when coupled with appropriate legal instruments, may in fact constitute a measure proportionate to the public interest objective pursued. The Court has thus held that such a system may make it possible to eliminate the requirement of prior authorisation, generally more restrictive of the free movement of capital, without undermining the effective pursuit of the aims of the public authority (see, to that effect, Joined Cases C-163/94, C-165/94 and C-250/94 *Sanz de Lera and Others* [1995] ECR I-4821, paragraph 27; *Konle*, paragraphs 46 and 47; and *Salzmann*, paragraph 50). As the Commission of the European Communities rightly submits, such a declaration system cannot, in itself, constitute a disproportionate measure.

53 However, the question referred for a preliminary ruling does not concern the declaration procedure introduced by the VGVG as a whole, but only the penalty provided for if the necessary declaration is submitted after the due date, that is, the retroactive invalidity of the property transaction.

54 Such a penalty is not proportionate to the objectives pursued in the public interest in this case.

55 First, it is imposed automatically, following the mere passing of the time-limit for submitting the requisite declaration, irrespective of the reasons for its being late. Accordingly, in the case in the main proceedings, it seems that the belated submission of the declaration by Mr Stauderer was in part linked to the state of uncertainty as to the law in which he found himself, since the national court had taken the view, in previous proceedings, that it was in any event too late for the person concerned to discharge that obligation.

56 Secondly, for no reason deriving from infringement of the applicable substantive rules, such a penalty radically calls into question an agreement expressing the intentions of the parties and cannot therefore reflect the requirements of legal certainty, which are particularly important in relation to property acquisitions. The fact that that time-limit is, as stated by the Commission, 'calculated generously' is not therefore sufficient for that penalty to be regarded as proportionate to the objectives envisaged.

57 Admittedly, the Court has accepted that an action for annulment of a contract of sale could constitute a proportionate penalty in the context of a prior declaration system (*Salzmann*, cited above, paragraph 51). Likewise, the Court has already held that certain town and country planning objectives, such as that of sustaining and developing stable agriculture through control of the development of agricultural land ownership, might not be attainable through a simple system of prior declaration and that therefore even a prior authorisation procedure could, under certain circumstances, be compatible with the free movement of capital (see, to that effect, in particular Case C-452/01 *Ospelt and Schlössle Weissenberg* [2003] ECR I-9743, paragraphs 41 to 45).

58 It is therefore in principle conceivable that a prior declaration system, less restrictive of the free movement of capital than a prior authorisation procedure, could be

coupled with the imposition ex post facto of severe penalty measures with a sufficiently deterrent effect to ensure that town and country planning objectives were in fact complied with.

59 However, if a penalty such as that at issue in the main proceedings can be allowed in respect of infringement of the substantive rules laid down by the legislation concerned, duly found by the competent authority in the light of all the facts in the file, such a measure is excessive in so far as it has automatic consequences for late submission of the declaration, prohibiting that authority from examining whether, on the merits, the proposed acquisition complies with the applicable planning rules.

60 Other measures with less wide-ranging effects, such as fines, could penalise late submission of a declaration. Paragraph 34 of the VGVG includes, moreover, a list of facts justifying the imposition of pecuniary sanctions. Likewise, the applicant could be given an opportunity to explain the reasons for his delay or the competent authority could be allowed, particularly if the rights of third parties are not at issue, to accept, under certain conditions, even a late declaration, or to uphold the validity of the agreement, also under certain conditions.

61 A penalty such as that at issue in the main proceedings cannot therefore be regarded as absolutely necessary to ensure that the obligation to make a declaration of acquisition is complied with and to attain the objective in the public interest pursued by the VGVG.

62 The answer to the national court's question must therefore be that Article 56(1) EC precludes the application of national legislation such as the VGVG under which the mere fact that the requisite declaration of acquisition is submitted after the due date results in the retroactive invalidity of the property transaction concerned.

Costs

63 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national court, the decision on costs is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (Third Chamber) hereby rules:

Article 56(1) EC precludes the application of national legislation such as the Vorarlberg Land Transfer Law (Vorarlberger Grundverkehrsgesetz) of 23 September 1993, in its amended version, under which the mere fact that the requisite declaration of acquisition is submitted after the due date results in the retroactive invalidity of the property transaction concerned.

[Signatures]