OPINION OF ADVOCATE GENERAL SAGGIO

delivered on 17 June 1999 *

Facts and procedure

1. By a document registered at the Court Registry on 10 November 1998, the Commission brought infringement proceedings against the Hellenic Republic under Article 169 of the EC Treaty (now Article 226 EC), seeking a declaration from the Court that the defendant State had failed to fulfil its obligations under the Treaty and 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 (hereinafter 'the Directive'). [1]

2. Article 12(1) of the Directive, which was adopted on the basis of Article 100a of the EC Treaty (now, after amendment, Article 95 EC), provides that 'Member States shall bring into force the laws, regulations and administrative provisions necessary for them to comply with [the] Directive no later than 30 months after its publication in the *Official Journal of the European Communities*'.

3. In its application, the Commission stated that it had not received any communication from the Greek authorities concerning the adoption of the measures needed to transpose the Directive into Greek law, and that it had no information from other sources from which it could conclude that such measures had been brought into force. That being the case, on 9 September 1997, the Commission sent the Greek Government, in accordance with the procedure laid down in the first paragraph of Article 169 of the Treaty, a letter of formal notice charging it with its failure to fulfil its obligation to implement the Directive and calling upon it to submit its observations, if any.

4. By letter of 11 November 1997, the Greek Government informed the Commission that it had already prepared a draft ministerial decree containing the provisions in question. It added that the procedure for approving the decree was under way.

5. On 16 January 1998, having received no communication from the Greek authorities regarding the adoption of the measures in question, the Commission sent those authorities a reasoned opinion charging them with failure to fulfil their obligations under

* Original language: Italian.

1 — OJ 1994 L 280, p. 83.

the Directive and giving them a period of two months in which to comply with the Directive.

6. In view of the position thus adopted by the Greek authorities, the Commission concluded that they had not transposed the Directive into national law and therefore brought the present action against them.

8. In its defence, lodged on 15 December 1998, the Greek Government expressly admitted that it had not yet transposed the Directive into national law. It stated that it was perfectly aware of the time-limit by which the internal procedure for implementing the Directive had to be completed and undertook to set about bringing the requisite national provisions into being as quickly as possible. In this connection, it pointed out that the Ministry of Development, being the relevant competent authority, had already prepared a draft presidential decree containing the provisions at issue and that the draft would be submitted to the Council of State for review as soon as all the necessary consents had been obtained. It reserved the right to place a copy of the draft decree before the Court.

The failure to implement the Directive

7. According to the third paragraph of Article 189 of the EC Treaty (now Article 249 EC), a directive is binding, as to the result to be achieved, upon each Member State to which it is addressed. Under the first paragraph of Article 5 of the EC Treaty (now Article 10 EC), Member States are to take all appropriate measures, whether general or particular, to ensure fulfilment of the obligations arising out of the Treaty or resulting from action taken by the institutions of the Community. As far as transposition of Directive 94/47 into national law is concerned, the obligation in this respect is stated explicitly in Article 12 thereof, to which reference has already been made. That provision fixes the time-limit for implementation at 29 April 1997 and requires the Member States immediately to inform the Commission of the adoption of the national provisions.

It is clear, therefore, that the Greek Government has not adopted the measures required to implement the Directive within the period laid down in Article 12(1) thereof and that, in any event, it has not communicated to the Commission the adoption of such measures. Furthermore, after expressly admitting its own failure to fulfil its obligations, the Greek Government has failed to provide any justification for such failure. It hardly needs to be added that the mere fact of preparing a draft decree, the text of which has not even been placed before the Court, cannot in any way justify the inertia of the Greek Government.

Costs

9. 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, in the present case, the Commission has applied for costs and the Greek Government has been unsuccessful, the latter must be ordered to pay the recoverable costs.

Conclusion

10. In light of the foregoing considerations, I propose that the Court should:

(1) declare that, by failing to adopt the laws, regulations and administrative provisions necessary to implement 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 and Article 189 of the EC Treaty (now Article 249 EC);

(2) order the Hellenic Republic to pay the costs.