# OPINION OF MR ADVOCATE GENERAL JACOBS
## delivered on 21 November 1991 *

*My Lords,*

1. In these proceedings the Commission seeks a declaration that the Hellenic Republic is in breach of its obligations under Article 171 of the EEC Treaty as a result of its failure to take the measures necessary to comply with:

(a) the judgment of the Court of 15 March 1988 in Case 147/86 *Commission* v *Greece* [1988] ECR 1637;

(b) the judgment of the Court of 14 July 1988 in Case 38/87 *Commission* v *Greece* [1988] ECR 4415.

2. In Case 147/86 the Court declared that:

'(1) by prohibiting nationals of other Member States from setting up "frontistiria" (coaching establishments) and private music and dancing schools, and from giving private lessons at home, the Hellenic Republic has failed to fulfil its obligations under Articles 52 and 59 of the EEC Treaty;

(2) by prohibiting or by restricting access for nationals of other Member States already employed in Greece and of members of their families to the posts of director or teacher in "frontistiria" and in private music and dancing schools, the Hellenic Republic has failed to fulfil its obligations under Article 48 of the EEC Treaty.'

3. In Case 38/87 the Court declared that:

'(1) by maintaining in force provisions which do not expressly uphold the right of nationals of the other Member States to register as ordinary members of the Technical Chamber of Greece, where such registration is a precondition for and facilitates access to the professions of architect, civil engineer and surveyor and the exercise thereof in the Hellenic Republic, the Hellenic Republic has failed to fulfil its obligations under Articles 52 and 59 of the EEC Treaty;

(2) by maintaining in force provisions which make access to the profession of

* Original language: English.

lawyer and the exercise thereof conditional upon the possession of Greek nationality, the Hellenic Republic has failed to fulfil its obligations under Articles 52 and 59 of the EEC Treaty.'

4. Having received no information from the Greek authorities about the implementation of those judgments, the Commission invited Greece, by letter of 26 May 1989, to submit its observations.

5. By letter of 4 August 1989 Greece informed the Commission that compliance with the judgment in Case 147/86 would require the amendment of legislation that had been in force for several decades. The author of the letter also observed that third-party proceedings were pending against the aforesaid judgment. He stated, furthermore, that since the Greek Government had been formed for a short period and for the performance of specific tasks, it would not be possible to introduce legislation for matters so particular. No mention was made in that letter of any steps that might be taken to comply with the judgment in Case 38/87.

6. On 22 January 1990 the Commission issued a reasoned opinion stating that, by failing to take the necessary steps to comply with the aforesaid judgments, Greece was in breach of its obligations under Article 171 of the Treaty. The Commission invited Greece to take the necessary steps within two months.

7. By letter of 30 March 1990 Greece asked the Commission to grant it a further period of two months to comply with the judgment in Case 147/86 and a reasonable period to comply with the judgment in Case 38/87 as regards access to the professions of architect, civil engineer and surveyor. It stated further that it had informed the Commission in April 1989 that, as regards access to the legal profession, it had complied with the Court's judgment in Case 38/87 by adopting Presidential Decree No 172 of 2 March 1989.

8. In a further letter dated 12 June 1990 Greece informed the Commission that the competent authorities had now initiated procedures that would ensure the full application of the judgment in Case 147/86.

9. The Commission lodged an application with the Court on 23 October 1990. It asks the Court to declare that Greece is in breach of its obligations under Article 171 of the Treaty as a result of its failure to take the measures necessary to comply with the judgment in Case 147/86 and the measures necessary to comply with the judgment in Case 38/87 as regards access to the professions of architect, civil engineer and surveyor. The Commission accepts implicitly that by adopting Presidential Decree No 172 Greece has complied with the judgment in Case 38/87 as regards access to

the legal profession. The Commission also asks that Greece should be ordered to pay the costs.

10. In its defence Greece states that the competent ministries are in the process of drafting legislation to amend Greek law in accordance with the judgments of the Court. It states further that, since it had already informed the Commission that it was in the process of amending the relevant legislation, it only remains to bring the legislative process to completion. It therefore invites the Court to dismiss the application and order the Commission to pay the costs.

11. At today's hearing the agent of the Greek Government has confirmed that the necessary legislation has still not been adopted. There cannot be any doubt that the Commission is entitled to succeed in its application. The following observations may be made.

12. First, in order to comply with a judgment of the Court establishing that national law is at variance with Community law, it is not sufficient to state an intention to amend the legislation in question. The amending legislation must actually be enacted and brought into force.

13. Secondly, the fact that the legislation found to be contrary to Community law has been in force for several decades is irrelevant, as is the fact that the government has been formed for a short period and for the performance of specific tasks. A Member State may not plead provisions, practices or circumstances in its internal legal system in order to justify a failure to comply with its obligations under Community law.

14. Thirdly, the commencement of third-party proceedings against a judgment, pursuant to Article 39 of the Protocol on the Statute of the Court of Justice of the EEC, does not have automatic suspensory effect. It is true that the Court may, under Article 97(2) of the Rules of Procedure, order a stay of execution of the judgment on application by the third party. However, no such order was made, or requested, in relation to the judgment in Case 147/86. The applications originating third-party proceedings were in any event dismissed on 6 December 1989 [(1989] ECR 4103, 4111 and 4119).

15. Fourthly, although Article 171 does not prescribe any particular period for the adoption of the necessary measures to comply with a judgment of the Court, such measures 'must be initiated immediately and must be completed as soon as possible': see, for example, Case 160/85 *Commission* v *Italy* [1986] ECR 3245.

16. I am accordingly of the opinion that the Court should:

(1) declare that, by failing to take the necessary measures to comply with the judgment of the Court in Case 147/86, the Hellenic Republic is in breach of its obligations under Article 171 of the Treaty;

(2) declare that, by failing to comply with the judgment of the Court in Case 38/87, as regards access to the professions of architect, civil engineer and surveyor, the Hellenic Republic is in breach of its obligations under Article 171 of the Treaty;

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