

Greece:
Commission v. Hellenic Republic (C-155/09)

Theodore Fortsakis/Katerina Perrou

I. Introduction

II. The Greek rules: tax exemption for the acquisition of a first residential real property in Greece

1. Persons covered
 - 1.1 Residents
 - 1.2 Non-residents
2. The amount of tax exemption
3. General conditions for granting the exemption
4. Required documentation

III. The infringement procedure by the Commission

IV. Analysis

1. Which freedom applies?
 - 1.1 The right to move and reside freely within the territory of the Member States (Article 18 EC)
 - 1.2 The free movement of workers and freedom of establishment
 - 1.3 The free movement of capital
2. Is there discrimination and/or a restriction?
3. Is the discrimination and/or the restriction justified?

V. Conclusions

I. Introduction

Aiming at facilitating the acquisition of a first residential real property, Greek legislation provides for an exemption from the real estate transfer tax for the acquisition of such real property. The exemption is provided for permanent residents of Greece who do not own real property that covers their family needs. The exemption is granted to residents of Greece, irrespective of their nationality. It is also granted, under certain conditions, to non-resident Greek nationals. The Commission considers that the exemptions provided for in the Greek legislation are discriminatory with respect to non-residents and foreign nationals and are contrary to the free movement of persons and freedom of establishment. It has therefore initiated an infringement procedure against Greece.

II. The Greek rules: tax exemption for the acquisition of a first residential real property in Greece

The exemption from real estate transfer tax for the acquisition of a first residential real property is provided for in Article 1 of Act 1078/1980. According to those provisions, the exemption is provided for the acquisition of full ownership of real property by a person, under the condition that the buyer or his or her spouse (if the person is married) or any of their minor children (if there are any) do not have full ownership or usufruct or a right of habitation in another house or apartment that covers the housing needs of the family¹ or right of full ownership on land on which a house that covers the family housing needs may be built that lies within the limits of a municipality with population of over 3,000 inhabitants.

1. Persons covered

Both residents and non-residents are covered by the exemption but under different conditions.

1.1. Residents

According to Article 1(3) of Act 1078/1980, the exemption is granted to solely natural persons² who have their permanent residence in Greece. Exceptionally, the exemption is also granted to Greek citizens or persons of Greek origin that do not reside permanently in Greece at the time the real property is acquired but who fulfil two other conditions: – they have been living abroad or working abroad for at least

¹ If a person owns real estate that is used for business purposes, such as hotels, warehouses, offices or similar property, he is still allowed the exemption, as this real property is not able to cover residential needs. The real property that was built on for residential purposes is not considered business real estate even though its use has changed and it is being used as business real estate.

² Marital status is irrelevant for the exemption.

six years and they are registered in a municipal citizens' registry at the time of the acquisition, provided that the other conditions set by the law are also satisfied.

The provision does not set any nationality conditions. Therefore, in principle any non-Greek nationals residing permanently in Greece should be allowed the exemption.

Citizens of EU Member States are allowed the exemption under the same conditions that apply for Greek citizens. This was not always so. Until 1989 the Administration applied the exemption only to Greek nationals who were also Greek residents.³ A decision of a lower court delivered in 1989, however, confirmed the application of the exemption to a UK national who proved that he resided permanently in Greece at the time of the acquisition of his first residential real property. The plaintiff's argument was that the law does not make any distinction based on nationality but grants the exemption to any person, irrespective of his nationality, if the person proves that he is a permanent resident of Greece.⁴ In 1991 an opinion of the Legal Council of the State was issued,⁵ advising the Administration to extend the application of the exemption to all EU nationals. Since 1992 the Administration applies the exemption to all EU nationals under the same conditions that apply to Greek nationals.⁶

The practice of the Greek tax administration, however, is different as far as third-country nationals are concerned. A recent decision of the Administrative Court of First Instance of Athens⁷ confirmed that even nationals of third countries are covered by the exemption if they satisfy the residence criterion. In this case the exemption was denied to a third-country national (a Vietnamese national) who was a refugee in Greece and who was granted a temporary residence permit in Greece. The plaintiff claimed that he fulfilled the condition of permanent residence in Greece and since the law makes no distinction as far as nationality is concerned, he should be entitled to the exemption. The Court accepted that he was a resident of Greece and therefore ruled that he is entitled to the exemption.

According to a ministerial decision of 2005⁸ an additional condition is set for EU nationals: they must prove that they have been residing in Greece for at least one full year (that is, according to the Administration: twelve consecutive months without interruption) before they may claim the tax exemption. This requirement was deemed necessary, according to the Administration, in order for the permanence criterion to be satisfied.

³ Circular of the Ministry of Finance No. 1162/1989.

⁴ Administrative Court of First Instance of Piraeus Decision No. 2648/1989.

⁵ Opinion 865/1991 of the Plenary session of the Legal Council of the State.

⁶ Circular of the Ministry of Finance No. 1034/1992; circular of the Ministry of Finance No. 1005/2007 concerning the extension of the application to nationals of Bulgaria and Romania as from 1/1/2007.

⁷ Administrative Court of First Instance of Athens Decision No. 1913/2007.

⁸ Decision of the Minister of Finance 1036725/147/A0013/7-4-2005 (Φ.Ε.Κ. 515 Β'/19-4-2005) – communicated in the Circular of the Ministry of Finance No. 1060/2005.

This condition, however, is not provided for in the legislation. It is an additional condition provided for the first time in the ministerial decision. This additional requirement is problematic under both European law and national law. Indeed, as regards European law, this requirement is actually more burdensome than the conditions set for Greek nationals, as for the latter category there is no minimum time period of residence that must be completed before they are eligible for the tax exemption.

1.2. Non-residents

According to Article 1(3) of Act 1078/1980, an exception to the residence criterion is provided for Greek nationals living abroad and for expatriates of Greek origin. For those two categories, and provided that all other conditions are satisfied, it is enough that they are registered in Greece in a municipal citizens' registry, even if they do not reside permanently in Greece at the time of the acquisition of the first residential real property.

This provision is contrary to Community law in as far as the residence criterion is relaxed only for Greek nationals and not for other EU nationals. Furthermore, the requirement of registration in a Greek municipal citizens' registry is more likely to be fulfilled by Greek nationals than by other EU nationals, making this requirement the basis for indirect discrimination based on nationality and thus contrary to Community law.

2. The amount of tax exemption

A full tax exemption is granted for the acquisition of a first residential real property with a total surface of up to 200 m² or for land on which a house of up to 200 m² can be built, irrespective of their value.⁹ The limit of the surface is increased by 25 m² for the third minor child and for each of the minor children after the third one that is in the care of the buyer and for any child who has a disability of more than 67 % and cannot support himself or herself by his or her own financial means.

If the area of the first residential real property acquired is larger than the area covered by the exemption, the tax exemption is limited to the area provided for by the law and the value that corresponds to the square metres above the limit is subject to the normal real estate transfer tax rate.

3. General conditions for granting the exemption

The first condition is that the buyer may not have a house or apartment or piece of land anywhere in Greece (in a municipality with more than 3,000 inhabitants) large

⁹ This regime was introduced under the provisions of Article 3(4) of Act 3634/2008 (published in the Official Journal of the Greek Government 9A/29-1-2008) that abolished the previous regime which had provided certain limits on the value of the property (and so indirectly on the tax for which the exemption was provided). The new regime applies for transactions that took place after 13 December 2007.

enough to cover his or her family's housing needs. The housing needs of a person or a family are deemed to be covered if there is a house or apartment or land on which a house or apartment may be built that has a total surface of

- 70 m² for a single person or married couple without children;
- 90 m² for a married couple with one child or a single parent with one child in his or her custody;
- 110 m² for a married couple with two children or a single parent with two children in his or her custody;
- 135 m² for a married couple with three children or a single parent with three children in his or her custody.

For larger families, the limit of the surface is increased by 25 square metres for every child after the third one. If the buyer has a disability of more than 67 %, the limit is set to 90 m² and is increased proportionally, based on the number of children, if any.

The real property must have been built according to the applicable building regulations as the tax exemption is not granted for the purchase of houses or apartments built illegally or for land on which building is not allowed because of building regulations. Furthermore, the exemption is not granted when there is a first-degree blood or family relationship between the buyer and the purchaser. Finally, the tax exemption is granted under the condition that the real property will remain in the ownership of the buyer for at least five years after the purchase.

4. Required documentation

The required documentation for the application of the tax exemption is provided for by a ministerial decision of 2004.¹⁰ As far as Greek nationals are concerned, the permanent residence criterion is proved by a simple declaration of the person claiming the tax exemption.¹¹ As far as EU nationals are concerned, the permanent residence criterion may be proved by any means, such as, for example, the leasing contract of a house or apartment, an employment contract, the filing of tax returns in Greece, a certificate from a social security organization, the start-up of an enterprise in Greece, etc. This rule was amended in 2005 by the Decision of the Ministry of Finance 1036725/147/A0013/7-4-2005¹² which provides that the permanent residence criterion is fulfilled only if the EU national has completed at least one full uninterrupted year of residence or work in Greece.

¹⁰ Decision of the Ministry of Finance 1051240/385/A0013/21-6-2004 (Φ.Ε.Κ. 973 Β'/29-6-2004) communicated in the Circular of the Ministry of Finance 1057/2004, and Decision of the Ministry of Finance 1036725/147/A0013/7-4-2005 (Φ.Ε.Κ. 515 Β'/19-4-2005) communicated in the Circular of the Ministry of Finance 1060/2005.

¹¹ Article 1(3)(e) of the Decision of the Ministry of Finance 1051240/385/A0013/21-6-2004 (Circular of the Ministry of Finance 1057/2004).

¹² Communicated in the Circular of the Ministry of Finance 1060/2005.

Non-residents of Greek nationality or Greek origin, on the other hand, must produce:

- a certificate from a municipal citizens' registry;
- a Greek identity card or passport;
- special documentation that proves the Greek origin of the person (e.g. a certificate from a Greek community in a foreign country).

III. The infringement procedure by the Commission

In September 2008 the Commission sent Greece a formal request¹³ in the form of a reasoned opinion to amend its rules which give permanent residents in Greece a tax exemption on the real estate transfer tax for their first residential property purchase but which do not grant the same exemption to first-time residential buyers who do not yet live in permanently in Greece but intend to do so in the future. Greece was also requested to abolish its discriminatory rules that under certain circumstances grant an exemption from the real estate transfer tax to Greek nationals living abroad who acquire a first residential real property in Greece but do not grant the same exemption to foreign nationals living abroad.

The Commission argues that the Greek rules violate the free movement of persons and the freedom of establishment and constitute a violation of the prohibition of discrimination. The more advantageous tax treatment for the acquisition of first residential real property in Greece is justified by the public interest purpose of facilitating the acquisition of residential real estate. It is also justified by the need to avoid or at least to impede speculation, such as cases where the acquisition of real estate is not for residential but merely for investment purposes. However, the Commission considers that these arguments do not justify the different treatment of non-residents who acquire residential property in Greece when they do not reside in Greece but intend to do so. The Commission supports the fact that the exemption should also be granted to those persons who acquire a first residential real property in Greece and intend to live in the dwelling, irrespective of whether or not they live permanently in Greece at the time of the acquisition.

Furthermore, the Commission considers that the Greek rules granting the same exemption from real estate transfer tax to non-residents of Greek nationality but not to non-residents of foreign nationality constitute discrimination based on nationality.

The Greek rules were not amended after the formal request sent by the Commission and as a result the Commission referred Greece to the European Court of Justice (ECJ) over the discriminatory tax provisions for the acquisition of a first residential real property in Greece.¹⁴

¹³ European Commission press release IP/08/1364 of 18 September 2008.

¹⁴ European Commission press release IP/09/287 of 19 February 2009.

By an action brought on 4 May 2009¹⁵ the Commission asked the Court to: declare that Greece in breach of its obligations under Articles 18, 39 and 43 EC in the light of Article 12 EC (and under Articles 28, 31 and 4 EEA), inasmuch as it is impeding the exercise of fundamental freedoms deriving from those provisions:

- by granting exemption from tax on the transfer of immovable property solely to persons already permanently resident in Greece but not to persons who intend to settle in Greece in the future;
- by granting, subject to conditions, exemption from tax on the transfer of immovable property in Greece solely to Greek nationals on the purchase of a first home in Greece, expressly discriminating against foreign residents who are not Greek nationals.

The Commission argues that the tax exemption benefits mainly Greek citizens in a way that breaches the discrimination prohibition. The fact that the exemption is not allowed for Community nationals who are not already resident in Greece constitutes, according to the Commission, discriminatory treatment based on nationality. This discriminatory treatment renders more difficult and impedes the purchase of a first home in that country by citizens of other Member States. The Commission argues that the discriminatory impediment becomes all the more apparent and is confirmed by the fact that Greece allows the exemption to Greek citizens that are non-residents at the time of the acquisition of the real property.

The exemption serves a social policy purpose: it aims at facilitating residents of the country in acquiring ownership of their homes. This aim, however, according to the Commission, is not served in the absence of corresponding obligations as regards the use of the immovable property and the restriction of the exemption to Greek residents only is not an appropriate measure for serving this purpose.

The exemption depends on the condition that the prospective buyer proves that he is a permanent resident of Greece. This condition appears to be excessive, according to the Commission, as the residence criterion could be checked by simpler methods such as by way of a declaration on the part of the purchaser, accompanied by various entries in the Register and checks.

Granting the exemption to Greek nationals abroad serves, according to the Greek government, a national policy objective: to facilitate the repatriation of Greeks living abroad. This objective, however, is not, according to the Commission, capable of justifying the discriminatory rule, as it conflicts with the principle of free movement.

IV. Analysis

There are two features of the Greek legislation on the tax exemption for the acquisition of a first residential real property that are problematic from an EC law point of view:

¹⁵ Official Journal of the European Union C 167/4 (18.7.2009).

The first one involves the condition of “permanent residence” and the means of proof required from EU nationals. The proof required from EU nationals as well as the fact that they must have completed at least one full uninterrupted year of residence in Greece in order to satisfy the “permanent residence” criterion are more burdensome than the requirements set on Greek nationals, who may submit a simple declaration stating that they are permanent residents of Greece. Moreover, according to the same legislation, EU nationals must also have been working in Greece for at least one uninterrupted year in order to be eligible for the tax exemption, a requirement that is not set for residents of Greek nationality. The restriction of the tax exemption to economically active EU citizens is also problematic, as it totally excludes from the circle of beneficiaries non- economically active EU citizens that exercise their right to move and reside freely within the European Union.

The second one involves the application of the exemption to non-residents and its restriction to Greek nationals or persons of Greek origin. Since the Greek legislation grants the tax exemption to non-residents, the restriction of the exemption to Greek nationals constitutes prohibited discrimination on grounds of nationality.

1. Which freedom applies?

The acquisition of a first residential real property in Greece that involves a cross-border element may be based on the decision of an individual to reside permanently in Greece as a result of taking up an employment contract in Greece or starting up a business in Greece or even deciding to live in Greece after retirement. The Commission argues that the Greek legislation infringes Articles 18, 39 and 43 in light of Article 12 EC.¹⁶

As far as Article 12 EC is concerned, it is sufficient to observe that it applies independently only to situations governed by Community law for which the Treaty lays down no specific rules on non-discrimination.¹⁷ In the case discussed here there

¹⁶ The Commission also refers to Articles 28, 31 and 4 of the EEA Treaty; these will not be treated separately as they are substantially the same as the corresponding EC Treaty provisions; see ECJ 5 July 2007, C-522/04, *Commission V. Belgium*, paras. 76-77: “It is to be noted, in that regard, that the rules prohibiting restrictions on freedom of movement and freedom of establishment laid down in Articles 28 and 31 of the EEA Agreement are identical to those established in Articles 39 EC and 43 EC”. Both the ECJ and the Court of the European Free Trade Association (EFTA) have recognized the need to ensure that the rules of the EEA Agreement which are identical in substance to those of the Treaty are interpreted uniformly (ECJ 23 February 2006, C-471/04 *Keller Holding*, [2006] ECR I-2107, para. 48, and the case law cited there, and ECJ 26 October 2006, C-345/05 *Commission v Portugal*, [2006] ECR I-0000, para. 40, and EFTA Court in Case E-1/03 *EFTA Surveillance Authority v Iceland* [2003] EFTA Court Reports 143, para. 27).

¹⁷ See, for example, ECJ 11 October 2007, C-443/06, *Hollmann*, para. 28: “It is apparent from the case-law that Article 12 EC applies independently only to situations governed by Community law for which the Treaty lays down no specific rules of non-discrimination (see, inter alia, Joined Cases C-397/98 and C-410/98 *Metallgesellschaft and Others* [2001] ECR I-1727, paragraph 38, and Case C-422/01 *Skandia and Ramstedt* [2003] ECR I-6817, paragraph 61).”

are specific rules that apply and therefore the non-discrimination principle will not be dealt with separately. The relevant provisions of the EC Treaty will be discussed in the following sections.

1.1. The right to move and reside freely within the territory of the Member States (Article 18 EC)

Article 18 (1) EC Treaty reads as follows: "Every citizen of the Union shall have the right to move and reside freely within the territory of the Member States, subject to the limitations and conditions laid down in this Treaty and by the measures adopted to give it effect". Article 18 EC Treaty has direct effect¹⁸ and has evolved as the source of an autonomous right of free movement, independent from the market freedoms that apply to economically active persons (whether employed or self-employed). Indeed, since the *Pusa* case,¹⁹ it has been made clear that no economic connecting factor is required for an emigrant to be entitled to national treatment in the host state.

With regard to tax law, the right to move and reside freely within the European Union contained in Article 18 EC Treaty has been recognized as applicable to non-economically active taxpayers. In the *Turpeinen* case²⁰ the ECJ held that the different tax treatment of a retired individual receiving her pension from Finland but residing in Spain constituted an infringement of Article 18 EC Treaty and her right to move and reside freely within the territory of any Member State. Of course, the *Turpeinen* case involved a rule of the origin state and the obstacles it set for the individual residing in another Member State. However, the same reasoning applies to cases of host states creating obstacles for citizens of other Member States who wish to reside in their territory, such as the case of the Greek legislation denying a tax exemption or making it subject to more burdensome conditions than for Greek nationals.

1.2. The free movement of workers and freedom of establishment

The provisions of Articles 39 and 43 on the freedom of movement for persons are intended to facilitate the pursuit by Community nationals of occupational activities of all kinds throughout the Community and preclude measures which might put Community nationals at a disadvantage when they wish to pursue an economic activity in the territory of another Member State. In that context nationals of the Member States have in particular the right, which they derive directly from the Treaty, to enter the territory of a Member State and reside there in order to pursue an economic activity.²¹

¹⁸ ECJ 17 September 2002, C-413/99, *Baumbast and R v Secretary of State for the Home Department*, [2002] ECR I-7091.

¹⁹ ECJ 29 April 2004, C-224/02, *Pusa v. Osuuspankkien Keskinäinen Vakuutusyhtiö*, [2004] ECR I-5763.

²⁰ ECJ 9 November 2006, C-520/04, *Turpeinen*, [2006] ECR I-10685.

²¹ ECJ 1 April 2008, C-212/06, *Government of the French Community and Walloon Government v. Flemish Government*, para. 44, with further references.

Articles 39 and 43 EC constitute specific expressions of Article 18 EC.²² If there is a situation that falls within the scope of Articles 39 or 43 EC, there is no need to examine whether the same situation falls within the scope of Article 18 EC, as the more specific provision applies.

Articles 39 and 43 EC from a host state perspective preclude measures that might place Community nationals at a disadvantage just because they exercised their right to freedom of movement. Therefore, in cases where an EU citizen that takes up an employment contract or self-employed activity and establishes himself in Greece, he should be granted the tax exemption for the acquisition of first residential real property under the same conditions that apply for Greek nationals. Any conditions that are more burdensome than those that apply to Greek nationals are incompatible with Community law.

1.3. *The free movement of capital*

The Commission did not refer to the free movement of capital in its reference to the ECJ. Although the purchase of real property always involves a movement of capital, in our view the provisions on the free movement of capital are not applicable to the case discussed here. The purpose of the Greek legislation is the facilitation of acquiring a first residential real property in Greece. It has been argued by the Greek government – and the Commission agreed with this argument – that the danger of abuse must be minimized: to this end, the Commission agrees that the purchase of real property for purely investment purposes is correctly excluded from the scope of the Greek exemption. As a result, the purchase of the real property will occur in one of the following cases:

- migration of a non-economically active person to Greece; in this case Article 56 will not apply at all, as it only applies to economically active persons.
- migration of a self-employed person who starts a business in Greece and purchases a house for his family needs; in this case the free movement of capital co-exists with the freedom of establishment and, as such, priority is given to the freedom of establishment.²³
- migration of an employed person to Greece to take up employment in Greece who purchases a house for his family needs; in this case the free movement of capital co-exists with the free movement of workers and, as such, priority is given to the free movement of workers.

²² See the judgment in *Turpeinen*, para. 13.

²³ ECJ 18 June 2009, C-303/07, *Aberdeen Property Fininvest Alpha Oy*, paras. 30-36, especially para. 35: “Should the legislation at issue in the main proceedings have restrictive effects on the free movement of capital, those effects would be the unavoidable consequence of such an obstacle to freedom of establishment as there might be, and do not therefore justify an independent examination of that legislation from the point of view of Article 56 EC (see, to that effect, *Cadbury Schweppes and Cadbury Schweppes Overseas*, para. 33; *Test Claimants in the Thin Cap Group Litigation*, para. 34; and *Oy AA*, para. 24).”

Purchase of a real property in Greece with no intent of living permanently in Greece (and thus cases that do not fall within one of the cases mentioned above) will indeed fall within the scope of protection of the free movement of capital; however, if this is the case, the EU citizen is not entitled to the tax exemption at all, according to the Greek legislation. Since cases that fall within the autonomous application of Article 56 EC are not covered by the scope of the tax exemption on real property transfer tax, there is no need to examine the possible infringement of the said Article by the Greek legislation. The application of Article 18 or Articles 39 and 43 will always prevail over the application of Article 56, since the tax exemption only applies to cases where the person has demonstrated that the purchase is not a simple investment but relates to the exercise of one of the freedoms protected by Articles 18, 39 or 43 EC. The same considerations apply for non-EU nationals as well, to which the free movement of capital also applies.

2. Is there discrimination and/or a restriction?

As far as residents are concerned, it appears that the conditions that apply to EU nationals are more burdensome than those applicable to Greek nationals. From this perspective, the Greek rules discriminate against EU nationals on the basis of nationality in two aspects:

- firstly, because they require a minimum period of residence of at least one full uninterrupted year before they make the exemption available to them, a condition that does not exist for Greek nationals; and
- secondly; because the means of proof that apply to EU nationals are different and more complicated than the simple declaration that is required from Greek nationals.

In addition, the fact that the exemption is granted only to economically active persons constitutes discrimination against EU nationals that have exercised their right to move and reside freely within the territory of the Member States.

As far as non-residents are concerned, two observations may be made. There is discrimination of non-residents on the basis of nationality, as long as the tax exemption is granted only to non-residents with the Greek nationality and not to non-residents with EU nationalities. Since the Greek legislation has extended the tax exemption so as to cover non-residents as well, the restriction of the tax exemption to only one category of non-resident based on nationality creates unequal treatment and thus creates a hindrance to the freedoms of movement guaranteed by the EC Treaty (Articles 18, 39 and 43 EC). Even if the exemption were not granted to any category of non-resident at all, the ECJ has made it clear that, in the case of a tax advantage which is not available to a non-resident, a difference in treatment between residents and non-residents may constitute discrimination within the meaning of the Treaty where there is no objective dif-

ference between the situations of the two such as to justify different treatment in that regard.²⁴

In conclusion, the Greek legislation regarding the tax exemption from real estate transfer tax for the acquisition of a first residential real property in Greece treats in a different and more disadvantageous way two sets of persons who are in an objectively comparable situation, as far as the legislation at hand is concerned:

- residents of EU nationality as compared to residents of Greek nationality;
- non-residents of EU nationality as compared to non-residents of Greek nationality.

The different treatment of each group of persons as described above constitutes direct discrimination on the basis of nationality and creates an obstacle to the freedoms of movement as it makes less attractive for persons with the EU nationality to move, reside and work in Greece.

3. Is the discrimination and/or the restriction justified?

As a preliminary remark we note that in our opinion the Greek legislation creates direct discrimination based on nationality. This type of discrimination is absolutely prohibited by the Treaty and therefore the rule of reason does not apply and no valid justification may be presented.

Under the restriction doctrine developed by the ECJ, differences in treatment such as those contained in the Greek legislation on the exemption from real estate transfer tax for the acquisition of first residential real property in Greece can be justified only if they are based on objective considerations independent of the nationality of the persons concerned and if they are proportionate to the legitimate aim of the national provisions.

The Greek Government has argued that the measures under scrutiny aim at making it easier for the residents of the country to acquire ownership of their homes. This purpose is capable of justifying the difference in treatment between those who acquire a first residential real property and those who acquire real estate for investment purposes. The function of the legislation, however, favours mainly Greek citizens and creates obstacles to EU citizens who wish to move to Greece, for whatever reason. The aim of the legislation, however, is not capable of justifying the discrimination of EU nationals.

Another argument put forward by the Greek Government concerns the limitation of the tax exemption to non-residents of Greek nationality; the Greek Government argued that this measure aims at making easier the repatriation of Greek nationals living abroad. Such a measure, however, is not compatible with the freedoms of movement of the Treaty and therefore it cannot justify the difference in treatment.

²⁴ ECJ 22 March 2007, *Talotta*, [2007] ECR I-2555 para. 19 with further references to *Schumacker*, paras. 36 to 38, and *Asscher*, para. 42.

Since the legislation under scrutiny concerns the granting of a tax advantage (a tax exemption) an argument could be presented by the Greek Government that the beneficiary has to have a real link with the host State (permanence of residence), in order to be entitled to that tax benefit. This, however, cannot be upheld for two reasons: firstly, because the legislation itself has disassociated the granting of the tax exemption from such a real link since it grants the tax exemption to certain categories of non-residents and, secondly, because the permanence of the residence of EU nationals in Greece could be checked by a simple declaration, as it is for Greek nationals.

V. Conclusions

The Greek legislation regarding the exemption from real property transfer tax in cases of acquisition of first residential real property is drafted in such a way that it creates discrimination of other EU nationals who are not residents of Greece at the time of acquisition and of non-residents who are not Greek nationals. Since this appears to be a case of direct discrimination based on nationality, the only possible justifications may be those provided for expressly in the Treaty; however, none of those applies to the Greek legislation discussed in this case. To date, the Greek government has not announced any intention to amend the problematic rules.