



Press and Information

Court of Justice of the European Union

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Judgment in Case C-155/09
Commission v Hellenic Republic

Greek tax legislation which grants exemption from the tax payable on the purchase of a first residential property only to persons residing in Greece is contrary to European Union principles

It acts as a deterrent with regard to persons who are not resident in Greece and thus restricts their right to freedom of movement within the European Union

Greek legislation provides, subject to certain conditions, for an exemption from the tax payable on the purchase of a first residential property, which is granted only to buyers who are permanently resident in Greece and, by way of exception, to non-resident Greeks who have worked abroad for at least six years.

The Commission brought an action against Greece before the Court of Justice, maintaining that, by granting exemption from the tax, first, solely to persons permanently resident in Greece – and not to non-residents who intend to settle in Greece in the future – and, second, on certain conditions, solely to Greek nationals on the purchase of a first home in Greece, Greece expressly discriminated against persons resident abroad who are not Greek nationals.

The Commission argued, first, that, although the requirement for permanent residence does not necessarily entail discriminatory treatment as between European Union nationals since it applies irrespective of their nationality, the fact remains that permanent residents in Greece are, in the great majority, Greek nationals. In the second place, it maintained that the provisions concerned prevented or deterred a national of a Member State from leaving his country of origin in order to exercise his right to freedom of movement and amounted to obstacles to that freedom.

In its judgment, the Court first of all recalls that, although direct taxation falls within their competence, the Member States must none the less exercise that competence consistently with European Union law. The rules which the Treaty lays down regarding equal treatment forbid not only overt discrimination by reason of nationality but also all covert forms of discrimination which, by the application of other criteria of differentiation – such as residence or ordinary residence, lead in fact to the same result, since persons who are not resident on the national territory are in the majority of cases foreigners.

Accordingly, the Greek legislation, by deterring persons not residing in Greece from purchasing, in pursuance of the right to freedom of movement, a first home there, impedes the freedom of movement of workers and the freedom of establishment.

The Court goes on to address Greece's argument that the requirement for permanent residence is justified, in particular, by objectives of social policy (making it easier for individuals to purchase a first home) and of preventing all property speculation, tax evasion and abuse.

The Court rejects those justifications. As regards the justification based on prevention of speculation, it finds that the Greek legislation imposes no obligation on the purchaser of immovable property to use it as a permanent residence and does not prohibit him from letting the property. Similarly, the Court does not accept the allegedly socio-political objectives, as the tax advantage is granted on a non-selective basis and irrespective of the income of the purchaser.

Finally, the objective of limiting tax evasion – to prevent abuse entailing claims to entitlement to the exemption in respect of a number of property purposes – could be achieved by other less restrictive methods, which would allow the Greek authorities to ensure that the purchaser of immovable property meets all the conditions necessary to be entitled to the tax exemption. The State could thus ascertain that the purchaser does not own another property in Greece and could do so by means of registration on the tax register or the land register, by a requirement for declarations as to tax or accommodation or for a statement under oath by the purchaser and by checks by the tax authorities.

The Court adds that the tax exemption granted only to Greek nationals or persons of Greek origin who have worked abroad for at least six years draws a distinction based on the criterion of nationality and consequently amounts to direct discrimination.

In that regard, the Court rejects the justification advanced by Greece on the basis of social-policy objectives seeking to make it easier for Greeks who have emigrated to purchase a home, to encourage their return and, generally, to maintain links between Greeks who have emigrated and their country of origin. Such considerations do not establish that there are objective circumstances capable of justifying that discrimination.

NOTE: An action for failure to fulfil obligations directed against a Member State which has failed to comply with its obligations under European Union law may be brought by the Commission or by another Member State. If the Court of Justice finds that there has been a failure to fulfil obligations, the Member State concerned must comply with the Court's judgment without delay.

Where the Commission considers that the Member State has not complied with the judgment, it may bring a further action seeking financial penalties. However, if measures transposing a directive have not been notified to the Commission, the Court of Justice can, on a proposal from the Commission, impose penalties at the stage of the initial judgment.

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The [full text](#) of the judgment is published on the CURIA website on the day of delivery.

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