JUDGMENT OF THE COURT

1 June 1999 *

In Case C-302/97,

REFERENCE to the Court under Article 177 of the EC Treaty (now Article 234 EC) by the Landesgericht für Zivilrechtssachen Wien (Austria) for a preliminary ruling in the proceedings pending before that court between

Klaus Konle

and

Republic of Austria

on the interpretation of Articles 5 of the EC Treaty (now Article 10 EC), 6 of the EC Treaty (now, after amendment, Article 12 EC), 52, 54, 56 and 57 of the EC Treaty (now, after amendment, Articles 43 EC, 44 EC, 46 EC and 47 EC), 53 of the EC Treaty (repealed by the Treaty of Amsterdam), 55 and 58 of the EC Treaty (now Articles 45 EC and 48 EC), 73b to 73d, 73f and 73g of the EC Treaty (now Articles 56 EC to 60 EC), 73e and 73h of the EC Treaty (repealed by the Treaty of Amsterdam), and Article 70 of the Act concerning the conditions of accession of the Republic of Austria, the Republic of Finland and the Kingdom of Sweden and the adjustments to the Treaties on which the European Union is founded (OJ 1994 C 241, p. 21, and OJ 1995 L 1, p. 1),

* Language of the case: German.

THE COURT,

composed of: G.C. Rodríguez Iglesias, President, P.J.G. Kapteyn, J.-P. Puissochet (Rapporteur), G. Hirsch and P. Jann (Presidents of Chambers), G.F. Mancini, J.C. Moitinho de Almeida, C. Gulmann, J.L. Murray, D.A.O. Edward, H. Ragnemalm, L. Sevón and M. Wathelet, Judges,

Advocate General: A. La Pergola,

Registrar: H.A. Rühl, Principal Administrator,

after considering the written observations submitted on behalf of:

— Mr Konle, by A. Fuith, Rechtsanwalt, Innsbruck,

— the Republic of Austria, by M. Windisch, Oberkommissär at the Finanzprokuratur, acting as Agent,

— the Austrian Government, by C. Stix-Hackl, Gesandte in the Federal Ministry of Foreign Affairs, acting as Agent,

— the Greek Government, by A. Samoni-Rantou, Special Legal Adviser to the Special Department for Community Legal Affairs, Ministry of Foreign Affairs, and S. Vodina and G. Karipsiadis, Special Scientific Assistants in the same department, acting as Agents,

— the Spanish Government, by N. Díaz Abad, Abogado del Estado, acting as Agent,

— the Commission of the European Communities, by C. Tufvesson and V. Kreuschitz, Legal Advisers, acting as Agents,

having regard to the Report for the Hearing,

after hearing the oral observations of: Mr Konle, represented by A. Fuith; the Republic of Austria, represented by M. Windisch; the Austrian Government, represented by C. Stix-Hackl, assisted by J. Unterlechner, Consultant to the Office of the Land Government; the Greek Government, represented by A. Samoni-Rantou; the Spanish Government, represented by M. López-Monís Gallego, Abogado del Estado, acting as Agent; and the Commission, represented by C. Tufvesson and V. Kreuschitz, at the hearing on 1 December 1998,

after hearing the Opinion of the Advocate General at the sitting on 23 February 1999,

gives the following

Judgment

1 By order of 13 August 1997, received at the Court on 22 August 1997, the Landesgericht für Zivilrechtssachen (Regional Civil Court), Vienna, referred to the Court for a preliminary ruling under Article 177 of the EC Treaty (now Article 234 EC) four questions on the interpretation of Articles 5 of the EC Treaty (now Article 10 EC), 6 of the EC Treaty (now, after amendment, Article 12 EC), 52, 54, 56 and 57 of the EC Treaty (now, after amendment, Articles 43 EC, 44 EC, 46 EC and 47 EC), 53 of the EC Treaty (repealed by the Treaty of Amsterdam), 55 and 58 of the EC Treaty (now Articles 45 EC and 48 EC), 73b to 73d, 73f and 73g of the EC Treaty (now Articles 56 EC to 60 EC), 73e and 73h of the EC Treaty (repealed by the Treaty of Amsterdam), and Article 70 of the Act concerning the conditions of accession of the Republic of Austria, the Republic of Finland and the Kingdom of Sweden and the adjustments to the treaties on which the European Union is founded (OJ 1994 C 241, p. 21, and OJ 1995 L 1, p. 1, 'the Act of Accession').

2 Those questions were raised in the context of an action brought by Mr Konle, a German national, against the Republic of Austria for damages for the loss sustained by him as a result of the alleged infringement of Community law by the Tyrol legislation on land transactions.

The relevant national legislation

3 The Tiroler Grundverkehrsgesetz 1993 (Tiroler LGBl. 82/1993; Tyrol Law on the Transfer of Land, 'the TGVG 1993'), adopted by the Tyrol in respect of transfers of land there, entered into force on 1 January 1994 and was replaced, with effect from 1 October 1996, by the Tiroler Grundverkehrsgesetz 1996 (Tiroler LGBl. 61/1996; 'the TGVG 1996').

4 According to Sections 9(1)(a) and 12(1)(a) of the TGVG 1993, acquisition of the ownership of building land is subject to authorisation by the authority responsible for land transactions.

5 Section 14(1) of the TGVG 1993 provides that authorisation 'shall be refused, in particular where the acquirer fails to show that the planned acquisition will not be used to establish a secondary residence'.

6 However, Section 10(2) of the TGVG 1993 states that authorisation 'is not... required where the right acquired relates to land which has been built on and the acquirer makes a written declaration to the authority responsible for land transactions that he has Austrian nationality and that the acquisition will not be used to establish a secondary residence'.

7 Furthermore, under Section 13(1) of the TGVG 1993, authorisation may be granted to a foreigner only on condition that the intended purchase does not conflict with the policy interests of the State and there is an economic, cultural or social interest in acquisition by the foreigner. That rule is not, however, applicable where it is precluded by obligations under international agreements (Section 13(2) of the TGVG 1993).

8 Under Section 3 of the TGVG 1993, which, unlike the remainder of the Law, did not enter into force until 1 January 1996, the condition for granting authorisation laid down in Section 13(1) is also inapplicable where the foreign acquirer furnishes proof that he is exercising one of the freedoms guaranteed by the Agreement on the European Economic Area.

9 By judgment of 10 December 1996, when the TGVG 1993 was already no longer in force, the Verfassungsgerichtshof (Constitutional Court) held that the Law was unconstitutional in its entirety since it involved an excessive infringement of the fundamental right to property.

10 The TGVG 1996 abolished the declaration procedure which had previously been limited to Austrian nationals alone and thus extended to all acquirers, by Sections 9(1)(a) and 12(1), the obligation to apply for administrative authorisation prior to the acquisition of land.

11 Sections 11(1)(a) and 14(1) of that Law maintain the obligation for the acquirer to show that the acquisition will not be used to create a secondary residence.

12 Additional conditions are still imposed on foreigners by Section 13(1)(b) of the TGVG 1996 for the acquisition of land, although they are not applicable,

pursuant to Section 3 of the TGVG 1996, where the foreign acquirer furnishes proof that he is exercising one of the freedoms guaranteed by the EC Treaty or the Agreement on the European Economic Area.

13 Finally, Section 25(2) of the TGVG 1996 provides for an accelerated procedure allowing authorisation for the acquisition of land which is built on to be granted within two weeks if the conditions for authorisation are clearly satisfied.

The relevant Community legislation

14 Article 70 of the Act of Accession provides:

'Notwithstanding the obligations under the Treaties on which the European Union is founded, the Republic of Austria may maintain its existing legislation regarding secondary residences for five years from the date of accession.'

The main proceedings

15 In the context of a procedure for compulsory sale by auction, the Bezirksgericht Lienz (Lienz District Court) allocated on 11 August 1994 a plot of land in the Tyrol to Mr Konle on condition that he obtain the administrative authorisation required under the TGVG 1993 then in force.

16 On 18 November 1994, the Bezirkshauptmannschaft Lienz (Lienz District Administration) rejected Mr Konle's application for authorisation, although he stated that he intended to transfer his principal residence to Austria and carry on business there within the framework of the undertaking that he was already running in Germany. Mr Konle appealed to the Landes-Grundverkehrskommission beim Amt der Tiroler Landesregierung (Land Transfer Commission to the Office of the Tyrol Land Government, 'the LGvK') which, by decision of 12 June 1995, upheld the refusal to grant authorisation.

17 Mr Konle instituted proceedings against that decision, both before the Verwaltungsgerichtshof (Administrative Court), which dismissed the action by judgment of 10 May 1996, and before the Verfassungsgerichtshof, which, by judgment of 25 February 1997, set aside the decision of 12 June 1995 on the ground that the whole of the TGVG 1993 had been declared unconstitutional. The effect of the latter judgment was to bring Mr Konle's application for authorisation back before the LGvK.

18 Without awaiting the LGvK's new decision on his application, Mr Konle also brought an action against the Republic of Austria before the Landesgericht für Zivilrechtssachen to establish the liability of the State for breach of Community law by the provisions of both the TGVG 1993 and the TGVG 1996.

19 In its defence, the Republic of Austria has relied, in particular, on Article 70 of the Act of Accession.

20 In those circumstances, the Landesgericht für Zivilrechtssachen Wien took the view that the solution of the dispute required an interpretation of the relevant provisions of the Treaty and the Act of Accession and referred the following questions to the Court of Justice for a preliminary ruling:

'1. Does it follow from the interpretation of Article 6 of the EC Treaty, Article 52 et seq. (Part Three, Title III, Chapter 2) of the EC Treaty and Article 73b et seq. (Part Three, Title III, Chapter 4) of the EC Treaty and Article 70 of the Act of Accession (Act concerning the conditions of accession of... the Republic of Austria... and the adjustments to the Treaties on which the European Union is founded) that

(a) in that, while the TGVG 1993 was in force, the plaintiff was required to prove that he would not establish a holiday residence, whereas in the case of an acquisition by an Austrian a mere declaration under Section 10(2) would have sufficed to obtain the authorisation of the land transactions authority, and he was refused such authorisation, and

(b) in that, under the TGVG 1996, the plaintiff, even before his property right is entered in the land register, must — as is now also the case for Austrians — undergo an authorisation procedure, the possibility of making an effective declaration that no holiday residence is being created no longer existing for Austrians either,

Community law was infringed and the plaintiff injured in respect of a fundamental freedom guaranteed by provisions of Community law?

2. If Question 1 is answered in the affirmative, is it for the Court of Justice in proceedings under Article 177 of the EC Treaty also to decide whether a breach of Community law is "sufficiently serious" (as the phrase is used, for example, in the judgment in Joined Cases C-46/93 and C-48/93 *Brasserie du Pêcheur and Factortame*)?

3. If Questions 1 and 2 are answered in the affirmative, is the breach "sufficiently serious"?

4. Is the principle of the liability of Member States for the damage caused to an individual by breaches of Community law complied with, on a proper interpretation of Article 5 of the EC Treaty, if the national law on liability of a Member State with a federal structure lays down that in the case of infringements attributable to a part of the State, the injured party may claim only against that part of the State, not the State as a whole?'

The first question

21 By its first question, the national court seeks essentially to ascertain whether the freedom of establishment and free movement of capital guaranteed by the Treaty are ensured by schemes, such as those under the two national laws at issue in the main proceedings, which make acquisition of land subject to prior administrative authorisation and which, in the case of one of those laws, exempt only nationals of the Member State concerned from the authorisation otherwise required. If the answer in respect of either scheme is in the negative, the national court also asks, in substance, whether the derogating clause in Article 70 of the Act of Accession, which allows the Republic of Austria to maintain its existing legislation regarding secondary residences for five years, is such as to permit national provisions such as those at issue in the main proceedings.

22 First of all, it is common ground that national legislation on the acquisition of land must comply with the provisions of the Treaty on freedom of establishment for nationals of Member States and the free movement of capital. The Court has already held that, as is apparent from Article 54(3)(e) of the Treaty, the right to acquire, use or dispose of immovable property on the territory of another Member State is the corollary of freedom of establishment (Case 305/87 *Commission* v *Greece* [1989] ECR 1461, paragraph 22). As for capital movements, they include investments in real estate on the territory of a Member State by non-residents, as is clear from the nomenclature of capital movements set out in Annex I to Council Directive 88/361/EEC of 24 June 1988 for the implementation of Article 67 of the Treaty (OJ 1988 L 178, p. 5).

The scheme established under the TGVG 1993

23 Section 10(2) of the TGVG 1993, which exempts only Austrian nationals from having to obtain authorisation before acquiring a plot of land which is built on and thus from having to demonstrate, to that end, that the planned acquisition will not be used to establish a secondary residence, creates a discriminatory restriction against nationals of other Member States in respect of capital movements between Member States.

24 Such discrimination is prohibited by Article 73b of the Treaty, unless it is justified on grounds permitted by the Treaty.

25 In this case, the Republic of Austria relies exclusively on Article 70 of the Act of Accession to justify the maintenance beyond the date of its accession, in the Land of Tyrol, of different schemes for the acquisition of land depending on the nationality of the acquirer, as laid down in the TGVG 1993.

26 However, as the Court has pointed out in paragraph 9 of this judgment, the TGVG 1993 was declared unconstitutional, at a time when it was already no longer in force, by a judgment of the Verfassungsgerichtshof of 10 December 1996. That court then used that judgment as the basis for setting aside the decision of refusal upheld against Mr Konle by the LGvK.

27 Determination of the content of the existing legislation regarding secondary residences on 1 January 1995, the date of the accession of the Republic of Austria, is, in principle, a matter for the national court. It is, however, for the Court of Justice to supply it with guidance on interpreting the Community concept of 'existing legislation' in order to enable it to carry out that determination.

28 The concept of 'existing legislation' within the meaning of Article 70 of the Act of Accession is based on a factual criterion, so that its application does not require an assessment of the validity in domestic law of the national provisions at issue. Thus, any rule regarding secondary residences which was in force in the Republic of Austria at the date of accession is, in principle, covered by the derogation laid down in Article 70 of the Act of Accession.

29 It would be otherwise if that rule were withdrawn from the domestic legal system by a decision subsequent to the date of accession but with retroactive effect from before that date, thereby eliminating the provision in question as regards the past.

30 In proceedings for a preliminary ruling, it is for the courts of the Member State concerned to assess the temporal effects of declarations of unconstitutionality made by the constitutional court of that Member State.

31 The answer to the first part of the first question must therefore be that Article 73b of the Treaty and Article 70 of the Act of Accession do not preclude a scheme for acquiring land such as that introduced by the TGVG 1993, unless that Law was deemed not to form part of the domestic legal system of the Republic of Austria on 1 January 1995.

The scheme established under the TGVG 1996

32 The Austrian Government contends that the TGVG 1996 was not applied to the applicant's case before Mr Konle brought his action for damages against the Republic of Austria and that the question of the compatibility of that Law with Community law is, therefore, irrelevant to the outcome of the main proceedings.

33 However, as the Court has consistently held, it can refrain from giving a preliminary ruling on a question submitted by a national court only where it is quite obvious that the interpretation or assessment of validity of Community law sought by that court bears no relation to the actual facts of the main action or its purpose, or where the problem is hypothetical and the Court does not have before it the factual or legal material necessary to give a useful answer to the questions submitted to it (see, *inter alia*, Case C-415/93 *Union Royale Belge des Sociétés de Football Association and Others* v *Bosman and Others* [1995] ECR I-4921, paragraph 61).

34 Since the TGVG 1996 entered into force before Mr Konle initiated his action for damages before the national court, it is not obvious that the interpretation of Community law sought is irrelevant to the assessment of the question whether the Republic of Austria is liable in respect of the refusal to grant the authorisation applied for by the applicant in the main proceedings. Furthermore, the question is not hypothetical and the Court has before it the factual and legal material necessary to give an answer.

35 It is therefore necessary to answer the first question submitted for a preliminary ruling also in so far as it concerns the provisions of the TGVG 1996.

36 Mr Konle and the Commission submit that the general requirement of authorisation for the acquisition of land constitutes a restriction on the free movement of capital, can be applied in a discriminatory manner, is not justified by overriding reasons in the general interest and is not necessary in order to achieve the objective pursued, with the result that it is contrary to Article 73b of the Treaty.

37 The Austrian and Greek Governments observe that Article 222 of the EC Treaty (now Article 295 EC) leaves the Member States in control of the system of property ownership and that only a procedure of prior authorisation for the acquisition of land can enable the national and local authorities to retain control over town and country planning policies which are pursued in the general interest and which, according to the Austrian Government, are particularly necessary in a region such as the Tyrol, where only a very small proportion of the land can be built on.

38 In that regard, although the system of property ownership continues to be a matter for each Member State under Article 222 of the Treaty, that provision does not have the effect of exempting such a system from the fundamental rules of the Treaty (see Case 182/83 *Fearon* v *Irish Land Commission* [1984] ECR 3677, paragraph 7).

39 Accordingly, a procedure of prior authorisation, such as that under the TGVG 1996, which entails, by its very purpose, a restriction on the free movement of capital, can be regarded as compatible with Article 73b of the Treaty only on certain conditions.

40 In that regard, to the extent that a Member State can justify its requirement of prior authorisation by relying on a town and country planning objective such as maintaining, in the general interest, a permanent population and an economic activity independent of the tourist sector in certain regions, the restrictive measure inherent in such a requirement can be accepted only if it is not applied in a discriminatory manner and if the same result cannot be achieved by other less restrictive procedures.

41 As to the first condition, it is not possible for the person seeking authorisation to provide incontrovertible proof of the future use of the land to be acquired. The administrative authorities thus have, in determining the probative value of the information received, considerable latitude which is closely related to a discretionary power. Furthermore, the explanatory memoranda drawn up by the administrative authorities of the Land of Tyrol on Section 25 of the TGVG 1996, which were produced by the applicant in the main proceedings and the significance of which for the interpretation of the Law has been accepted by the Republic of Austria, reveal the intention of using the means of assessment offered by the authorisation procedure in order to subject applications from foreigners, including nationals of Member States of the Community, to a more thorough check than applications from Austrian nationals. In addition, the accelerated authorisation procedure laid down in Section 25(2) is presented in that document as designed to replace the declaration procedure laid down in Section 10(2) of the TGVG 1993 and reserved for Austrians alone.

42 As to the second condition, the need for the prior authorisation procedure is not made out in this case.

43 Admittedly, as is stated in Article 73d of the Treaty, Article 73b of the Treaty is without prejudice to the right of Member States to take all requisite measures to prevent infringements of national law and regulations.

44 The Court of Justice has, however, taken the view that provisions making currency exports conditional upon prior authorisation, in order to allow Member States to exercise supervision, may not cause the exercise of a freedom guaranteed by the Treaty to be subject to the discretion of the administrative authorities and thus be such as to render that freedom illusory (Joined Cases 286/82 and 26/83 *Luisi and Carbone* v *Ministero del Tesoro* [1984] ECR 377, paragraph 34; Joined Cases C-358/93 and C-416/93 *Bordessa and Others* [1995] ECR I-361, paragraph 25; and Joined Cases C-163/94, C-165/94 and C-250/94 *Sanz de Lera and Others* [1995] ECR I-4821, paragraph 25). The Court has stated that the restriction on the free movement of capital resulting from the requirement of prior authorisation could be eliminated, by virtue of an adequate system of declaration, without thereby detracting from the effective pursuit of the aims of those rules (see *Bordessa and Others*, paragraph 27, and *Sanz de Lera and Others*, paragraphs 26 and 27).

45 That reasoning cannot be applied directly to a procedure prior to the acquisition of immoveable property, since the intervention of the administrative authorities does not, in that case, pursue the same objective. National administrative authorities cannot lawfully prevent a transfer of currency, with the result that their supervision, which reflects essentially a need for information, can also, in that field, take the form of a compulsory declaration. However, prior verification, in connection with the acquisition of property ownership, does not reflect merely a need for information, but can result in a refusal to grant authorisation, without necessarily being contrary to Community law.

46 A procedure simply involving a declaration does not, therefore, in itself enable the aim pursued to be achieved in the context of a procedure for prior authorisation. In order to ensure that the land is used in accordance with its intended purpose, as it appears from the national legislation in force, Member States must also be able to take measures where a breach of the agreed declaration is duly established after the property has been acquired.

47 It is sufficient to note in that regard that an infringement of national legislation on secondary residences such as that at issue in the main proceedings may be penalised by a fine, by a decision requiring the acquirer to terminate the unlawful use of the land forthwith under penalty of its compulsory sale, or by a declaration

that the sale is void resulting in the reinstatement in the land register of the entries prior to the acquisition of the property. Moreover, it is clear from the Austrian Government's replies to the questions from the Court that Austrian law provides for mechanisms of that kind.

48 Furthermore, by adopting the TGVG 1993, the legislature of the Tyrol had itself acknowledged that prior declaration, established for the benefit of Austrian nationals, constituted an effective means of supervision capable of preventing the property concerned from being acquired as a secondary residence.

49 In those circumstances, given the risk of discrimination inherent in a system of prior authorisation for the acquisition of land as in this case and the other possibilities at the disposal of the Member State concerned for ensuring compliance with its town and country planning guidelines, the authorisation procedure at issue constitutes a restriction on capital movements which is not essential if infringements of the national legislation on secondary residences are to be prevented.

50 The Republic of Austria also contends that Article 70 of the Act of Accession allows it, in any event, to maintain the provisions of the TGVG 1996 in force until 1 January 2000, by way of derogation.

51 As the Court stated in paragraph 27 of this judgment, it is, in principle, for the Austrian courts to determine the content of the national legislation existing at the date of accession of the Republic of Austria, for the purposes of Article 70 of the Act of Accession.

52 Any measure adopted after the date of accession is not, by that fact alone, automatically excluded from the derogation laid down in Article 70 of the Act of Accession. Thus, if it is, in substance, identical to the previous legislation or if it is

limited to reducing or eliminating an obstacle to the exercise of Community rights and freedoms in the earlier legislation, it will be covered by the derogation.

53 On the other hand, legislation based on an approach which differs from that of the previous law and establishes new procedures cannot be treated as legislation existing at the time of accession. That is true of the TGVG 1996 which includes a number of significant differences when compared with the TGVG 1993 and which, even if it brings to an end, in principle, the dual scheme of land acquisition which existed before, does not thereby improve the treatment reserved for nationals of Member States other than the Republic of Austria, since it also lays down detailed rules for examining applications for authorisation which are designed, in practice, as the Court stated at paragraph 41 above, to favour applications from Austrian nationals.

54 Accordingly, the relevant provisions of the TGVG 1996 cannot, in any event, be covered by the derogation laid down in Article 70 of the Act of Accession.

55 In the light of all the foregoing considerations, there is no need to examine the questions concerning the interpretation of Articles 6 and 52 of the Treaty.

56 The answer to the second part of the first question must therefore be that Article 73b of the Treaty and Article 70 of the Act of Accession preclude a scheme such as that introduced by the TGVG 1996.

The second and third questions

57 By its second question, the national court seeks, in substance, to ascertain whether it is for the Court of Justice, in proceedings for a preliminary ruling, to assess whether a breach of Community law is sufficiently serious for a Member State to incur non-contractual liability vis-à-vis individuals who may be victims of that breach.

58 It is clear from the case-law of the Court that it is, in principle, for the national courts to apply the criteria to establish the liability of Member States for damage caused to individuals by breaches of Community law (Joined Cases C-46/93 and C-48/93 *Brasserie du Pêcheur and Factortame* [1996] ECR I-1029, paragraph 58), in accordance with the guidelines laid down by the Court for the application of those criteria (*Brasserie du Pêcheur and Factortame*, paragraphs 55 to 57; Case C-392/93 *The Queen* v *H.M. Treasury, ex parte British Telecommunications* [1996] ECR I-1631; Joined Cases C-178/94, C-179/94, C-188/94, C-189/94 and C-190/94 *Dillenkofer and Others* v *Federal Republic of Germany* [1996] ECR I-4845; and Joined Cases C-283/94, C-291/94 and C-292/94 *Denkavit Internationaal and Others* v *Bundesamt für Finanzen* [1996] ECR I-5063).

59 The answer to the second question must therefore be that it is in principle for the national courts to assess whether a breach of Community law is sufficiently serious for a Member State to incur non-contractual liability vis-à-vis an individual.

60 Having regard to the answer given to the second question, there is no need to answer the third question referred for a preliminary ruling.

The fourth question

61 By its fourth question, the national court seeks, in substance, to ascertain whether, in Member States with a federal structure, reparation for damage caused to individuals by national measures taken in breach of Community law must necessarily be provided by the federal State in order for the obligations of the Member State concerned under Community law to be fulfilled.

62 It is for each Member State to ensure that individuals obtain reparation for damage caused to them by non-compliance with Community law, whichever public authority is responsible for the breach and whichever public authority is in principle, under the law of the Member State concerned, responsible for making reparation. A Member State cannot, therefore, plead the distribution of powers and responsibilities between the bodies which exist in its national legal order in order to free itself from liability on that basis.

63 Subject to that reservation, Community law does not require Member States to make any change in the distribution of powers and responsibilities between the public bodies which exist on their territory. So long as the procedural arrangements in the domestic system enable the rights which individuals derive from the Community legal system to be effectively protected and it is not more difficult to assert those rights than the rights which they derive from the domestic legal system, the requirements of Community law are fulfilled.

64 The answer to the fourth question must therefore be that, in Member States with a federal structure, reparation for damage caused to individuals by national measures taken in breach of Community law need not necessarily be provided by the federal State in order for the obligations of the Member State concerned under Community law to be fulfilled.

Costs

65 The costs incurred by the Austrian, Greek and Spanish Governments and by the Commission, which have submitted observations to the Court, are not recoverable. 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.

On those grounds,

THE COURT,

in answer to the questions referred to it by the Landesgericht für Zivilrechtssachen Wien by decision of 13 August 1997, hereby rules:

1. **Article 73b of the EC Treaty (now Article 56 EC) and Article 70 of the Act concerning the conditions of accession of the Republic of Austria, the Republic of Finland and the Kingdom of Sweden and the adjustments to the Treaties on which the European Union is founded:**

   — do not preclude a scheme for acquiring land such as that introduced by the Tiroler Grundverkehrsgesetz 1993, unless that Law was deemed not to form part of the domestic legal system of the Republic of Austria on 1 January 1995;

— preclude a scheme such as that introduced by the Tiroler Grundverkehrsgesetz 1996;

2. It is in principle for the national courts to assess whether a breach of Community law is sufficiently serious for a Member State to incur non-contractual liability vis-à-vis an individual;

3. In Member States with a federal structure, reparation for damage caused to individuals by national measures taken in breach of Community law need not necessarily be provided by the federal State in order for the obligations of the Member State concerned under Community law to be fulfilled.

Rodríguez Iglesias Kapteyn Puissochet

Hirsch Jann

Mancini Moitinho de Almeida Gulmann

Murray Edward

Ragnemalm Sevón Wathelet

Delivered in open court in Luxembourg on 1 June 1999.

R. Grass G.C. Rodríguez Iglesias

Registrar President