

## ACQUISITION OF IMMOVABLE PROPERTY BY ALIENS UNDER GREEK LAW

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### Introduction

The prohibition or the restrictions that are imposed on the acquisition of immovable property is a legal matter that is traditionally linked to aliens. The mistrust of the national legislator against aliens arises either as a complete prohibition, or as a mechanism of a priori control of the legal acts, with which the immovable property will be acquired. Therefore, the determination of who is alien under Greek law is a central question for the law of transactions of immovable property and of equal importance are also the differentiations of immovable property in Greek Law. Thus, before we describe the regulation of the acquisition of immovable property in Greek Law, we will present the various kinds of immovable property, the definition of real and natural aliens, along with their assortment in categories according to their legal treatment and last but not least the legal bases of the present regulation.

### I. Various Kinds of Immovable Property in Greek Law

#### A. Praedia Urbana and Praedia Rustica

The distinction between urban and rustic immovable property is of great importance in Greek Law. The criterion for this distinction is not the real use of the immovable property ad hoc, but its predestinated use, as it is conceived in trade. This distinction, which also existed in Roman Law, is not only evident in the Greek Civil Code but also in subsidiary laws.

Urban (praedia urbana) is the immovable property that is conceived in trade to be predestinated to be buildable, although it may or may not be actually built. The location of urban immovable property inside or outside a city is irrelevant for its characterization. The fact that it might be planted or tillaged before it is built is also an irrelevant element.

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Rustic (*praedia rustica*) is the immovable property that is conceived in trade to be predestinated to be used for the growth and collection of fructus. The location of rustic immovable property inside or outside a city is once again irrelevant for its characterization.

### B. Buildable and Not Buildable Land

Buildable is in general the land, within which the erection of a construction is in principle allowed. Whether land is buildable or not, is determined by a series of laws and presidential decrees that are presented below:

According to article 102 paragraph 1a of the *Urban Planning Legislation* (i.e. Presidential Decree No 14/27.7.1999, which has codified all the existing legal norms regulating urban planning) in order for immovable land to be **par and buildable** two conditions have to be fulfilled:

- a) its area must be at least 2000 square meters
- b) the land has to face a subordinate communal space.

On the other hand, the land that is situated in settlements, which are remote from urban centers (mountainous, difficult to access e.t.c), their growth is not intense and their population is according to the last census less than 800 residents, is par and buildable under the condition that its area is at least 500 square meters and it faces a subordinate communal space.

The conditions in order for immovable land to be par and buildable alter when the building ground is situated within the city plan. Those conditions are introduced by the General Construction Regulation (law 1577/1985) — which sets the framework for all construction activity in the country — and more specifically in art. 6<sup>1</sup> (art. 243 of the *Urban Planning Legislation*).

Building land that is situated within the city plan is par and buildable, as long as: a) the land satisfies the minimum requirements of the area and front length, which are determined ad hoc for each region and b) within the buildable part of the land a plan view of the building to be built can be projected. In addition to that, this plan view should satisfy the minimum requirements for area and side length in accordance with the building restrictions which apply in that region. The aforementioned conditions are determined ad hoc by presidential decrees and are specific to and different for each region.

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<sup>1</sup> The General Construction Regulation is also codified in the *Urban Planning Legislation* (i.e. Presidential Decree No 14/27.7.1999, which has codified all the existing legal norms regulating urban planning), in art. 241 et seq.



When a building ground does not fulfill the conditions set by the Urban Planning Legislation (art. 4 of Presidential Decree 2/1981 and art. 6 of the General Construction Regulation) and by the presidential decrees that determine ad hoc for each area the minimum requirements of area and front length, it is conceived as not buildable.

## II. Who is Alien Under Greek Law

### A. Real Persons

**Alien** is every natural person who doesn't have the Greek citizenship or who doesn't have any citizenship, according to law 3386/2005 *about the entrance, residence and social integration of third countries' citizens* (art. 1a). Contrary to Greek nationals, aliens are the persons who have a foreign nationality. However, all aliens are not subject to the same legal treatment under Greek law and therefore it is crucial to specify the exact citizenship of each alien, since some categories of them are treated optimally in comparison to others.

The first category of aliens being fairly treated is **Greek expatriates**. Greek expatriates are real persons who do not have the Greek Citizenship, but who are of Greek ethnicity. They are aliens bonded to the Greek nation usually because of their common language, religion, traditions, but above all because of their common national conscience<sup>2</sup>.

There are some favorable legal regulations for Greek expatriates, which in many cases result in their complete assimilation to domestics. This favorable treatment of Greek expatriates is explicitly guaranteed by the Greek Constitution. According to art. 108a of the Greek Constitution "*The State shall be concerned with Greeks residing abroad and with the maintenance of their ties with Motherland.*"

As far as the acquisition of immovable property is concerned, Greek expatriates are subject to exactly the same treatment as Greek citizens for the areas which are characterized as border regions both in law 1892/1990 as well as in Law Decree of 22/24.6.1927.

The second category of aliens includes the citizens of the Member States of the E.U., who have the **European Citizenship**. The laws and the decree – laws which were issued in conformity with E.C. Directives have created an especially favorable *status quo* for European citizens. The legal basis of this development lies in article 12 of the EC Treaty, which forbids any

<sup>2</sup> According to the consultative opinion of the Advocate General of Arios Pagos (Supreme Court of Cassation) number 2 of the 22.3.1979, Greek expatriates are the persons who are born by Greek parents, or generally have ethnological bonds with Greece, or the ones that used to have the Greek citizenship but have abolished it.



discrimination on grounds of nationality among the citizens of the Member States.

Apart from the citizens of the E.U. Member States, the citizens of the countries of the **European Economic Area (E.E.A.)**, namely the citizens of Norway, Iceland and Lichtenstein, are favorably treated in comparison to citizens of third countries<sup>3</sup>.

After the introduction of law 1892/1990 European citizens and citizens of the E.E.A. countries have been subjected to the same treatment as Greek citizens, concerning the acquisition of immovable property in Greece .

In particular, E.U. and E.E.A. citizens, who wish to acquire immovable property in border regions of Greece, can be classified in one of the following three categories:

1. Persons who wish to settle in Greece for professional reasons
  - as workers (art. 39 TEC)
  - as independent professionals (art. 43 TEC)
  - as service providers (art. 49 TEC)
2. citizens of Member States whose permanent residence is in another Member State and who wish to acquire immovable property either as an investment of funds, or as a secondary (country) residence
3. citizens of Member States, who are not any more, not yet or have not at all been economically active (e.g. students, pensioners) and who wish to acquire immovable property exercising their right to reside freely within the E.U., acknowledged to them by article 18 of the EC Treaty and by secondary law.

**Citizen of a third country**, on the other hand, is the real person who doesn't hold either the Greek citizenship, or any other Member – State citizenship according to article 17.1 of the TEC (see art. 1 b law No. 3386/2005).

In comparison to Greek and European nationals more restrictions are imposed on citizens of third countries, as far as the acquisition of immovable property is concerned. However, these restrictions are in force and apply only in so far as they are allowed by the international treaty commitments of Greece.

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<sup>3</sup> The Agreement creating the European Economic Area was signed in May 1992 and was ratified in Greece by law 2155/1993.



## B. Corporate Persons

There are two conditions under which a corporate person possesses the Greek nationality: (a) it should be established in accordance with Greek law and (b) its real seat (*siege reel*) shall be situated in Greece. Besides, whether the legal person is a profit or non-profit one is not crucial for its legal treatment as a Greek corporate.<sup>4</sup>

Similar to real persons, all foreign corporates are not subject to the same legal treatment under Greek law. European corporates are treated optimally as far as the acquisition of immovable property is concerned, under the condition that:

- They are established in accordance with one of the law of a Member State,
- They have their registered office, central administration or principal place of business within the Community and
- They are profit-making companies

However, the corporates which are controlled by Greek expatriates are not subject to a preferential treatment in comparison to other foreign corporates. The corporates which are established in accordance with the law of a third country, are not treated as Greek corporates, even if they are controlled by Greek expatriates.

## III. The Legal Bases

### A. Historical Background

The presentation of the historical background of the restrictions on the acquisition of immovable property in Greece is crucial, since remnants of the previous legal regime are still valid today. The Greek legislation concerning the acquisition of immovable property by aliens has a history of

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<sup>4</sup> Under the previous legal regime regulating the acquisition of immovable property by aliens, the jurisprudence of the Greek Courts had adopted the "theory of control" of the juridical persons, in order to determine whether a juridical person was foreign. According to this theory the characterization of a juridical person as "foreign" was determined by the nationality of the members of its administration, the origin of the capital and the possibility of control of the juridical person by aliens. The Greek courts had applied the aforementioned criteria, for they have ruled that the provisions for the acquisition of immovable property were of superior power, as they were embodying a superior form of public interest, namely the national security of the Greek State. This position of the jurisprudence was highly criticized, since it was and still is not based on any legal provisions concerning the nationality of foreign persons willing to acquire immovable property in Greece. On the contrary, the theory of the real seat (*siege reel*) is instituted in the Greek Civil Code and it governs the Greek Law in general.



almost 90 years. During the so called "Balkan wars" not just restrictions but explicit prohibitions concerning legal transactions of real property rights were introduced with regard to the conquered land. The Greek legislator, bearing in mind its responsibility and the conditions of that specific period of time, strived to secure the sovereignty of the extended Greek State, in a way that, was considered to be the most appropriate one. Therefore, it has developed a mechanism for the preliminary control of the corporate transactions concerning real property which are located in sensitive territorial areas. More specifically:

**1. With Law Decree No. 22/24.6.1927** "*about ratifying the Law Decree of 5.5.1926, which amended Law 3250/1924 concerning prohibition of legal transactions over real property*", the acquisition of property rights, except for mortgage, as well as contractual rights over land located in border regions was forbidden both for real and legal aliens,. Moreover, the lease for a period longer than 3 years, as well as any lease or permit to use land for agricultural purposes, was prohibited. This prohibition could have only been lifted by a joint decision of the Ministry of Internal Affairs , Ministry of Agriculture and Ministry of National Defense, adopted on the basis of an opinion of a special commission.

**2. By the Law No. 1366/1938** "*about prohibiting legal transactions in border regions*", an absolute prohibition was established for legal transactions *inter vivos* over land situated in border regions, near the coastal line, or islands or islets, regardless of the nationality of the parties. However, by virtue of the law no.1366/1938, real persons of Greek nationality or legal persons under the management of Greek nationals could validly conclude such a transaction had they produced an attestation from the Ministry of Agriculture certifying that there were no objections to the conclusion of the transaction on security grounds. On the other hand, aliens were permitted to conclude such legal acts only if the decree designating the area as a border region was revoked.

**3. The Law No. 376/1938** "*about measures for security of key fortress areas*", is currently in force, The entrance, the establishment and the freedom of contractual transactions over real estate of both Greeks and foreigners are prohibited in areas where fortresses exist or are likely to exist

Under the aforementioned regime, citizens of the Member States of the E.U. have obviously not been preferentially treated, since, contrary to Greek nationals, they could not acquire immovable property without a special permit that could only be issued by a special committee in the areas of the Greek dominion that were designated by Law Decree of 22.6.1927 as borderland . The Law No.1366/1938 ,by allowing the acquisition of real



property after the issuance of a special permit solely to Greek nationals, caused discrimination among the citizens of the other EU member states<sup>5</sup> and Greek nationals.

The aforementioned provisions have naturally drawn the attention of the European Commission. The European Commission blamed the Greek government in April 1984 for making discrimination that is strictly forbidden by the EU Law. The Commission took a legal action against the Greek government and claimed that provisions of the Greek Laws violated the EU Law, particularly the principle of non-discrimination. On May 30<sup>th</sup> 1989, The ECJ, in its judgement on Case 305/87, ruled against the Greek State by ascertaining the conflict of the sole article of Presidential Decree of 22/24.6.1927 and of articles 1,2,3,4 and 5 of Emergency Law no: 1366/1938 with the EC Treaty and in particular the freedom of movement of real persons, the freedom of establishment and the freedom to provide services, which are well-established in the EC Treaty.

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<sup>5</sup> The jurisprudence of the Greek courts, considering that with the provisions about the land located in border regions national security was served, had secured their unobstructed application, even when the consequences of their application were really detrimental to the interested parties and in some cases resulted in the abusive use of the legal norms from one of the contracting parties. With a series of judgments, the civil and administrative courts underlined the mandatory nature of the relevant provisions, which were characterized as of immense public order. What was mainly emphasized was that the entire regime aimed at the realization of the public interest. According to judgment 1366/ 1983 of the Greek Council of the State, which is representative of this opinion, the preliminary control of transactions over real property constituted the safest means of observation of the land located in border regions for the benefit of the defence needs of the country. With regard to this position, which was general and objective, there could have been no infringement of the constitutional right of respect of human dignity, nor of the freedoms of equal treatment and economic development. Further, there wasn't, according to the same judgment, any possibility of conflict between the scrutinized provisions and the Greek Constitution, since they did not introduce a limitation on the freedom of establishment. Even if it could be alleged that the position adopted by the fore mentioned judgment was correct, it is obvious that the answer that was given wouldn't be the same, were it the equivalent community law freedom (article 52 paragraph 2 EC Treaty) to be considered. The same position towards this issue was also adopted by Greek Civil Courts. The latter have ruled that the relevant provisions were of superior rank in relation to article 281 of the Greek Civil Code (abusive use of a legal right), as they were embodying a superior form of public interest. Beyond the hierarchy between the various forms of public interest, jurisprudence had also tried unsuccessfully to use the public interest, which was served by these provisions, as a ground for justifying the deviations from the fundamental community law freedoms of establishment and free movement of persons and capital.



**B. Case 305/87, Judgment of the Court of 30 May 1989:****Commission of the European Communities v Hellenic Republic**

By an application lodged at the Court Registry on 5 October 1987, the Commission of the European Communities brought an action under Article 169 of the EEC Treaty for a declaration that, by maintaining in force and applying the sole article of the Presidential Decree of 22 to 24 June 1927 as well as Articles 1, 2, 3, 4 and 5 of Emergency Law No 1366 of 2 to 7 September 1938 with regard to the conclusion, by nationals of other Member States, of legal acts in respect of immovable property situated in border regions, the Hellenic Republic had failed to fulfill its obligations under Articles 7, 48, 52 and 59 of the Treaty. The court decided the following: In the first place, in regard to workers, access to housing and ownership of property, provided in Article 9 of Regulation No 1612/68, was the corollary of freedom of movement and was for that reason covered by the prohibition of discrimination laid down in Article 48 of the Treaty. Therefore, in so far as the Greek legislation made the right of workers who were nationals of other Member States and who were lawfully employed in the Hellenic Republic to conclude any legal act relating to immovable property subject to conditions not imposed on Greek nationals, it constituted an obstacle to freedom of movement for workers and was for that reason contrary to Article 48 of the Treaty (new Article 39). In the second place, with regard to freedom of establishment, the prohibition of discrimination on grounds of nationality laid down in Article 52 (new article 43) of the Treaty was concerned not solely with the specific rules on the pursuit of an occupation but also with the rules relating to the various general facilities which were of assistance in the pursuit of that occupation, with the result that it applied to the acquisition and use of immovable property. Under those circumstances, the Greek legislation, which made the exercise of the right to purchase or use immovable property by nationals of other Member States subject to restrictions not imposed on Greek nationals, was a hindrance to the exercise of freedom of establishment which was contrary to Article 52 of the Treaty. Finally, with regard to freedom to provide services, access to ownership and the use of immovable property was guaranteed by Article 59 (new article 49) of the Treaty to the extent that, as in the case of immovable property from which or in which a service is provided, such access was appropriate to enable that freedom to be exercised effectively and may not have been subject to discriminatory restrictions. Consequently, the restrictions laid down in the Greek legislation concerning the acquisition by nationals of other Member States of immovable property from which or in which a service was provided constituted an obstacle to the exercise of the freedom to provide services and are therefore contrary to Article 59 of the Treaty.



### C. The Present Regulation

Complying with the abovementioned judgment, the Greek Legislator reformed the relevant legal regime by introducing **Law 1892/1990 “concerning the modernization and the development and other provisions”**. At this point it should be underlined that according to art. 31 par. 2 of Law 1892/1990, Law Decree of 22.6.1927 and Law No.376/1938 remain in force. The legal norms of Law Decree of 22.6.1927 apply exclusively to natural or juridical persons that have the citizenship of a third country, notwithstanding article 26 paragraph 2 of Law 1892/1990.

### D. International Treaties

As far as aliens from third countries are concerned, article 26.2 and 31. 2 of Law 1892/1990 as well as the provisions of Law Decree 22.6.1927 are in force and apply **only in so far as allowed by the international treaty commitments of Greece**. We are referring mainly to the international treaties of economic, of investment protection or of establishment and protection of citizens of the contracting parties, which usually incorporate provisions for the acquisition of real or contractual rights, shares e.t.c. According to **article 28 paragraph 1 of the Greek Constitution** *the international conventions as of the time they are ratified by law and become operative according to the conditions therein, shall be an integral part of domestic Greek law and shall prevail over any contrary provision of the law, even if the law was the last to be put into force.*

Here, a particular reference should be made to the Agreements relating to promotion and protection of foreign investments (Bilateral Investment Treaties).<sup>6</sup> The incorporation of a most-favored-nation clause and a national treatment clause in their provisions guarantee that investors from these countries should be treated no less favorably than investors from third countries with which Greece concluded bilateral treaty, and that they should not be discriminated from Greek nationals. As real and contractual rights relating to immovable property fall within the definition of investment under certain circumstances, investors from these countries are subject to the same conditions that apply to Greek citizens.

<sup>6</sup> Greece has concluded Bilateral Investment Treaties with 26 countries, namely Democratic Republic of Congo, Albania, China, Morocco, Armenia, Egypt, Ukraine, Cuba, Uzbekistan, Croatia, Ukraine, Moldavia, Serbia & Montenegro, Algeria, Turkey, Bosnia & Herzegovina, Kazakhstan, Syria, Azerbaijan, Tunisia, Russia, Georgia, Chile, Lebanon, South Africa, Argentina, Mexico. A complete list of these BITs is available at <http://nomothesia.ependyseis.gr/eu-law/categoryAction.do?action=displayCategory&categoryId=192>.



On the contrary, the enforcement of the regulation of Law 1892/1990 is applied in the cases, where an international treaty specifically excluded the acquisition of real rights by the citizens of the other contracting party. For example, according to article 9.1 of the convention of friendship, commerce, navigation e.t.c. of 1951 between Greece and the U.S.A., it is allowed to the Greek state to impose restrictions upon American citizens concerning the acquisition of immovable property, which is located in border land and vice versa.

#### **IV. The Legal Framework Regulating the Acquisition of Immovable Property in Greece for the Citizens of the Member States of the E.U. and of the E.E.A.**

Under the existing legal regime European citizens as well as European legal persons can acquire immovable property in Greece under exactly the same conditions as Greek nationals. The restrictions that are imposed on them refer to the acquisition of immovable property in "border regions". As it is already mentioned, those restrictions are imposed by law 1892/1990 "*concerning the modernization and the development and other provisions*", in articles 24 – 31.

At first, we should make three introductory remarks; first and foremost, there is absolutely no difference in the legal regime for the acquisition of immovable property for real and legal persons. Secondly, after the Agreement creating the European Economic Area was concluded, citizens of countries of E.E.A. are subjected to the same treatment as European citizens. Finally, it is obvious that the provisions of law 1892/1990 are imposed on a locally restricted area; their application is not extended in the whole surface of the Greek state, but it can be locally expanded or shrunk according to the discretion of the legislative<sup>7</sup> (art. 24) or the executive body<sup>8</sup>. For the purposes of law 1892/1990 border regions are not the areas that are actually situated at the borders of the Greek state with other countries, but the areas that are characterized as such by the aforementioned law<sup>9</sup>. We also

<sup>7</sup> Lex posterior derogat legem priorem

<sup>8</sup> According to article 24 par. 1 of Law 1892/1990 the power of characterization or decharacterization of land as located in border regions is delegated to the Administration.

<sup>9</sup> Article 24 provides that for the enforcement of law 1892/1990 the following are considered to be border regions:

- a) The prefectures of Florina, Thesprotia, Kastoria, Ksanthi, Rodopi, Evros, Samos, Chios, Lesvos, Dodekanisa and Kilkis.
- b) The provinces Pogoniou and Konitsa of the Prefecture of Ioannina, the provinces of Almopia and Edessa of the prefecture of Pella, the province of Sintiki of the prefecture of Serres, and the province of Neurokopi of the prefecture of Drama.
- c) The islands Skyros and Thira with the islets that administratively come under it.



have to note that in comparison to the previous legal regime<sup>10</sup>, a substantial decrease of the land characterized as located in border regions has occurred after the introduction of law 1892/1990.

### A. The Prohibition of the Right Acts Inter Vivos in Border Regions

As far as the actual restrictions on the acquisition of immovable property in Greece is concerned we have to note the following; Article 25 of Law 1892/1990 provides that every legal act inter vivos with which national as well as foreign natural or juridical persons acquire ownership or other real or contractual rights on immovable property situated in border regions of Greece is prohibited.

According to the opinion of the academia and the administration<sup>11</sup>, the **preliminary agreement** for the acquisition of immovable property in border regions is also prohibited by article 25 of law 1892/1990, for it is a legal act inter vivos, via which a contractual right is created.

Excluded from this prohibition according to article 25.1 are:

- Transaction of shares inputted in the Greek Stock market
- Contracts of parental grant
- Contracts of lease for a period of less than 6 years
- Contracts of settlement of boundaries, division of a common asset and transfer of an indivisible percentage between co-proprietors.

Besides, this prohibition does not apply when the aforementioned rights are acquired by the Greek State, municipalities and communes, legal persons of public law e.t.c. (Art. 25.2 of law 1892/1990). Therefore, citizens of the European Union and the E.E.A. can freely transfer the immovable property in border regions to the Greek State .

### B. The Lift of the Prohibition

The aforementioned **prohibition can only be lifted** by a special permit,

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<sup>10</sup> Under the previous legal regime Greek administration had overwhelmingly used the provided legislative tools, thus characterizing great surfaces of Greek territory as being located near the borders. According to relevant statistical data, until 1990 51% of the Greek territory fell within the scope of the regime of land located in border regions.

<sup>11</sup> For example internal guidance document of the ministry of finance, department for legal issues concerning the European Union. However, such documents can not be treated as sources of law.



which is issued by the competent committee<sup>12</sup> at a prefectural level, following the submission of an application filed by **real and legal persons of Greek or Community nationality**. The purpose of use of the immovable asset should be mentioned in the application (Art. 26 par. 1a, 1b of law 1892/1990).

One of the major shortcomings of law 1892/1990 is the **inexistence of a priori statutory criteria** determining the acceptance or the rejection of the application<sup>13,14</sup> and how the administration should exercise its discretion.

Another major shortcoming of the law is the lack of provisions concerning the right of the person to a prior hearing or ,for an appeal in front of a higher administration authority or in front of administrative courts. Nevertheless, Greek administrative law provides that the rejection of an application or even the omission of the issuance of a decision (tacit omission) can constitute a cassation dispute ,and should be resolved by the Greek State Council.

### C. Consequence of the Infringement of Law

The acquisition of immovable property by Greek and European citizens without the special permit of the competent committee is prohibited. The punishment would be the **absolute nullity of the legal act in question** and of criminal as well as of disciplinary sanctions for any notary who infringes that prohibition (Art. 30 of law 1892/1990).

Thus, the legal transaction is bounded with a special administrative permit.. Consequently, a posterior grant of the permit can not remedy the nullity of the legal act and therefore the transaction should be recontracted.

This rule is chosen by the legislator, who wishes to place these transactions under preliminary control, via the issuance of a special permit, instead of absolutely prohibiting them. So, under the existing legal regime there is the

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<sup>12</sup> The committee is an organ of the respective prefecture.

<sup>13</sup> To overcome this unclarity the competent ministries circulate internal guidance documents, which can not be treated as sources of law. According to an internal guidance document of the ministry of finance the application can be set aside for **reasons of public policy or public security** of the exact same nature with the reasons for which the grant of a residence permit could be rejected. The application can be also set aside if it is proven that the transaction in question consist a **means for pursuing illegal goals** and especially **money laundering**.

<sup>14</sup> The decision of the committee should dean the purpose of law, which is the protection of the border regions from the settlement of undesirable persons for reasons of national safety. This is also determined by the jurisprudence and more specifically by decision 467/2004 and 361/1952 Areos Pagos (High court of cassation) and by decision 1413/1972 of the Court of Appeal of Thessaloniki.



possibility of ad hoc a priori removal of the interdiction for the acquisition of immovable property in border regions.

#### D. Special Issues Concerning the Substantive Content of the Provisions

As far as the substantive content of the provisions is concerned we have to make the following remarks.

##### 1. Public Auction

The acquisition of immovable property in border regions by public auction is of particular interest, as this matter has controversially been dealt with academics and Greek courts. Nowadays, there is unanimity that the prohibition of transactions *inter vivos* in border regions and the procedures concerning the lifting of this prohibition apply also for public auctions. Although there is no such specific provision in law no.1892/1990, this interpretation is necessary in order to avoid the danger of abuse of the law, since public auction also leads to the acquisition of a real right<sup>15</sup>. After all, the public auction, according to Greek civil and procedural law is a *sui generis* sale<sup>16</sup>. Another issue is about when the permit of the competent committee should be issued. According to the Academia and the jurisprudence of the Greek courts, it is not necessary for the permit of the competent committee in favor of the successful bidder to be issued before the carrying out of the public auction, as long as it is done so before the editing of the summary of the adjudicative act<sup>17</sup>. Therefore, the bidders are not obliged to have the administrative permit in order to take part in the auction<sup>18</sup>.

##### 2. Mortgage

According to article 25 of law 1892/1990 the transactions *inter vivos* by which a real or contractual right is acquired on immovable property situated in border regions are prohibited. Consequently, this prohibition does not concern the cases where the real or contractual rights are acquired in a legal

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<sup>15</sup> See decisions 1471/2004 and 610/2002 of the High Court of Cassation (Arios Pagos)

<sup>16</sup> See decision 1471/2004 of the High Court of Cassation (Arios Pagos), decision 2/1993 and decision 1688/1983 of the plenary session of the High Court of Cassation (Arios Pagos)

<sup>17</sup> See decision 467/2004 of the High Court of Cassation (Arios Pagos) according to which the successful bidder acquired the ownership of the immovable assets by the conveyance of the summary of the adjudicative act, although the administrative permit was issued after the public auction and the adjudication.

<sup>18</sup> See decision of the 1471/2004 of the High Court of Cassation (Arios Pagos).



way other than a legal transaction. The mortgage is according to article 973 of the Greek Civil Code, one of the eight real rights and therefore the concession and registration of a mortgage in favor of E.U. and E.E.A. citizens without the special permit of law 1892/1990 is prohibited and thus void<sup>19</sup>. On the other hand mortgage which is based on a court's decision (judicial mortgage) or directly on law falls under the category of real rights that are acquired through a legal way different from a transaction and therefore it is not subject to any prohibition.

### 3. Leases

According to article 25 of law no. 1892/1990 contractual transactions relating to immovable property situated in border regions are prohibited without the special permit of the competent committee. It is explicitly indicated that especially for Greek citizens and expatriates and for E.U. and E.E.A. citizens, leases for a period of less than 6 years are excluded from this prohibition. Therefore, a special permit is essential for the validity of leases lasting over 6 years; however the legislator doesn't specify the exact time of the issuance of the permit. According to the concerted opinion of the academia and the jurisprudence<sup>20</sup> if the permit is issued while the lease is still valid and in force, that is during the first six years of its duration, the lease becomes valid for the time after six years as well. If such a permit is not issued during the first six years, the lease will be null for the remaining time and the leaser will be able to claim the use of the immovable property. Protective regulations that insure the compulsory prolongation and the minimum duration of the lease in cases of commercial leases do not apply to the leases in border regions, which are contracted without the issuance of the permit within the first six years of the lease<sup>21</sup>.

E. The restrictions in the legal regime for the acquisition of immovable property by European citizens and legal persons as it is presented above is no different than those imposed on Greek citizens and legal persons<sup>22</sup>. We

<sup>19</sup> According to the Academia the prohibition of the concession of a mortgage does not serve the purpose of law, namely the safety in border regions, since no ownership or possession right on the immovable property in border land is acquired, for mortgage is nothing more than a means of security and does not allow the right holder to use the immovable asset. Furthermore, the previous legal regime allowed the concession of a mortgage in favour of aliens; therefore it is paradoxical to impose such a prohibition on Greek, E.U. and E.E.A. citizens, since it was not imposed on aliens.

<sup>20</sup> See decision 1312/2005 of the High Court of Cassation (Arios Pagos).

<sup>21</sup> See opinion of the State Legal Council 210/2004, decision 1312/2005 of the High Court of Cassation (Arios Pagos), decision 218/2006 of the Court of Appeal of Dodekanisa

<sup>22</sup> This fact is also verified by the jurisprudence of the Greek courts. The Supreme Administrative Court (Council of State) accepted in its decision 1701/1997 that the prefectural committee of article 26 par. 1 of law 1892/1990 could not deny to issue a



have to underline that this legal regime has functioned so far without causing any major problems of constitutional or community law.

### V. Requirements for the Acquisition of Immovable Property in Greece by Citizens/ Legal Persons of Third Countries

The restrictions of law 1892/1990 concerning the acquisition of immovable property in areas that are characterized as "border regions" by the same law also apply for citizens and legal persons of third countries, with some alterations. Given the fact that no issue of application of Community Law arises, the acquisition of immovable property by aliens of third countries is allowed under more strict conditions<sup>23</sup>. Third persons can acquire *inter vivos* real or contractual rights on immovable assets situated in border regions, if they are granted a permit that is to be issued, by the **Minister of National Defence** (Art. 26.2 of law 1892/1990). Furthermore, the exceptions from the prohibition of acquisition of immovable property in border regions under article 25.1 of law 1892/1990, namely contracts of parental grant, leases for a period of less than six years, settlement of boundaries, division of a common asset and transfer of indivisible percentage between co proprietors, do not apply for persons from third countries.

In addition to that, according to article 31.2 of Law 1892/1990, Law Decree of 22/24.6.1927 and the presidential decrees that were issued after it remain in force, but they apply exclusively to real or legal nationals persons of a third country, notwithstanding article 26.2 of Law 1892/1990, which regulates the lifting of the prohibition by a special permit of the Minister of National Defence. The legislator of law 1892/1990 wanted to preserve the specific restrictive legislation against non European persons for national security reasons; the former definition of border regions stated in law decree 22/24.6.1927 is still valid concerning the acquisition by third countries' nationals of real or contractual rights in the therein defined border regions.<sup>24</sup> However, a new procedure regulated in article 26.2 of law

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permit so that two German citizens could purchase a field on the island of Ios with the justifications that they were aliens, for the prohibition to acquire immovable property in borderland can be lifted when the applicants are citizens of the E.U. For the regions that are not characterized by law 1892/1990 as border regions the citizens of the E.U. can acquire immovable property, regardless of the purpose of use of the asset, without being subjected to any special conditions, exactly like the Greek citizens.

<sup>23</sup> The disadvantaged treatment of aliens is in force and applies only in so far this is allowed by the international treaty commitments of Greece.

<sup>24</sup> For the enforcement of law decree 22/24.6.1927 the following are considered to be border regions: the island of Corfu and the islets around it, the island of Crete, the islands Skyros and the island of Cephalonia, the prefectures of Ioannina, Preveza, Florina, Pella, Serres, Drama, Samos, Chios, Lesvos, Thessaloniki, Chalkidiki, Dodekanisa and the whole of west Thrace.



no.1892/1990, about lifting the prohibition has been introduced. The purpose of the reference to the procedure of article 26.2 was that the legislator wanted to ease the strict legal regime of law decree 22/24.6.1927, in favour of aliens from third countries, by providing them the possibility to lift the prohibition, for the acquisition of real or contractual rights both in border areas of law 1892/1990 as well as in border areas of law decree 22/24.6.1927 by the a priori issuance of a permit of the Minister of National Defence. The procedure in order for the permit to be issued can last from four to six months.

The Ministry of National Defence, in coordination with other State authorities, has complete and discretionary power to decide on lifting the prohibitions, having the protection of the National Defence as its first priority.

The acquisition of immovable by third country nationals situated in border areas of law 1892/1990 and of law decree 22/24.6.1927 without the issuance of the special permit by the Ministry of Defence results in the absolute nullity of the transaction (article 30 of law 1892/1990).

Once the special permit of the Minister of National Defence is issued, the citizen or the juridical person from a third country can validly acquire immovable property in the border regions designated in law decree 22/24.6.1927. Afterwards, the alien from a third country can transfer the immovable property freely to Greek and European Citizens as well as to Greek expatriates, without being submitted to any further conditions. If the new holder of the real or contractual rights is also an alien from a third country, then that person has to file an application to the Minister of National Defence, following the exact same procedure as if the original owner of the immovable asset were a Greek or European citizen. The disposition by an alien from a third country of immovable property situated in the border regions designated in law 1892/1990 does not present any complexity; the new holder of the real or contractual rights should file an application to the competent prefectural committee, if he is a Greek or European citizen or a Greek expatriate, and to the Minister of National Defense if he is a third country national.

To sum up the major differences between the acquisition of immovable property by European and non European citizens lie in the local region, and on the Authority that decides whether the prohibition should be lifted or not. Finally, the substantive scope of the prohibition is wider in the case of persons of third counties, as far as the contracts mentioned in article 25.1 of law 1892/1990 are concerned.



## VI. Requirements for the Acquisition of Immovable Property in Greece by Greek Expatriates

Greek expatriates form the only category of aliens who are treated differently according to their nature as real or legal persons. Greek expatriates are citizens from a third country; therefore it would be expected them to be treated as such by Greek Law, as far as the acquisition of immovable property in border regions is concerned. However, law 1892/1990 explicitly provides that they should be subject to exactly the same treatment as Greek and European citizens. Therefore, Greek expatriates should apply to the competent prefectural committee in order for the prohibitions for the acquisition of immovable property to be lifted and only for the areas that are characterized as border regions in law 1892/1990 and not for the ones designated in law decree 22/24.6.1927.

However, the legal persons that are controlled by Greek expatriates are not subject to a preferential treatment in comparison to other foreign legal persons. The legal persons that are formed in accordance with the law of a third country, that is not a Member State of the E.U. or of the E.E.A., are not treated as Greek juridical persons, even though they are controlled by Greek expatriates and the prohibitions that were described in paragraph 5. apply on them.

## VII. Restrictions Imposed Regardless of the Nationality of the Contracting Parties

Apart from the aforementioned prohibitions that are imposed on the acquisition of immovable property in border regions, the following restrictions/prohibitions also apply, regardless of the location of the immovable asset in a border region. The acquisition of immovable property is prohibited in areas where fortresses exist or are likely to exist (Law No:376/1938) and it is allowed on private islands and islets only after the issuance of a special administrative permit. Restrictions on the acquisition of immovable property can also be imposed also by legislation concerning the protection of cultural heritage, national defence, as well as the safety of Greece. All the aforementioned restrictions are imposed regardless of the nationality of the contracting parties.

The provisions of law 1892/1990 impose a prohibition on the acquisition of immovable property *regardless of the location of the asset in a border region* in the cases of **private islands or islets** on the one hand and the performance of **quarrying or metallurgical work in certain areas**. According to article 28, real or legal persons who wish to acquire real or contractual rights on private islands or islets of Greece, regardless of their



nationality, have to file an application to the Ministry of Agriculture, along with a declaration of the purpose of use of the immovable property. In order for the transaction to be valid, a permit has to be issued by the Minister of Agriculture, having the concurring opinion of the competent department of the Ministry of National Defence. An administrative permit, granted by the prefecture, having the concurring opinion of the competent department of the Ministry of National Defence, is necessary according to article 29 for performing quarrying or metallurgical work in certain mountainous areas<sup>25</sup>. Excluded from this procedure are sales contracts with the Greek State, municipalities and communes as well as legal persons of public law, contracts of parental grant, of lease for a period under 6 years, of settlement of boundaries, of division of a common asset and of transfer of an indivisible percentage between co proprietors.

As it is already noted, law no: 1892/1990, which is the basic law that regulates the acquisition of immovable property by aliens in Greece, provides in article 31 par. 2 b, that Mandatory Law 376/1938 "*about measures for security of key fortress areas*" remains into force, thus maintaining another prohibition to the acquisition of immovable property for the sake of national safety. According to the aforementioned law, the entrance, the establishment and the freedom of contractual transactions over real estate of both Greeks and aliens are prohibited in areas where fortresses exist or are going to be created.

### VIII. Inheritance

The rights of inheritors, which derive by succession by law as well as by succession by testament, are not subject to law 1892/1990 or law decree 22/24 June 1927. The latter provides that the hereditary rights of aliens are recognized without being imposed to any further conditions. Law 1892/1990 is explicitly referring in articles 25 par. 1, 28 par. 1 and 29 par. 1 to legal transactions *inter vivos*, via which real or contractual rights over immovable property situated in border regions are acquired. In contradistinction to the content of the aforementioned provisions, the conclusion can be reached that every legal transaction that belongs to the category *mortis causa*, thus meaning every transaction where the occurrence of death constitutes a necessary condition for its completion are not subject to the prohibitions of law 1892/1990. The reason is that the nullity described in law 1892/1990 relates solely to legal transactions as such and not to the object of the

<sup>25</sup> According to article 29 these are the mountainous areas of Karvounia, Pieria, Olympus, Vermion, Dussoron, Vertiskos, Kerdullion, Menikios, Paggaiio, Oreon Lekanis as well as certain areas of Crete.



transaction. For instance acquisition of property deriving from a valid testament as well as the bequest of immovable property situated in border regions (bequest can derive only from a valid testament) is not subjected to the prohibition of the law. On the contrary, donations mortis causa are subject to the prohibitions of the law, for they constitute according to the prevailing opinion transactions inter vivos.

Finally, the acceptance of the inherited property, which constitutes a legal act without consideration, as well as the registration of the acceptance in the public registry are not subject to the restrictions imposed by law 1892/1990.

### **Concluding Remarks**

The specific legislation that sets barriers to transactions concerning immovable property situated, in most cases, in border regions reflects the historic adventures of Greece since the 1920s. The policy orientation, which necessitated the implementation of prohibitions and of the other restrictions at first against aliens and then against domestics, occurred in parallel with sad historical incidents. Nowadays, their existence appears less vital for national safety reasons and the complete removal of the specific prohibitory legislation would be desirable.