



Reports of Cases

Case C-340/10

European Commission
v
Republic of Cyprus

(Failure of a Member State to fulfil obligations — Directive 92/43/EEC — Articles 4(1) and 12(1) — Failure to include Paralimni Lake as a site of Community importance within the time-limit laid down — System of protection for the species *Natrix natrix cypriaca* (Cypriot grass snake))

Summary of the Judgment

1. *Procedure — Absolute bar to proceeding — To be considered of the Court's own motion — Actions for failure to fulfil obligations — Purpose — Action founded on an objection not stated in the pre-litigation procedure — Inadmissibility*

(Art. 258 TFEU; Rules of Procedure of the Court of Justice, Art. 92(2))

2. *Environment — Conservation of natural habitats and of wild fauna and flora — Directive 92/43 — Special areas of conservation — Site eligible for identification as a site of Community importance, but not included in the national list*

(Council Directive 92/43, Arts 3(1) and 4(1))

3. *Environment — Conservation of natural habitats and of wild fauna and flora — Directive 92/43 — Strict protection for the animal species listed in Annex IV(a) — Measures necessary in order to establish a system of protection*

(Council Directive 92/43, Art. 12(1) and Annex IV(a))

1. Under Article 92(2) of the Rules of Procedure of the Court the Court may at any time of its own motion consider whether there exists any absolute bar to proceeding with a case.

In an action for failure to fulfil obligations the purpose of the pre-litigation procedure is to give the Member State concerned an opportunity, on the one hand, of fulfilling its obligations under Union law and, on the other, to avail itself of its right to defend itself against the objections formulated by the Commission. The subject-matter of the action brought under Article 258 TFEU is, therefore, delimited by the pre-litigation procedure provided for by that article. Accordingly, the action may not be founded on any objections other than those stated in the pre-litigation procedure.

(see paras 20, 21)

2. In the case of sites eligible for identification as sites of Community importance, included in the national lists transmitted to the Commission and, in particular, sites hosting priority natural habitat types or priority species, the Member States are, by virtue of Directive 92/43 on the conservation of

natural habitats and of wild fauna and flora, as amended by Directive 2006/105, required to take protective measures appropriate, from the point of view of the directive's conservation objective, for the purpose of safeguarding the relevant ecological interest of those sites at national level.

The appropriate protection scheme applicable to the sites appearing in a national list transmitted to the Commission under Article 4(1) of that directive requires Member States not to authorise interventions which incur the risk of seriously compromising the ecological characteristics of those sites. This is particularly the case when an intervention poses the risk of significantly reducing the area of a site, or of leading to the disappearance of priority species present on the site, or, lastly, of having as an outcome the destruction of the site or the destruction of its representative characteristics.

If that were not the case, the European Union decision-making process, which is not only based on the integrity of the sites as notified by the Member States, but is also characterised by the ecological comparisons between the different sites proposed by the Member States, would run the risk of being distorted and the Commission would no longer be in a position to fulfil its duties in the area concerned, namely, in particular, to draw up the list of selected sites as sites of Community importance in order to form a coherent European ecological network.

The above considerations also apply, *mutatis mutandis*, to the sites which the Member State concerned does not dispute satisfy the ecological criteria in Article 4(1) of Directive 92/43 and which, therefore, should have been included in the national list of proposed sites of Community importance sent to the Commission. It is not permissible, under that directive and the objectives which it pursues, for a site, which the Member State concerned does not dispute must be included in that list, not to enjoy any protection.

Consequently, a Member State that tolerates activities seriously compromising the ecological characteristics of such a site and does not take the protective measures necessary to maintain the population of the species concerned, which constitutes the ecological interest of that site, fails to fulfil its obligations under Directive 92/43.

(see paras 43-47, 69, operative part)

3. Article 12(1) of Directive 92/43 on the conservation of natural habitats and of wild fauna and flora, as amended by Directive 2006/105, requires the Member States to take the requisite measures to establish a system of strict protection for the animal species listed in Annex IV(a) of the same directive, which must enable the effective avoidance of all forms of deliberate capture or killing of specimens of these species in the wild, deliberate disturbance of those species, particularly during the period of breeding, rearing, hibernation and migration, deliberate destruction or taking of eggs from the wild as well as deterioration or destruction of breeding sites or resting places.

Consequently, a Member State that does not take the measures necessary in order to establish and apply a system of strict protection for that animal species fails to fulfil its obligations under Article 12(1) of Directive 92/43.

(see paras 59, 62, 69, operative part)