

Action brought on 1 June 2016 — European Commission v Hellenic Republic

(Case C-328/16)

(2016/C 402/16)

*Language of the case: Greek***Parties**

Applicant: European Commission (represented by: G. Zavvos and E. Manhaeve, acting as Agents)

Defendant: Hellenic Republic

Form of order sought

The applicant claims that the Court should:

- declare that the Hellenic Republic, by failing to take all measures required for the implementation of the judgment delivered by the Court on 24 June 2004 in Case C-119/02, ⁽¹⁾ *Commission v Greece*, has failed to fulfil its obligations under Article 260(1) TFEU;
- order the Hellenic Republic to pay to the Commission a proposed penalty payment of EUR 34 974 for each day of delay in the implementation of the judgment delivered in Case C-119/02 from the date when the judgment in this case is delivered until the date when the judgment that was delivered in Case C-119/02 has been implemented,
- order the Hellenic Republic to pay a daily lump sum amounting to EUR 3 828 per day from the date of delivery of the judgment in Case C-119/02 until the date when the judgment in this case is delivered or the date when the judgment in Case C-119/02 is implemented, whichever is the earlier,
- order the Hellenic Republic to pay the costs.

Pleas in law and main arguments

1. In the judgment of 24 June 2004, in Case C-119/02, *Commission v Greece*, the Court declared that:

‘... by not taking the measures necessary for the installation of a collecting system for urban waste water from the area of Thriasio Pedio and not subjecting urban waste water from that area to treatment more stringent than secondary treatment before its discharge into the sensitive area of the Gulf of Eleusina, the Hellenic Republic has failed to fulfil its obligations under the second subparagraph of Article 3(1) and Article 5(2) of Council Directive 91/271/EEC of 21 May 1991 ⁽²⁾ concerning urban waste-water treatment, as amended by Commission Directive 98/15/EC of 27 February 1998.’

2. The Hellenic Republic was obliged to take the necessary measures to ensure that the urban waste-water from the area of Thriasio Pedio (which encompasses the towns of Eleusina, Aspropirgos, Magoula and Mandra) is collected and subjected to treatment in accordance with the second paragraph of Article 3(1) and Article 5(2) of Directive 91/271/EEC as amended by Directive 98/15/EC before its discharge into the sensitive area of the Gulf of Eleusina. The system for the collection and treatment of waste-water from the area of Thriasio Pedio ought to have been established by 31 December 1998 at the latest. In addition, by that date the urban waste-water ought to have been subjected to treatment more stringent than secondary treatment (‘tertiary treatment’) before its discharge into sensitive areas.
3. The Hellenic Republic was obliged to ensure the collection and treatment of all the urban waste-water from the area of Thriasio Pedio and its subjection to treatment more stringent than secondary treatment treatment, and also prove that the operation of the waste-water treatment plants was in compliance with the requirements of the directive.
4. Compliance with the judgment of the Court ought to have been achieved by means of completion of various projects:
 - the creation of an urban waste water treatment centre;
 - the construction of the ‘main’ conduits (for the urban waste water network) or the ‘basic network’,
 - the construction of conduits (for the urban waste water network) or ‘the secondary network’,
 - the connection of the various settlements/industries in the area (the towns of Aspropirgos, Eleusina, Mandra, Magoula) with the urban waste water network, or ‘the tertiary network’.

5. The competent Greek authorities informed the Commission that the greater part of the entire project should have been completed by the end of 2010. The basic network was in the construction stage, the secondary network had been 45 % completed and the tertiary network was under development. The authorities maintained that the urban waste-water treatment centre would be able to collect the urban waste-water from the entire population of the area before the end of 2010. With regard to the main network, it would cover 100 % of the population of the towns of Aspropirgos, Mandra and Magoula and 2/3 of Eleusina (in total around 90 % with respect to the four towns). The remainder of the population would be covered by 30 April 2011.
6. The Commission concluded from the above that, as at 18 July 2011, the judgment of the Court had still not been fully implemented.
7. The Greek authorities, in their reply of 27 November 2012, informed the Commission that the urban waste-water treatment centre had been operational since 27 July 2012 but that the secondary and tertiary network had not yet been completed (postponed until the end of March 2013). With respect to the secondary network, that would almost be completed, with the exception of part of the town of Eleusina ('Lower Eleusina') where work had been delayed due to archaeological finds. It is further indicated that currently 24 % of the urban waste water of the Thrasio Pedio agglomeration is collected and subjected to treatment by the urban waste-water treatment centre. The authorities also sent evidence to show (tertiary treatment for the urban waste-water that is collected) that the operation of the plant is lawfully compliant.
8. The Commission considers that notwithstanding the period of 12 years since the date of delivery of the judgment concerned, the Hellenic Republic has still not yet fully implemented it. The waste-water treatment plants have been completed and brought into operation since 27 July 2012, with the capacity for removal of nitrogen, but the Commission emphasises that only a very low percentage (28 %) of the urban waste-water from the area of Thrasio Pedio is currently subject to collection and treatment.
9. In addition, the Commission has not obtained from the competent authorities any timetable with reliable data to permit any assessment of when any realistic progress can be expected. The Commission emphasises that the various deadlines which the Greek authorities have over time made known to the Commission have never been observed. Quite apart from the tertiary network, which connects various settlements and industries in the area, the secondary network (the construction of large conduits) has also not been completed, in that the area of Lower Eleusina in the town of Eleusina is excluded.
10. The Commission states that there is no statistical data to demonstrate that the urban waste-water which has been collected has been subject to treatment more stringent than secondary treatment, with the exception of the reply from the Greek authorities of 27 November 2012. That reply contains data, but that data covers only one period of four months, since the plant had been brought into operation on 27 July 2012. In any event, in order to prove adequate treatment of the collected waste-water the Greek authorities are under an obligation to demonstrate that the operation of the treatment plant has been lawfully compliant for a period of 12 months, recording a percentage of reduction in BOD5 (biochemical oxygen demand) and COD (chemical oxygen demand) which satisfies the requirements of the directive with respect to secondary treatment and, with respect to the tertiary treatment, an adequate percentage of reduction in nitrogen that complies with Table 2 of Annex I to the directive. While that data is absent the Commission is not in a position to verify whether the urban waste-water which is now collected is finally subjected to treatment more stringent than secondary treatment, as that is described in Article 4 of the directive.

⁽¹⁾ EU:C:2004:385

⁽²⁾ OJ 1991, L 135, p. 40

Appeal brought on 7 July 2016 by European Union Intellectual Property Office against the judgment of the General Court (Fourth Chamber) delivered on 27 April 2016 in Case T-556/11: European Dynamics Luxembourg SA, European Dynamics Belgium SA, Evropaïki Dynamiki — Proigmena Systimata Tilepikoinonion Pliroforikis kai Tilematikis AE v European Union Intellectual Property Office

(Case C-376/16 P)

(2016/C 402/17)

Language of the case: English

Parties

Appellant: European Union Intellectual Property Office (represented by: N. Bambara, Agent, P. Wytinck, B. Hoorelbeke, advocaten)