

Action brought on 2 April 2009 — Commission of the European Communities v Republic of Cyprus

(Case C-125/09)

(2009/C 141/53)

Language of the case: Greek

Parties

Applicant: Commission of the European Communities (represented by: G. Zavvos and A. Nijenhuis)

Defendant: Republic of Cyprus

Form of order sought

- declare that, by not ensuring that rights of way on, over or under public property are granted in good time, without discrimination and transparently, the Republic of Cyprus has failed to fulfil its obligations under Article 11(1) of the Framework Directive (2002/21/EC) and Article 4(1) of the Authorisation Directive (2002/20/EC);
- order the Republic of Cyprus to pay the costs.

Pleas in law and main arguments

1. It is apparent from the information supplied to the Commission that the second mobile telephony provider has been unable to establish its network effectively in order to provide electronic communications services competitively vis-à-vis the established network operator, the Arkhi Tilepikinonion Kiprou (Cyprus Telecommunications Authority; 'ATHK'), because of time-consuming and uncoordinated procedures in Cyprus.
2. The Commission alleges that, as a result of the conduct of the competent Cypriot public authorities (municipalities and/or districts), the second mobile telephony provider does not have at the moment the construction authorisations which are required under national legislation and therefore its existing network, which is expected to correspond to the strict requirement regarding geographical coverage that is entered in its authorisation, could be regarded as operating in breach of Cypriot law.
3. The Commission considers that that situation gives rise to substantial disadvantages for the activities of the second mobile telephony network operator. Since it has not completed the development of its network, it can offer end users full geographical coverage only by means of the national roaming service available to it, at wholesale prices, from ATHK. This results in the second operator currently being dependent on ATHK's wholesale national roaming service for approximately 20 % of its total traffic. Thus, since the second operator's own network does not provide full geographical coverage, it is obliged to shoulder the real external cost of use of ATHK's wholesale national roaming service and is dependent on that service.
4. In the Commission's view, this significant delay regarding the grant, to the second mobile telephony provider, of rights

of way on, over or under public property for the installation of masts and antennae constitutes an infringement of Article 11(1) of the Framework Directive, which provides that the competent authority must act on the basis of transparent and publicly available procedures, applied without discrimination and without delay.

5. The Republic of Cyprus states that the decree which was to be issued immediately after the vote on the draft law was expected also to cover other important points of the Code, such as the six-week rule and, generally, all the provisions of paragraph 4 of the Code. However, the abovementioned decree was *never* issued, with the result that the situation remains essentially unchanged. Consequently, the Commission considers that the Framework Directive and the Authorisation Directive are currently not implemented correctly in Cyprus so far as concerns the grant of town-planning and construction authorisations.
6. Therefore, Article 4(1) of the Authorisation Directive and Article 11(1) of the Framework Directive will not be fully implemented prior to formal implementation of the forthcoming measures implementing the Code since, in the absence of completion of the necessary procedure and issue of the decree, the new construction authorisation regime will not be capable of being brought into force.

Action brought on 3 April 2009 — Commission of the European Communities v Grand Duchy of Luxembourg

(Case C-126/09)

(2009/C 141/54)

Language of the case: French

Parties

Applicant: Commission of the European Communities (represented by: N. Yerrell, acting as Agent)

Defendant: Grand Duchy of Luxembourg

Form of order sought

- Declare that, by failing to adopt all the laws, regulations and administrative provisions necessary to comply with Directive 2003/59/EC of the European Parliament and of the Council of 15 July 2003 on the initial qualification and periodic training of drivers of certain road vehicles for the carriage of goods or passengers, amending Council Regulation (EEC) No 3820/85 and Council Directive 91/439/EEC and repealing Council Directive 76/914/EEC⁽¹⁾ or, in any event, by failing to notify those provisions to the Commission, the Grand Duchy of Luxembourg has failed to fulfil its obligations under that directive;
- order the Grand Duchy of Luxembourg to pay the costs.