



Reports of Cases

JUDGMENT OF THE COURT (Fourth Chamber)

15 March 2012*

(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))

In Case C-340/10,

ACTION under Article 258 TFEU for failure to fulfil obligations, brought on 7 July 2010,

European Commission, represented by G. Zavvos and D. Recchia, acting as Agents, with an address for service in Luxembourg,

applicant,

v

Republic of Cyprus, represented by K. Lykourgos and M. Chatzigeorgiou, acting as Agents,

defendant,

THE COURT (Fourth Chamber),

composed of J.-C. Bonichot, President of the Chamber, A. Prechal, K. Schieman, L. Bay Larsen (Rapporteur) and C. Toader, Judges,

Advocate General: J. Kokott,

Registrar: A. Calot Escobar,

having regard to the written procedure,

having decided, after hearing the Advocate General, to proceed to judgment without an Opinion,

gives the following

Judgment

- 1 By its application, the European Commission requests the Court to declare that,
 - by not having included the site of Paralimni Lake in the national list of proposed sites of Community importance ("SCIs"),

* Language of the case: Greek.

- by tolerating activities which seriously compromise the ecological characteristics of Paralimni Lake and by not having taken the protective measures necessary to maintain the population of *Natrix natrix cyprica* (Cypriot grass snake), the species which constitutes the ecological interest of the lake and Xyliatos Dam, and
- by not having taken the requisite measures to establish and apply a system of strict protection for that species,

the Republic of Cyprus has failed to fulfil its obligations under Article 4(1) of Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora (OJ 1992 L 206, p. 7), as amended by Council Directive 2006/105/EC of 20 November 2006 (OJ 2006 L 363, p. 368, ‘the Habitats Directive’), under the Habitats Directive as interpreted by the judgments in Case C-117/03 *Dragaggi and Others* [2005] ECR I-167 and Case C-244/05 *Bund Naturschutz in Bayern and Others* [2006] ECR I-8445, and under Article 12(1) of that directive respectively.

Legal context

- 2 Under the first subparagraph of Article 3(1) of the Habitats Directive, ‘[a] coherent European ecological network of special areas of conservation shall be set up under the title Natura 2000. This network, composed of sites hosting the natural habitat types listed in Annex I and habitats of the species listed in Annex II, shall enable the natural habitat types and the species’ habitats concerned to be maintained or, where appropriate, restored at a favourable conservation status in their natural range’.

- 3 Article 4(1) and (2) of the Habitats Directive provides:

‘1. On the basis of the criteria set out in Annex III (Stage 1) and relevant scientific information, each Member State shall propose a list of sites indicating which natural habitat types in Annex I and which species in Annex II that are native to its territory the sites host. For animal species ranging over wide areas these sites shall correspond to the places within the natural range of such species which present the physical or biological factors essential to their life and reproduction. ...

The list shall be transmitted to the Commission, within three years of the notification of this Directive, together with information on each site. ...

2. On the basis of the criteria set out in Annex III (Stage 2) ..., the Commission shall establish, in agreement with each Member State, a draft list of sites of Community importance drawn from the Member States’ lists identifying those which host one or more priority natural habitat types or priority species.

...

The list of sites selected as sites of Community importance, identifying those which host one or more priority natural habitat types or priority species, shall be adopted by the Commission in accordance with the procedure laid down in Article 21.’

- 4 Article 5 of that directive provides:

‘1. In exceptional cases where the Commission finds that a national list as referred to in Article 4(1) fails to mention a site hosting a priority natural habitat type or priority species which, on the basis of relevant and reliable scientific information, it considers to be essential for the maintenance of that priority natural habitat type or for the survival of that priority species, a bilateral consultation procedure shall be initiated between that Member State and the Commission for the purpose of comparing the scientific data used by each.

2. If, on expiry of a consultation period not exceeding six months, the dispute remains unresolved, the Commission shall forward to the Council a proposal relating to the selection of the site as a site of Community importance.
3. The Council, acting unanimously, shall take a decision within three months of the date of referral.
4. During the consultation period and pending a Council decision, the site concerned shall be subject to Article 6(2).'
- 5 Article 12(1) of the Habitats Directive is worded as follows:

'Member States shall take the requisite measures to establish a system of strict protection for the animal species listed in Annex IV(a) in their natural range, prohibiting:
 - (a) all forms of deliberate capture or killing of specimens of these species in the wild;
 - (b) deliberate disturbance of these species, particularly during the period of breeding, rearing, hibernation and migration;
 - (c) deliberate destruction or taking of eggs from the wild;
 - (d) deterioration or destruction of breeding sites or resting places.'
- 6 The Cypriot grass snake is a priority species referred to in Annex II and Annex IV(a) of the Habitats Directive.

The facts of the dispute and the pre-litigation procedure

- 7 On 16 May 2006 the Commission received a complaint from the Federation of environmental and ecological organisations of Cyprus regarding the inadequate protection of the Cypriot grass snake. According to that complaint, the Republic of Cyprus had wrongly failed, inter alia, to include the area of Paralimni Lake in the national list of SCIs.
- 8 In the light of the information it had available to it, the Commission, on 23 March 2007, sent to the Republic of Cyprus a letter of formal notice by which it drew the latter's attention to the inadequate protection of that species because of the failure to include the site of Paralimni Lake in the national list of SCIs and the failure to protect that site as well as Xyliatos Dam.
- 9 By letter of 18 May 2007, the Republic of Cyprus replied to the letter of formal notice indicating that the competent authority was in discussion with the relevant parties in order to arrive at a commonly accepted proposition to include the site of Paralimni Lake in the national list of SCIs before the end of 2007. That Member State also set out the different measures which had been taken to reinforce the protection of that site and the Xyliatos Dam. Finally, it claimed that sending the letter of formal notice had been premature and unlawful because the Commission should have followed the procedure laid down in Article 5 of the Habitats Directive and not the procedure in Article 258 TFEU.
- 10 By letter of 6 June 2008, the Commission issued a reasoned opinion in which it stated that, by not adopting the laws, regulations and administrative provisions necessary to comply with the Habitats Directive, the Republic of Cyprus had failed to fulfil its obligations under that directive. As a consequence, the Commission requested the Republic of Cyprus to take the measures necessary to comply with that reasoned opinion within two months of its receipt.

- 11 By letter of 21 November 2008, the Republic of Cyprus responded to the reasoned opinion and set out the measures which had been taken to protect the Cypriot grass snake and the progress made in relation to the inclusion of the site of Paralimni Lake in the national list of SCIs.
- 12 By letter of 18 December 2009, the Commission referred in particular to the complaints relating to the property development in the northern part of the site of Paralimni Lake.
- 13 By letter of 23 December 2009, the Republic of Cyprus informed the Commission that the site had been officially included in the national list of SCIs on 24 November 2009. However, that Member State had not included the northern end of the lake in that list.
- 14 Subsequently, the Republic of Cyprus rejected the complaints referred to by the Commission in relation to the property development of the northern part of that lake.

The action

Failure to include the site of Paralimni Lake in the national list of SCIs

Arguments of the parties

- 15 The Commission takes the view that, by not having included the site of Paralimni Lake in the national list of SCIs before expiry of the period set in the reasoned opinion, the Republic of Cyprus has failed to fulfil its obligations under Article 4(1) of the Habitats Directive.
- 16 As regards Article 5(1) of the Habitats Directive, which the Republic of Cyprus claimed, during the pre-litigation stage, should have been applied where the Commission found that there was a failure to include a site which appears to be essential to the survival of the Cypriot grass snake in the national list of SCIs, the Commission claims that that provision presupposes the existence of a scientific disagreement between it and the Member State concerned, which, in this case, is lacking. In the present case, the information used by each party was the same and was not disputed. In its letters of 12 August and 21 November 2008, the Republic of Cyprus undertook to include the site of Paralimni Lake in the national list of SCIs. Consequently, the question of a scientific disagreement and a comparison of data does not arise.
- 17 In the alternative, the Commission claims that there are strong indications that the site boundaries which were finally disclosed to it concerning the designation of the SCIs, in so far as they do not include the important area situated at the northern end of Paralimni Lake, which was transformed into a residential area during 2009, are not sufficient for the protection and conservation of the Cypriot grass snake and, therefore, that the infringement is ongoing.
- 18 The Republic of Cyprus reiterates that it has never disputed that the site of Paralimni Lake should constitute an SCI. It contends, however, that the boundary of the current area as an SCI is sufficient for the protection and conservation of the species at issue. That species is to be found only in the southern and eastern parts of the SCI. Moreover, the study carried out by the Austrian expert, to which the Commission refers, does not contain clear guidance regarding the demarcation of the SCI which she considers necessary for sufficient protection of the Cypriot grass snake.
- 19 Since the Republic of Cyprus is claiming, citing scientific data in support, that the demarcation of the SCI is sufficient for the preservation of the Cypriot grass snake and its habitats, which is called in question by the Commission, there is a scientific disagreement relating to the evaluation of the scientific data. That disagreement justifies the application of the bilateral consultation procedure provided for in Article 5 of the Habitats Directive.

Findings of the Court

- 20 As regards the subject-matter of the action, it must be remembered that 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.
- 21 It is settled case-law that the purpose of the pre-litigation procedure is to give the Member State concerned an opportunity, on the one hand, to comply with its obligations under European 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 cannot be founded on any objections other than those stated in the pre-litigation procedure (see, *inter alia*, Case C-152/98 *Commission v Netherlands* [2001] ECR I-3463, paragraph 23).
- 22 In the present case, it should be noted that it is not apparent from the documents before the Court that, during the pre-litigation stage, whether at the stage of the formal notice or that of the reasoned opinion, the question of demarcation of the site of Paralimni Lake was addressed by the parties, nor that the Commission raised any argument specifically relating to the northern part of the site. As regards the failure to include the site of Paralimni Lake in the national list of SCIs, the Commission merely called for the inclusion of that site, identified in general terms and without any indication as regards its demarcation, in the national list of SCIs, and the Republic of Cyprus undertook to include it in that list, which it did, more than 17 months after the reasoned opinion was issued.
- 23 Since the pre-litigation procedure in no way related to the demarcation of the site of Paralimni Lake nor, in particular, to the question of inclusion of the northern part of the site in it, the action is inadmissible in so far as it refers to that subject.
- 24 As regards the complaint alleging failure to include the site of Paralimni Lake in the national list of SCIs, the Court notes that it has never been disputed that, in general, that site should have been included in that list.
- 25 Therefore, it must be held, first, that the conditions for the application of Article 5 of the Habitats Directive were not, in any event, met for either of the two complaints.
- 26 Second, as regards the complaint alleging failure to include the site of Paralimni Lake in the national list of SCIs, it is not disputed that it was not included in the list before expiry of the period set in the reasoned opinion.
- 27 Since the question whether a Member State has failed to fulfil its obligations must be determined by reference to the situation prevailing in that Member State at the end of the period laid down in the reasoned opinion and the Court cannot take account of any subsequent changes (see, *inter alia*, Case C-183/05 *Commission v Ireland* [2007] ECR I-137, paragraph 17, and judgment of 11 November 2010 in Case C-164/09 *Commission v Italy*, paragraph 19), it must be held that the Commission's action is well founded as regards that complaint.

Tolerance of activities which degrade or damage the habitat of the species concerned

Admissibility

– Arguments of the parties

- 28 The Republic of Cyprus claims that neither the letter of formal notice nor the reasoned opinion refer to the operation of a firing range and excavation works. Therefore, the Commission extended the subject-matter of the dispute by referring, in its action, to the firing range and excavation works as activities which degrade or damage the habitat of the species concerned.
- 29 The Republic of Cyprus claims that, since it was unable to make comments in response to those arguments they cannot be taken into account by the Court during the consideration of the Commission's complaints. The subject-matter of the dispute may be extended to events which took place after the reasoned opinion was delivered only if they are of the same kind as the events to which the opinion referred and constitute the same conduct, which is not the situation in the present case.
- 30 As regards the residential development of the 'northern part of the lake', the reasoned opinion did not clearly identify the arguments relied upon more generally in the letter of formal notice. Specifically, the residential development at the location in question was mentioned for the first time in the Commission's letter of 18 December 2009. The 'northern part of the lake' was mentioned neither in the letter of formal notice nor in the reasoned opinion.
- 31 Consequently, the Republic of Cyprus considers that the Commission's arguments regarding the operation of a firing range, excavation works and residential development in the northern part of Paralimni Lake must be rejected as inadmissible.
- 32 The Commission points out that, both in its letter of formal notice and its reasoned opinion, it criticises the conduct of the Republic of Cyprus, which tolerates activities seriously compromising the ecological characteristics of the lake as well as the fact that it has not taken the protective measures necessary to maintain the population of the Cypriot grass snake, in breach of European Union law. In that context, and in support of that complaint, the Commission refers more specifically to the excessive extraction of water, residential development and moto-cross racing.
- 33 Even if the operation of the firing range and the excavation works took place after the reasoned opinion, the Commission submits that the subject-matter of the dispute may be extended to events which took place after that opinion if they are of the same kind as the events to which the opinion referred and constitute the same conduct. The events at issue are of the same kind as the events to which the opinion referred and constitute the same conduct.
- 34 As regards the alleged failure to set out arguments clearly in relation to the property development, the Commission points out that it defined the general concept as property development 'beside the lake but also within its boundaries'. That definition manifestly also encompasses the northern part of the lake, given that it is situated 'within the boundaries' of the lake. In any event, the Commission did not have any real possibility of including the issue of the recent property development affecting the northern part of the lake in its letter of formal notice or its reasoned opinion given that the Republic of Cyprus did not include that area in the urban development plan until March 2009, that is to say well after expiry of the period for replying to the reasoned opinion.

– Findings of the Court

- 35 As regards the excavation works, it must be noted that they are among the matters which the Commission raised, in its letter of formal notice and in its reasoned opinion, against the Republic of Cyprus.
- 36 Accordingly, the argument regarding tolerance of the excavation works is admissible.
- 37 As regards the operation of the firing range, it should be noted that, as the Commission itself accepts, that matter was not mentioned during the pre-litigation procedure. While it is true that even events which took place after the reasoned opinion, but of the same kind as the events to which the opinion referred and constitute the same conduct, may be taken into account in the context of infringement proceedings (see, to that effect, Case 42/82 *Commission v France* [1983] ECR 1013, paragraph 20, and Case 113/86 *Commission v Italy* [1986] ECR 607, paragraph 11), that is not the case with the operation of a firing range when compared with excessive extraction of water, residential development, excavation works or the organisation of moto-cross racing.
- 38 Therefore, the argument regarding the operation of the firing range is not admissible.
- 39 As regards the argument concerning the residential development in the northern part of Paralimni Lake and its effects in that area, it should be noted that, in view of what is stated at paragraph 23 of this judgment and the fact that the argument was not, in any event, invoked by the Commission in its letter of formal notice or its reasoned opinion, it is also inadmissible.

Substance

– Arguments of the parties

- 40 The Commission takes the view that the case-law of the Court, which accepts the necessity of protecting SCIs and safeguarding the objectives of the Habitats Directive, in particular regarding the formation of a coherent European ecological network, also applies to sites which satisfy the necessary ecological criteria to be included in the list of SCIs.
- 41 The Commission states that the Republic of Cyprus tolerates the unlawful excessive extraction of water, which is the cause, in particular, of destruction of the habitat of the species concerned or the elimination of its representative characteristics. In addition, the residential development on the site at issue reduces the surface of that habitat and has, therefore, very substantial adverse effects on the conservation of the site and the species concerned. Furthermore, the organisation of moto-cross racing is particularly harmful to the Cypriot grass snake because of the continuous disturbance caused and is a hazard because it leads to injury and even death of the animals.
- 42 The Republic of Cyprus states that it has stopped the removal of water from where the Cypriot grass snake has its habitat, and that, therefore, the concerns regarding a drop in water level in the habitat of that species and the destruction of that habitat through the extraction of water are no longer justified. As regards the construction of residential buildings ‘beside the lake’, the defendant Member State states that there is no residential development within the SCI at issue and that the residential development on the outskirts of that site does not restrict the habitat of the Cypriot grass snake and will not have harmful consequences, contrary to what the Commission claims. As for the operation of a moto-cross track, the Republic of Cyprus notes that it has been terminated and the track has been demolished.

– Findings of the Court

- 43 It should be noted that, in the case of sites eligible for identification as sites of Community importance which are 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 the Habitats Directive, required to take protective measures that are appropriate, from the point of view of the Directive's conservation objective, for the purpose of safeguarding the relevant ecological interest which those sites have at national level (see *Draggagi and Others*, paragraph 30).
- 44 The appropriate protection scheme applicable to the sites which appear on a national list transmitted to the Commission under Article 4(1) of the Habitats 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 either of significantly reducing the area of a site, or of leading to the disappearance of priority species present on the site, or, finally, of having as an outcome the destruction of the site or the destruction of its representative characteristics (see *Bund Naturschutz in Bayern and Others*, paragraphs 46 and 47).
- 45 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 (see *Bund Naturschutz in Bayern and Others*, paragraphs 41 and 42).
- 46 The above considerations also apply, in any event, *mutatis mutandis*, to the sites which the Member State at issue does not dispute satisfy the ecological criteria in Article 4(1) of the Habitats Directive and which, therefore, should have been included in the national list of SCIs sent to the Commission.
- 47 It cannot be permitted, under the Habitats Directive and the objectives which it pursues, that a site such as that at issue in the present case, which the Member State concerned does not dispute must be included in that list, does not enjoy any protection.
- 48 As regards the conduct of the Republic of Cyprus of which the Commission complains and which it claims is the cause of destruction of the habitat of the Cypriot grass snake in the site of Paralimni Lake and of the endangerment, on the same site, of the maintenance of the population of that species, it is not disputed that the organisation of moto-cross racing on the site at issue, which the defendant Member State claims to have terminated after expiry of the period set in the reasoned opinion, constitutes conduct likely to seriously compromise the ecological characteristics of the site.
- 49 In that respect, the complaint is therefore well founded.
- 50 As regards the excessive extraction of water on the site at issue, it is apparent from the documents before the Court that it had not terminated upon the expiry of the two month period set in the reasoned opinion. It is clear that, in the present case, that type of operation is capable of having a considerable negative impact on the habitat of the Cypriot grass snake and on the conservation of that species, particularly during years of drought.
- 51 Accordingly, the complaint must also be upheld in that respect.
- 52 As regards the property development other than in the northern part of the SCI at issue, which allegedly causes a reduction of the area of habitat of the species concerned and which the Commission raised against the Republic of Cyprus, the latter accepts that such a development took place around the SCI but not within it and disputes the harmful effects alleged by the Commission.

- 53 In that regard, it is established case-law that, in proceedings for failure to fulfil obligations, it is for the Commission to prove the existence of the alleged infringement and to provide the Court with the information necessary for it to determine whether the infringement is made out, and the Commission may not rely on any presumption for that purpose (see, *inter alia*, *Commission v Ireland*, paragraph 39, and judgment of 22 September 2011 in Case C-90/10 *Commission v Spain*, paragraph 25).
- 54 In the absence of any evidence of the impact of that property development on the area of habitat of the Cypriot grass snake in the part of the SCI concerned, such an argument, like the related argument on the tolerance of excavation works, cannot, in any event, be considered well founded.
- 55 Therefore, the complaint alleging infringement of the Habitats Directive, due to the tolerance of activities which degrade and damage the habitat of the species concerned in respect of the site of Paralimni Lake, must be upheld, subject to what is stated at paragraph 54 of the present judgment.

Failure to establish and apply a system of strict protection for the Cypriot grass snake

Arguments of the parties

- 56 The Commission takes the view that, by tolerating the abovementioned activities such as, in particular, the excessive extraction of water and the organisation of moto-cross racing, and by not applying protective measures, the Republic of Cyprus has failed to fulfil its obligations under Article 12(1) of the Habitats Directive. As a consequence of those activities the area of habitat of the Cypriot grass snake and the population of that species have declined at the site of Paralimni Lake.
- 57 The Commission is of the opinion that the building projects on that site have serious consequences as a result of the earthworks and the debris which damage the habitat of that species. The division of the northern part of Paralimni Lake also infringes Article 12(1)(a) and (b) of the Habitats Directive.
- 58 Except for the illegal operation of a racing circuit, the Republic of Cyprus claims to have taken the necessary measures to implement a system of strict protection of the Cypriot grass snake and to have not therefore breached its obligations under Article 12(1) of the Habitats Directive.

Findings of the Court

- 59 It should be remembered that Article 12(1) of the Habitats Directive requires 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, in their natural range, prohibiting 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.
- 60 The transposition of that provision requires the Member States not only to adopt a comprehensive legislative framework but also to implement concrete and specific protection measures (*Commission v Ireland*, paragraph 29).
- 61 Similarly, the system of strict protection presupposes the adoption of coherent and coordinated measures of a preventive nature (judgment of 16 March 2006 in Case C-518/04 *Commission v Greece*, paragraph 16, and *Commission v Ireland*, paragraph 30).
- 62 Such a system of strict protection must therefore enable the effective avoidance of all forms of deliberate capture or killing of specimens of animal species listed in Annex IV(a) of the Habitats Directive in the wild, deliberate disturbance of the 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 of those species (see, to that effect, Case C-383/09 *Commission v France* [2011] ECR I-4869).

63 In this case the defendant Member State accepts that, by tolerating the organisation of moto-cross racing, it infringed Article 12(1) of the Habitats Directive.

64 Regarding the excessive extraction of water, having regard to paragraph 50 of this judgment and the fact that the presence of the Cypriot grass snake on the site of Paralimni Lake was well known, the inevitable conclusion is that it constitutes, in any event, a deliberate disturbance in accordance with Article 12(1) of the Habitats Directive.

65 As regards the argument alleging harmful consequences for the Cypriot grass snake linked to the property development on the site of Paralimni Lake, it is apparent from the evidence in the documents before the Court that the property development and the construction in or near the site of Paralimni Lake, in particular in or near its northern part, which are associated with excavation works, is likely to lead to disturbances affecting that protected species in the whole ecosystem of that site.

66 In those circumstances, it is therefore apparent that the Republic of Cyprus did not put a system of strict protection in place to enable the effective avoidance of all matters set out at paragraph 62 of this judgment.

67 Consequently, the complaint alleging infringement of Article 12(1) of the Habitats Directive is well founded.

68 Having regard to the foregoing, the Commission's action must be upheld, subject to the reservation made at paragraph 55 of this judgment.

69 Accordingly, it must be held that the Republic of Cyprus,

- by not having included the site of Paralimni Lake in the national list of SCIs,
- by tolerating activities which seriously compromise the ecological characteristics of Paralimni Lake and by not having taken the protective measures necessary to maintain the population of *Natrix natrix cypriaca* (Cypriot grass snake), the species which constitutes the ecological interest of the lake and Xyliatos Dam, and
- by not having taken the requisite measures to establish and apply a system of strict protection for that species,

has failed to fulfil its obligations under Article 4(1) of the Habitats Directive, under the Habitats Directive and under Article 12(1) of that directive respectively.

Costs

70 Under Article 69(2) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings. Since the Commission has applied for costs and the Republic of Cyprus has been essentially unsuccessful, the latter must be ordered to pay the costs.

On those grounds, the Court (Fourth Chamber) hereby:

1. Declares that the Republic of Cyprus,

- **by not having included the site of Paralimni Lake in the national list of proposed sites of Community importance,**
- **by tolerating activities which seriously compromise the ecological characteristics of Paralimni Lake and by not having taken the protective measures necessary to maintain the population of *Natrix natrix cypriaca* (Cypriot grass snake), the species which constitutes the ecological interest of the lake and Xyliatos Dam, and**
- **by not having taken the requisite measures to establish and apply a system of strict protection for that species,**
- **has failed to fulfil its obligations under Article 4(1) of Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora, as amended by Council Directive 2006/105/EC of 20 November 2006, under Directive 92/43, as amended, and under Article 12(1) of Directive 92/43, as amended, respectively;**

2. Orders the Republic of Cyprus to pay the costs.

[Signatures]