

JUDGMENT OF THE COURT (Sixth Chamber)

30 January 2002 (1)

(Failure by a Member State to fulfil its obligations - Directive 92/43/EEC - Conservation of natural habitats and of wild fauna and flora - Protection of species)

In Case C-103/00,

Commission of the European Communities, represented by R. Wainwright and P. Panayotopoulos, acting as Agents, with an address for service in Luxembourg,

applicant,

v

Hellenic Republic, represented by A. Samoni-Rantou and P. Skandalou, acting as Agents, with an address for service in Luxembourg,

defendant,

APPLICATION for a declaration that, by failing to adopt or, in the alternative, to notify to the Commission, within the prescribed time-limit, the requisite measures to establish and implement an effective system of strict protection for the sea turtle *Caretta caretta* on Zakynthos (Greece) so as to avoid any disturbance of the species during its breeding period and any activity which might bring about deterioration or destruction of its breeding sites, the Hellenic Republic has failed to fulfil its obligations under the EC Treaty and under Article 12(1)(b) and (d) 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),

THE COURT (Sixth Chamber),

composed of: F. Macken, President of the Chamber, C. Gulmann (Rapporteur), J.-P. Puissochet, R. Schintgen and J.N. Cunha Rodrigues, Judges,

Advocate General: P. Léger,

Registrar: L. Hewlett, Administrator,

having regard to the Report for the Hearing,

after hearing oral argument from the parties at the hearing on 12 July 2001,

after hearing the Opinion of the Advocate General at the sitting on 25 October 2001,

gives the following

Judgment

1. By application lodged at the Court Registry on 17 March 2000, the Commission of the European Communities brought an action under Article 226 EC for a declaration that, by failing to adopt or, in the alternative, to notify to the Commission, within the prescribed time-limit, the requisite measures to establish and implement an effective system of strict protection for the sea turtle *Caretta caretta* on Zakynthos (Greece) so as to avoid any disturbance of the species during its breeding period and any activity which might bring about deterioration or destruction of its breeding sites, the Hellenic Republic has failed to fulfil its obligations under the EC Treaty and Article 12(1)(b) and (d) 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, the 'Directive').

The relevant provisions

2. Article 2(1) of the Directive states that the aim of the Directive is to contribute towards ensuring bio-diversity through the conservation of natural habitats and of wild fauna and flora in the European territory of the Member States to which the Treaty applies.

3. Article 2(2) states that measures taken pursuant to the Directive are to be designed to maintain or restore, at favourable conservation status, natural habitats and species of wild fauna and flora of Community interest.

4. Article 12(1) provides:

'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.

5. The sea turtle *Caretta caretta* is one of the species listed in Annex IV(a) of the Directive.

6. Under Article 23(1), Member States are to bring into force the laws, regulations and administrative provisions necessary to comply with the Directive within two years of its notification, and to forthwith inform the Commission thereof. Since notification of the Directive took place in June 1992, the relevant time-limit expired in June 1994.

Pre-litigation procedure

7. The deterioration in the conservation conditions for the sea turtle *Caretta caretta* on the island of Zakynthos was criticized by non-governmental organizations. In addition, by a letter of 3 July 1998, the Commission requested information from the Greek authorities on measures for the protection of that species on the island.

8. On 16 and 17 July 1998, Commission officials went on a mission to Zakynthos to verify whether any measures for the protection of the sea turtle *Caretta caretta* had in fact been implemented. In the course of the mission, they visited the beaches at Laganas, Kalamaki, Sekania, Dafni and Gerakas, the places where that species lays its eggs. They found that the protective measures at all of the places visited were inadequate, in particular:

- there was no supervision and there were no notices on the beaches;
- there were pedalos and boats in the sea area where their use is prohibited;
- there were a significant number of beach umbrellas and deck-chairs on various beaches (Kalamaki, Gerakas, Dafni);
- there were illegal buildings and recent works on the beach at Dafni.

9. In response to the Commission's letter of 3 July 1998, the Greek authorities, by letter of 22 July 1998, referred *inter alia* to port regulations adopted during the first half of the 1990s, to the implementation of programmes for monitoring sea turtles and to public information and awareness campaigns.

10. The Commission took the view that the Hellenic Republic had not taken the requisite measures to introduce an effective system of protection for the sea turtle *Caretta caretta* at Zakynthos and, consequently, had failed to fulfil its obligations under Article 12(1)(b) and (d) of the Directive. By letter of 2 December 1998, it therefore gave the Greek Government formal notice to submit its observations on the matter.

11. The Greek authorities replied in a letter of 17 March 1999, stating that a draft presidential decree on the creation of a marine park of Zakynthos had been submitted to the Greek Council of State for finalization. They also informed the Commission that they had established a committee charged with drafting a special presidential decree, of general nature, containing financial provisions applicable to all the protected natural regions in Greece. In addition, they notified the Commission of their intention to draft a third presidential decree on compensatory measures for the marine park of Zakynthos. In the same letter, the Greek authorities also announced a series of measures such as, in particular, the demolition of all illegal buildings on the beaches, the establishment of a national land register, the prohibition of vehicle access to the beaches, the replacement of the current lighting which disturbs the sea turtles, and the removal of deck-chairs and beach umbrellas. They also stated that a contract had been signed on the construction of a high-speed patrol boat for the use of the Zakynthos port police for the purpose of ensuring compliance with the planned measures.

12. The Commission concluded that the Greek authorities had still not adopted the measures needed to introduce an effective system of protection for the sea turtle *Caretta caretta* on Zakynthos by creating the appropriate institutional framework or taking measures at the sites to protect that species. By letter of 15 June 1999, the Commission therefore delivered a reasoned opinion to the Hellenic Republic in which it reiterated the complaints contained in its letter of formal notice and requested that Member State to comply with the reasoned opinion within two months from the date of its notification.

13. On 24 and 25 August 1999, Commission officials carried out another mission to Zakynthos, in which they once again inspected the principal beaches used for breeding by the sea turtle *Caretta caretta*. They noted, in particular, a certain amount of progress in comparison with the situation prevailing at the time of their earlier mission, including *inter alia* the presence of supervisors and notices on the beaches, the publication and distribution of information pamphlets and the fact that a high-speed patrol boat had been put into service. However, they also found that:

- there were pedalos and small boats in Sea Area A at Gerakas and Dafni;
- pedalos and small boats were moored in Sea Area B at Kalamaki;
- there were beach umbrellas and deck-chairs on various beaches (Gerakas, Dafni, Kalamaki, Laganas) in numbers clearly exceeding the number permitted by the draft presidential decree on the creation of the marine park of Zakynthos;
- the number of illegal buildings on the beach at Dafni had increased;
- mopeds were being driven on the sand beach to the east of Laganas;
- supervisory measures on certain beaches were inadequate.

14. On 29 October 1999, the Greek authorities replied to the reasoned opinion by informing the Commission that a budget of GRD 30 million for a public information programme and for the supervision, cleaning and protection of the sand beaches on the biotope of the bay of Laganas on Zakynthos had been approved for the summer of 1999. The Greek authorities also stated that the beach umbrellas had been removed from the beach at Dafni and that the number of beach umbrellas on the beach at Gerakas had been considerably reduced so as not to exceed the limit fixed for that beach by the draft presidential decree on the creation of the marine park of Zakynthos.

15. Since the Commission did not receive any other information to lead it to conclude that the Hellenic Republic had complied with its obligations under the Directive, it decided to bring the present action.

Substance

16. The Commission states that the sea turtle *Caretta caretta* only lays eggs every two or three years. In Greece, the laying season starts at the end of May and finishes at the end of August. The turtle leaves the sea at night and moves towards the driest area of the beach, where it digs a hole of 40 to 60 centimetres in which it lays an average of 120 eggs. The Commission explains that two months later the eggs hatch and the baby turtles then crawl onto the sand and head towards the sea. The baby turtles are very vulnerable and a large number of them die.

17. The Commission emphasizes the fact that the bay of Laganas on Zakynthos is a vital breeding region, perhaps even the most important in the Mediterranean, for the sea turtle *Caretta caretta*. Given the significance of the bay of Laganas, the Greek authorities have proposed that the region be classified as one of the sites of Community importance for the Natura 2000 network.

18. The Commission's principal complaint is that the Hellenic Republic has infringed its obligations under the Treaty and Article 12(1)(b) and (d) of the Directive, first, by failing to adopt a legislative framework which would ensure the strict protection of the sea turtle *Caretta caretta* against any deliberate disturbance during its breeding period and

against any deterioration or destruction of its breeding sites and, second, by failing to take specific measures to prevent such nuisances.

*Legislative provisions for the protection of the *Caretta caretta* species*

19. According to the Commission, the Greek Government has not adopted an institutional framework within the prescribed time-limit capable of ensuring the effective long-term protection of the sea turtle *Caretta caretta*.

20. The Greek Government claims that by issuing a presidential decree on 22 December 1999 which classifies the land and sea regions of the bay of Laganas and the Strofada islands as a national marine park and the coastal areas of the communes of Zakynthos and Laganas as a regional park (FEK D'906/22.12.1999, the 'Decree of 1999'), it has instituted a system of strict protection for the sea turtle *Caretta caretta*.

21. The Greek Government submits that, over the last 20 years, measures have been progressively taken to ensure the protection of that species on the island of Zakynthos. It refers to various laws, regulations and administrative measures adopted to that end from 1980 onwards. The Decree of 1999 constitutes only the most recent measure in a process of progressive implementation of a system of strict protection for that species.

22. According to the Greek Government, the lack of grounds for the Commission's action is also demonstrated by the nesting figures available for the sea turtle *Caretta caretta* on the bay of Laganas over the last 15 years. These figures do not show that the number of nests has decreased.

23. It should be observed in this regard that the Court has consistently held that the question whether there has been a failure to fulfil obligations must be examined on the basis of the position in which the Member State found itself 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-166/97 *Commission v France* [1999] ECR I-1719, paragraph 18, and Case C-220/99 *Commission v France* [2001] ECR I-0000, paragraph 33).

24. The Decree of 1999, on which the Greek Government has based a significant part of its pleadings, was adopted after the expiry of the two-month time-limit laid down in the reasoned opinion.

25. Consequently, it is not necessary to examine whether the system of protection for the sea turtle *Caretta caretta* provided for by that decree meets the protection requirements set out in Article 12(1)(b) and (d) of the Directive.

26. As regards the other measures which, according to the Greek Government, are intended to implement an effective system of protection for that species, it must be remembered that Article 12(1)(b) and (d) of the Directive require that the requisite measures be taken to establish a system of strict protection for the animal species listed in Annex IV(a) of that Directive in their natural habitats, prohibiting the deliberate disturbance of those species, particularly during the period of breeding, rearing, hibernation and migration, and the deterioration or destruction of breeding sites or resting places.

27. First, it is undisputed that the bay of Laganas is a vital breeding region for the protected species *Caretta caretta*.

28. Second, according to the findings of the Greek Council of State in a report in 1999 annexed to the draft presidential decree establishing the marine park of Zakynthos, the provisions in force at that time did not ensure, to the extent necessary, the effective protection of the sea and land areas of the bay of Laganas. In particular, given the pressure and the erosion caused to the breeding beaches at Dafni, Gerakas and Kalamaki by the construction of access routes to those beaches and given the noise resulting from human activity, the Council of State recommended the prohibition not only of the opening of new access routes to those beaches, but also of the creation of infrastructure such as kiosks, tents or parking facilities. The Greek Government does not contest those matters.

29. Third, it should be observed that during the pre-litigation period, the Greek Government particularly stressed that the adoption of a decree creating a marine park at Zakynthos would introduce a system of strict protection for the sea turtle *Caretta caretta*. In its defence, the Greek Government claimed that, in respect of that species, the Decree of 1999 met the protection objectives set out in Article 12 of the Directive. In its rejoinder, the Greek Government submitted, for the first time, that the requisite measures to establish a system of strict protection for that species pursuant to Article 12(1)(b) and (d) of the Directive had been taken prior to 14 August 1999, the date on which the time-limit set by the Commission expired. However, in the oral hearing, the Greek Government admitted that the Decree of 1999 had established a system creating stricter protection than had been afforded by the system of protection previously in force. It should also be observed that, when asked by the Court to identify, and submit the wording of, the specific provisions in force in their legal system on 14 August 1999 which it believed met the requirements laid down by Article 12(1)(b) and (d) of the Directive, the Greek Government merely listed a series of laws, regulations and administrative measures without referring to any specific provisions capable of meeting those requirements.

30. In the light of the foregoing, it must be held that the Greek Government did not adopt a legal framework within the prescribed time-limit which was capable of ensuring strict protection for the sea turtle *Caretta caretta* against any deliberate disturbance during the breeding period and against any deterioration or destruction of its breeding sites. Consequently, the Commission's application must be granted on this point.

31. The fact that it does not appear that the number of nests of that species has decreased over the last 15 years does not, of itself, call this finding into question.

*Specific measures for the protection of the *Caretta caretta* species*

32. The Commission points out that, during a visit to the breeding beaches of the sea turtle *Caretta caretta* on the island of Zakynthos at the end of August 1999, its officials reported *inter alia* the use of mopeds on the sand beach to the east of Laganas, the presence of pedalos and small boats in the sea around Gerakas and Dafni and the presence of illegal buildings on the beach at Dafni.

33. The Greek Government does not dispute the accuracy of those findings.

34. It is undisputed that the use of mopeds on a beach used for breeding by the *Caretta caretta* turtle is, particularly owing to the noise pollution, liable to disturb that species during the laying period, the incubation period and the hatching of the eggs, as well as during the baby turtles' migration to the sea. It is also established that the presence of small boats near the breeding beaches constitutes a source of danger to the life and physical well-being of the turtles.

35. It is apparent from the documents before the Court that at the time the facts were ascertained by the Commission's officials, the use of mopeds on the breeding beaches was prohibited and notices indicating the presence of turtle nests on the beaches had been erected. As regards the sea area around Gerakas and Dafni, it had been classified as an absolute protection area and special notices had been erected there.

36. It follows that the use of mopeds on the sand beach to the east of Laganas and the presence of pedalos and small boats in the sea area around Gerakas and Dafni constitute the deliberate disturbance of the species in question during its breeding period for the purposes of Article 12(1)(b) of the Directive.

37. Moreover, the acts were not isolated occurrences. As regards the use of mopeds on the breeding beaches, this is clear from the Greek Government's assertion that nocturnal supervision of the eastern part of beach at Laganas was, at the material time, particularly difficult to ensure owing to the length of the beach, the high number of access points and the low number of supervisors. As far as the presence of small boats in the relevant sea area is concerned, it should be noted that these were observed on two visits to Zakynthos by Commission officials, as stated at paragraphs 8 and 13 of this judgment.

38. Finally, there is no doubt that the presence of buildings on a breeding beach such as the one at Dafni is liable to lead to the deterioration or destruction of the breeding site within the meaning of Article 12(1)(d) of the Directive.

39. It must, therefore, be held that the Hellenic Republic did not take, within the prescribed time-limit, all the requisite specific measures to prevent the deliberate disturbance of the sea turtle *Caretta caretta* during its breeding period and the deterioration or destruction of its breeding sites. Consequently, the Commission's application must also be granted on this point.

40. In the light of the foregoing, the Court finds that by failing to take, within the prescribed time-limit, the requisite measures to establish and implement an effective system of strict protection for the sea turtle *Caretta caretta* on Zakynthos so as to avoid any disturbance of the species during its breeding period and any activity which might bring about deterioration or destruction of its breeding sites, the Hellenic Republic has failed to fulfil its obligations under Article 12(1)(b) and (d) of the Directive.

Costs

41. 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 Hellenic Republic has been unsuccessful, the latter must be ordered to pay the costs.

On those grounds,

THE COURT (Sixth Chamber)

hereby:

1. Declares that by failing to take, within the prescribed time-limit, the requisite measures to establish and implement an effective system of strict protection for the sea turtle *Caretta caretta* on Zakynthos so as to avoid any disturbance of the species during its breeding period and any activity which might bring about deterioration or destruction of its breeding sites, the Hellenic Republic has failed to fulfil its obligations under Article 12(1)(b) and (d) of Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora;

2. Orders the Hellenic Republic to pay the costs.

Macken

Gulmann

Puissochet

Schintgen

Cunha Rodrigues

Delivered in open court in Luxembourg on 30 January 2002.

R. Grass

F. Macken

Registrar

President of the Sixth Chamber

1: Language of the case: Greek

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