

EUROPEAN PARLIAMENT

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Committee on Petitions

3.02.2006

NOTICE TO MEMBERS

Petition 0356/2005 by Klaus and Elfi Schneider (German), concerning satellite TV access

1. Summary of petition

The petitioners, who have been refused authorisation to install a satellite dish for the reception of foreign television programmes, argue that foreign nationals in Germany are entitled to receive satellite broadcasts from their home countries and that, independently of their nationality, individual citizens should enjoy unrestricted access to satellite television broadcasts and hence to other European cultures.

2. Admissibility

Declared admissible on 13 September 2005. Information requested from the Commission under Rule 192(4).

3. Commission reply, received on 3 February 2006.

1. Background

The petitioners live in an apartment in a building in Germany managed by a cooperative. From the correspondence submitted to the Commission, it would appear that, by letter of 2 September 2004, sent to the Commission, the petitioner asked the cooperative for permission to install a satellite dish in her apartment. By letter of 7 September 2004, signed by a member of the cooperative's board of directors, the request was rejected for several reasons, such as: the existing access to Deutsche Bundespost's cable TV network; aesthetic reasons; possible damage to the building, and the costs involved.

Further to this rejection, the petitioner, in her role as member of the cooperative, by letter of 20 January 2005 applied to the management to request that the opinion in the letter of 7 September 2004 be reviewed. In a letter dated 4 February 2005 the cooperative reconsidered its position and agreed that the satellite dish could be installed, with certain restrictions regarding, essentially, the installation arrangements and the

location of the dish. In the letter, the cooperative declared that it was basing its decision on the current law.

2. The petition to Parliament

The petitioner sent a petition to the European Parliament, maintaining that he was interested in European cultural life and that despite his efforts he was unable to enjoy programmes on other European TV channels. In his petition, Mr Schneider requested that he be 'allowed' to install a satellite dish. He also pointed out that foreigners living in Germany were entitled to receive programmes from their country of origin and argued that this right could not be denied to a German living in Germany.

3. Comments by the Commission

The Commission would first point out that any private individual wishing to install a satellite dish should, as a rule, have the right to do so, and that the notion '*right to satellite reception*' for individuals was explicitly set out in the Commission communication on satellite dishes of 27 June 2001 (COM(2001)351 final).

This opportunity stems in particular from Article 10 of the European Convention on Human Rights, as interpreted by the Court of Human Rights in its judgment of 22 May 1990, *Autronic*, according to which Article 10 of the Convention '*applies not only to the content of information but also to the means of transmission or reception*', and that, in particular, '*the reception of television programmes by means of a dish or other aerial comes within the right laid down in the first two sentences of Article 10 § 1*'. Such an interpretation means that freedom of expression, i.e. freedom to broadcast and receive information as enshrined in the Convention, also includes the right of an individual to install a satellite dish.

According to established case-law of the Court of Justice of the European Communities, fundamental rights are an integral part of the general principles of law enshrined in the Community legal order (see, for example, the judgement of 18 June 1991, *Elliniki Radiophonia*, C-260/89, paragraph 41). Moreover, Article 6(2) of the Treaty on European Union explicitly stipulates that the Union shall respect fundamental rights, as guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms signed in Rome on 4 November 1950.

Furthermore, this 'right to satellite reception' stems from the principle of free movement and free reception of services in the internal market, including radio and TV programmes in the European Community, in implementation of Article 49 EC (see, *inter alia*, the *Sacchi* judgment of 30 April 1974, 155/73, paragraph 7, and more recently, the *De Coster* judgment of 29 November 2001, C-17/00, paragraph 28). This article is directly and unconditionally enforceable in the national legal systems. In addition, according to the Court of Justice, the free movement of services in the internal market is a fundamental principle of Community law, from which not only the service providers benefit, but also those for whom the services are intended (see *Van der Elst* judgment of 9 August 1994, 43/93, paragraph 13). The idea that this right also belongs to those for whom the services are intended can also be confirmed by the text of the EC Treaty itself and in particular by the notion of the 'free movement of services' as laid

down in Article 3(c) and Article 14(2).

Moreover, as already pointed out on several occasions by the Court of Justice, it is necessary to prohibit the restriction of this fundamental freedom not only in respect of action taken by public authorities but also in respect of other kinds of rules which seek to regulate the provision of services. Indeed, the elimination of obstacles to the free movement of services, a key objective of the EC, would be jeopardised unless we eliminated not only government-created barriers but also those created by associations or bodies which are not governed by public law, in exercising their legal autonomy (see, *inter alia*, the judgments of 12 December 1974, *Walrave*, 36/74, of 9 June 1977, *van Ameyde*, 90/76, of 14 July 1976, *Donà*, C-13/76, of 15 December 1995, *Bosman*, C-415/93, and of 13 April 2000, *Lehtonen*, C-176/96).

Likewise, in its aforementioned communication on satellite dishes, the Commission stated that any obstacles to freedom of choice, discrimination between the alternative means of receiving services, or indirect restrictions on the right to use a satellite dish were unacceptable. It would therefore be unacceptable to force private individuals to receive TV programmes via the cable network rather than via a satellite dish.

However, neither freedom of expression nor the principle of the free movement of services should be considered absolute prerogatives. The individual right to install a satellite dish, which is covered by freedom of expression, must be exercised in such a way as to respect certain information and consultation arrangements, as required in apartment blocks, for example, and should be assessed on a case-by-case basis.

Naturally, the opportunity to install a satellite dish should not be hindered by excessively costly installation and operational arrangements which would result in the restriction of an individual's opportunity to receive all the programmes of his choice; even less should it be hindered by a general ban or groundless rejection, or opposed for aesthetic or technological reasons, for example.

Nevertheless, in this case, there is no clear indication from the petition itself or from the additional documents attached to it that the reply received by the petitioner might be contrary to the rules of Community law. The correspondence attached to the petition and, in particular, the last letter received by the petitioners, show that they still have the option of installing a satellite dish, albeit under certain conditions. The question of whether these conditions are liable to deprive the petitioners of their right to receive the TV programmes of their choice cannot be examined in a sufficiently thorough manner by means of the documents available.

The Commission would also point out that the petitioners still have the option of exercising, before the national courts, their rights under Article 49 of the EC Treaty, which is directly enforceable in the national legal systems. According to established case-law it is, in fact, the responsibility of the competent national judge, first and foremost, to enforce Community law and to draw conclusions from the Court of Justice case-law in the context of proceedings brought before him and in accordance with the specific facts of each case. In such national proceedings, the German courts, under Article 234 EC, also have the option of bringing a matter before the Court of Justice for a preliminary ruling, so that the latter – the only authority having jurisdiction in such

matters – may give a ruling on the scope of the principle of the free movement of services under Article 49 of the Treaty in a case such as this one.

4. Conclusion

In the light of the above, the Commission would point out that the information received does not lead it to conclude that the petitioners' right to install a satellite dish has been infringed.'