

# EUROPEAN PARLIAMENT

2004



2009

*Committee on Petitions*

28.03.2006

## NOTICE TO MEMBERS

Petition 0658/2005 by Daniel Mahmut Oeser (German) concerning a legal dispute regarding the installation of a television satellite dish

### 1. Summary of petition

The petitioner indicates that his client, an ethnic Turk with German citizenship, has installed a television satellite dish on the balcony of his rented apartment so as to receive a large selection of programmes in Turkish. Following the installation of cable television connections in the apartment, the owner then sought a court order requiring the petitioner's client to remove the satellite dish. The court found in favour of the owner on the grounds that the cable connection provided an adequate choice of German and Turkish broadcasts and that the owner's right to the protection of his property from eyesores took precedence over the leasee's right to freedom of information. The petitioner argues that this ruling infringes the principle of free movement of goods and services embodied in the EC Treaty and the provisions of Directives 97/36/EC and 93/83/EEC and accordingly calls for infringement proceedings to be initiated against Germany.

### 2. Admissibility

Declared admissible on 14 November 2005. Information requested from the Commission under Rule 192(4).

### 3. Commission reply, received on 28 March 2006.

#### **Background**

Since 9 August 1999, Mr Ilhan, a German national of Turkish origin, has been renting an apartment in a building in Popenreuteweg 7 in Ulm (Germany). The owner of the apartment is the town of Ulm. Since early 2000 the apartment has had access to the cable TV network, which offers the opportunity to receive a number of channels, including five Turkish channels. Moreover, at an extra charge, further channels can be received via the cable network by means of a digital tuner. In spite of this, Mr Ilhan installed two mobile satellite dishes on the balcony of his apartment, without the owner's permission. This was in breach of his tenancy agreement. By letter of 5 June 2000, the owner of the building asked Mr Ilhan for the

last time to dismantle the satellite dishes.

Further to this request, which was to no avail, the authorities of the town of Ulm began proceedings before the Ulm district court (*Amtsgericht*). By decision of 18 June 2004, this court found in favour of the owner and ordered that the satellite dishes in question be dismantled. In its ruling, the court noted that the failure to request permission to install a satellite dish did not mean that the installation of the satellite dishes was in breach of the tenancy agreement and constituted improper use of the rental property. However, when weighing up the different interests, i.e. the right to information and the right to property, the court ruled that the tenant's interest in having a satellite dish was not greater than the owner's interests. According to the Ulm court, access to the cable TV network, the opportunity to purchase a digital tuner and the opportunity to receive a number of German channels were sufficient to safeguard Mr Ilhan's interests. In this specific case, the owner's interest in preventing damage and a negative visual impact on the building was deemed to take precedence.

By order of 22 April 2005, the Ulm regional court (*Landgericht*) rejected the application for free legal aid for the appeal against the judgment of the Ulm district court, on the same grounds, essentially, as those expressed by the first court. On the basis of the order of 22 April 2005, the second court then rejected the appeal by decision of 27 April 2005.

Taking the view that it would be pointless to refer the matter to the Federal Supreme Court of Justice (*Bundesgerichtshof*) or the Federal Constitutional Court (*Bundesverfassungsgericht*), the petitioner thus decided not to do so.

### **The petition to Parliament**

The petitioner submitted a petition to the European Parliament, pointing out that there had been several infringements of Community law, in particular of the rules concerning the free movement of goods and services, the 'Television without Frontiers' directive and Article 10 of the European Convention on Human Rights. In his petition, Mr Ilhan gave a legal interpretation of the above-mentioned rules and, in view of these infringements, called for infringement proceedings to be initiated against the Federal Republic of Germany.

### **Commission comments on the petition**

The Commission would first point out that, in principle, each individual who so wishes should be given the opportunity to install a satellite dish, and that the notion '*right to a satellite dish*' for private individuals was explicitly set out in the Commission communication on satellite dishes of 27 June 2001 (COM(2001)351 final).

This 'right to a satellite dish' stems from the principle of free movement and free reception of services in the internal market, and of radio and TV programmes in the European Community in application 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. At the same time, the directly enforceable provisions of the Treaty are binding on all the authorities of the Member States, which are therefore required to comply with them without the need to adopt national implementing provisions (see judgment of 15 October 1986, Commission v Italy, paragraph 11).

According to the Court of Justice of the EC, the free movement of services in the internal market is a fundamental principle of Community law, which is to the benefit not only of the providers but also of the recipients of the services (see the Van der Elst judgment of 9 August 1994, 43/93, paragraph 13). The idea that this right belongs to the recipients of services is also confirmed by the very text of the EC Treaty and in particular by the notion of the 'free movement of services' laid down in Articles 3(c) and 14(2).

Moreover, in the communication on satellite dishes mentioned above, 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.

The right to a satellite dish also stems from Article 10 of the European Convention on Human Rights, as interpreted by the European Court of Human Rights in its ruling of 22 May 1990, *Autronic*. In this ruling, the European Court of Human Rights specifically affirmed that Article 10 of the Convention '*applies not only to the content of information but also to the means of transmission or reception*' and, in particular, that '*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*'. As pointed out in the petition, the freedom of expression guaranteed by the Convention, i.e. the right to broadcast and receive information, also includes the right of an individual to install a satellite dish.

According to the established case-law of the Court of Justice of the EC, fundamental rights are an integral part of the general principles of law enshrined in the Community legal order (see, in this regard, the judgments of 17 December 1970, *Internationale Handelsgesellschaft*, 11/70, paragraph 4; 17 May 1974, *Nold*, 4/73, paragraph 13; 13 December 1979, *Hauer*, 44/79, paragraph 15, and 18 June 1991, *Elliniki Radiophonia*, C-260/89, paragraph 41). Furthermore, Article 6(2) of the Treaty on European Union explicitly provides 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 and as they result from the constitutional traditions common to the Member States, as general principles of Community law.'

However, neither the principle of the free movement of services nor freedom of expression must be considered absolute rights. 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 relating to apartment buildings, and must also respect the legitimate interests of the owners. Such matters must therefore be assessed on a case-by-case basis.

Naturally, the possibility of installing a satellite dish should not be hampered by excessively costly arrangements concerning installation and use, as this would result in individuals having restricted opportunities to receive all the programmes of their choice; even less, however, should it be hampered by a general ban, by a groundless refusal, or by a refusal given, for example, for aesthetic or technological reasons.

Nevertheless, from examining the petitioner's file, it does not appear that the latter has availed himself of the opportunity to assert, before the national court, his rights under Article 49 EC

in his specific case. In particular, it does not appear that the petitioner has relied on his rights under Article 49 EC as interpreted in the aforementioned Commission communication, upon which the petitioner could have based his argument. However, in accordance with established case-law, it is up to the competent national judge, first of all, to enforce Community law and draw conclusions from the case-law of the EC Court of Justice in the procedures which are brought before him, and in accordance with the factual circumstances specific to each situation. Furthermore, in the context of such national proceedings, the German court, under Article 234 EC, may refer the matter to the EC Court of Justice for a preliminary ruling on the interpretation of the law, so that the latter, which is the only court having powers in such matters, may rule on the scope of the principle of the free movement of services provided for under Article 49 EC in a case such as this one. In this case, therefore, the main means of redress available to the petitioner is that of appealing to the German courts while directly relying on the aforementioned rights under the EC Treaty. Moreover, in the event of difficulty in interpreting Community law, the court, whose decisions are not open to challenge, would even be obliged to ask the Court of Justice for a preliminary ruling, under Article 234.

### **Conclusion**

The petition contains no information indicating that the petitioner might have requested that his rights under the EC Treaty be respected in his relations with the owner and in the national legal proceedings; neither does it contain, therefore, any specific information showing that such rights might have been denied by the German authorities. The Commission therefore takes the view that it does not have sufficient information to warrant the launch of infringement proceedings under Article 226 EC for infringement of Article 49 EC. Accordingly, the Commission proposes that the petition be closed.'