

# EUROPEAN PARLIAMENT

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*Committee on Petitions*

24.05.2006

## NOTICE TO MEMBERS

**Petition 0450 by N. Sarlui (Dutch), on satellite dishes and the free movement of services**

### **1. Summary of petition**

The petitioner, who is resident in France where he has an apartment, complains that the building administrators are refusing to allow him to install an individual satellite dish. The petitioner argues that, under the case law established by the Court of Justice the principle of the free movement of services also applies to the users of cross-border services and, in accordance with the Commission communication of 2001 on the application of the general principle of the free movement of goods and services, all those wishing to install satellite dishes are in principle entitled to do so. Since he wishes to take advantage of the opportunities of cultural and linguistic exchange within the EU, he is seeking the assistance of the European Parliament

### **2. Admissibility**

Declared admissible on 22 September 2005. Information requested from the Commission under Rule 192(4).

### **3. Commission reply, received on 24 May 2006**

#### **‘1. Background / the facts**

Mr Sarlui is a Dutch citizen who has lived in France since 2000. He lives in an apartment in a building managed by an agent, who is the legal representative of the householders’ association in the building.

Mr Sarlui has had a satellite dish installed and the agent has objected to this. However, the exchanges of views which have taken place and some complaints to the agent are confused, and the precise facts are difficult to ascertain. The additional information sent in July 2005 even questions the legality of the agent’s activities and existence.

Mr Sarlui, on the basis of a press article describing Community law applicable to the use of

satellite dishes, has already twice written to the Commission, which replied to him in October 2003 and April 2004. The first reply requested further information on the facts, the second, from Mr Bolkestein's office, gave details of the relevant Community legislation.

In July 2005 Mr Sarlui also sent the Commission a letter with a copy of the further information to add to the petition to the European Parliament. He was advised to make a complaint to the national authorities, as his problems with the agent seemed eminently within the remit of national law.

## **2. The petition to Parliament**

Mr Sarlui then sent a petition to the European Parliament asking it to point out to the French Government that it had infringed Article 49 of the Treaty and Article 10 of the Convention on Human Rights.

## **3. Commission's comments on the petition**

Firstly, the Commission would like to point out that in principle every individual who wishes to do so should have the right to install a satellite dish and that the concept of the individual's "*right to satellite reception*" was explicitly set out in the Commission communication on satellite dishes of 27 June 2001 (COM(2001)351 final).

This right is derived 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*. In this judgment, the European Court of Human Rights stated precisely that 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)*" This interpretation signifies that the freedom of expression guaranteed by the Convention, i.e. to broadcast and receive information, also includes the individual's right to install a satellite dish.

Consistent case-law of the Court of Justice of the European Communities shows that fundamental rights are an integral part of the general principles of law enshrined in the Community legal system (see the judgments of 17 December 1970, *Internationale Handelsgesellschaft*, 11/70, point 4; 17 May 1974, *Nold*, 4/73, point 13; 13 December 1979, *Hauer*, 44/79, point 15, and 18 June 1991, *Elliniki Radiophonia*, C-260/89, point 41). Moreover, Article 6(2) of the Treaty on European Union explicitly states 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".

Moreover, this "right to satellite reception" results from the principle of freedom of movement and freedom to receive services in the internal market and radio and television broadcasts in the European Community in application of Article 49 of the EC Treaty (see in particular the judgment of 30 April 1974, *Sacchi*, 155/73, point 7, and the judgment of 29 November 2001, *De Coster*, C-17/00, point 28). This article applies directly and unconditionally in the national legal systems.

According to the Court of Justice, the free movement of services in the internal market is a fundamental principle of Community law that is enjoyed by not only the providers but also the recipients of services (see judgment of 9 August 1994, *Van der Elst*, 43/93, point 13). The idea that recipients of services have this right can also be confirmed by the actual text of the Treaty and in particular by the concept of “free movement of services” at Article 3(c) and Article 14 (2).

Moreover, as the Court of Justice has repeatedly pointed out, it is not only the actions of public authorities which must not restrict this fundamental freedom, but the same principle also applies to other kinds of rules aiming to regulate service provision collectively. In fact, removing obstacles to the free movement of services, a fundamental objective of the European Union, would be compromised if the obstacles to be removed were only those set by the state and did not include those resulting from the exercise of their legal autonomy by associations or organisations which are not governed by public law (see, *inter alia*, the judgments of 12 December 1974, *Walrave*, 36/74; 9 June 1977, *van Ameyde*, 90/76; 14 July 1976, *Donà*, C-13/76; 15 December 1995, *Bosman*, C-415/93, and 13 April 2000, *Lehtonen*, C-176/96).

Finally, in the above communication on satellite dishes, the Commission confirmed 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 would be unacceptable. It would thus hardly be acceptable to require individuals to receive television broadcasts by cable distribution rather than by satellite dish.

However, freedom of expression and the principle of free movement of services must not be considered as absolute prerogatives. The individual's right to install a satellite dish, which is covered by freedom of expression, must be exercised in a way that respects certain arrangements for information and consultation, particularly in buildings occupied by several people, and must be assessed on a case-by-case basis.

The ability to install a satellite dish may not be hindered by excessively onerous arrangements for installation and use which would have the effect of restricting individuals' ability to receive all the broadcasts of their choice, still less by a general ban or a refusal with no reason given or on the grounds of, for example, aesthetics or technology.

However, in the light of this case, it is not clear from the petition itself or from the further information what are the arguments put forward by the building's householders' association for opposing the installation of a satellite dish, or what are the alternative solutions proposed or the extra costs entailed.

Moreover, the petitioner is still able to bring a case in the national courts to assert his rights under Article 49 of the Treaty, which is directly applicable in national legal systems. Consistent case-law shows that initially it is up to the relevant national judge to apply Community law and to draw the consequences of the Court's case-law in the cases brought before him, depending on the specific circumstances of each situation. In the context of national court proceedings, the French courts, under the terms of Article 234, can also forward a request for a preliminary ruling to the Court of Justice so that the Court can rule on the scope of the principle of free movement of services under Article 49 of the Treaty in a case

such as this one.

#### **4. Conclusion**

In the light of the foregoing, the information received is not sufficient to reach a conclusion as to whether and to what extent the petitioner's right to install a satellite dish has been infringed.' .