

JUDGMENT OF THE COURT (Fourth Chamber)

10 November 2016 (*)

(Failure of a Member State to fulfil obligations — Environment — Nature conservation — Directive 92/43/EEC — Article 6(2) and (3) and Article 12(1)(b) and (d) — Wild fauna and flora — Conservation of natural habitats — Sea turtle *Caretta caretta* — Protection of sea turtles in the Gulf of Kyparissia — ‘Dunes of Kyparissia’ Site of Community importance — Protection of species)

In Case C-504/14,

ACTION under Article 258 TFEU for failure to fulfil obligations, brought on 11 November 2014,

European Commission, represented by M. Patakia and C. Hermes, acting as Agents, with an address for service in Luxembourg,

applicant,

v

Hellenic Republic, represented by E. Skandalou, acting as Agent,

defendant,

THE COURT (Fourth Chamber),

composed of T. von Danwitz, President of the Chamber, E. Juhász (Rapporteur), C. Vajda, K. Jürimäe and C. Lycourgos, Judges,

Advocate General: J. Kokott,

Registrar: L. Hewlett, Principal Administrator,

having regard to the written procedure and further to the hearing on 13 January 2016,

after hearing the Opinion of the Advocate General at the sitting on 18 February 2016,

gives the following

Judgment

1 By its action, the European Commission requests the Court to declare that:

- by failing to take the measures referred to in Article 6(2) 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), so as to prevent deterioration of natural habitats and the habitats of species as well as disturbance of the species for which the area has been designated,
- by permitting (without carrying out any assessment of the implications as referred to in Article 6(3) of Directive 92/43) activities which, either individually or in combination with other plans or projects, are likely to have a significant effect on the site at issue, reducing and destroying the nesting area of the priority species *Caretta caretta*, which is present there, causing disturbance to the species concerned and, ultimately, reducing and destroying the sand dune habitats 2110, 2220 and the priority habitat 2250, and
- by failing to take the measures required by Article 12(1)(b) and (d) of Directive 92/43 to establish and implement an effective system of strict protection for the sea turtle *Caretta caretta* (a priority species) in the Gulf of Kyparissia (Greece) so as to avoid any disturbance of the species concerned during its breeding period and any activity which can cause deterioration or destruction of its breeding sites,

the Hellenic Republic has failed to fulfil its obligations under those provisions of Directive 92/43.

Legal context

European Union law

2 Article 2 of Directive 92/43 provides:

'1. The aim of this Directive shall be 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.

2. Measures taken pursuant to this Directive shall be designed to maintain or restore, at favourable conservation status, natural habitats and species of wild fauna and flora of Community interest.

3. Measures taken pursuant to this Directive shall take account of economic, social and cultural requirements and regional and local characteristics.'

3 Annex I to Directive 92/43, which is entitled 'Natural habitat types of Community interest whose conservation requires the designation of special areas of conservation', lists various types of dune habitat. In particular, point 22 of Annex I, which is headed 'Sea dunes of the Mediterranean coast', mentions, at point 2220, 'Dunes with *Euphorbia terracina*' and, at point 2250 *, 'Coastal dunes with *Juniperus* spp.'

4 In accordance with the third subparagraph of Article 4(2) of Directive 92/43, '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'. Article 4(5) provides that as soon as a site is placed on the list referred to in the third subparagraph of Article 4(2), it is to be subject to Article 6(2) to (4) of Directive 92/43.

5 Commission Decision 2006/613/EC of 19 July 2006 adopting, pursuant to Directive 92/43, the list of sites of Community importance for the Mediterranean biogeographical region (OJ 2006 L 259, p. 1), included on the list of sites of Community importance (SCIs) set out in Annex I thereto the Dunes of Kyparissia (Thines Kyparissias (Neochori-Kyparissia)), under the SCI code GR 25 50005, with 'C' marked against it, which indicates the presence on the site in question of at least one priority natural habitat type and/or priority species within the meaning of Article 1 of Directive 92/43.

6 Article 6 of Directive 92/43 provides:

'1. For special areas of conservation, Member States shall establish the necessary conservation measures involving, if need be, appropriate management plans specifically designed for the sites or integrated into other development plans, and appropriate statutory, administrative or contractual measures which correspond to the ecological requirements of the natural habitat types in Annex I and the species in Annex II present on the sites.

2. Member States shall take appropriate steps to avoid, in the special areas of conservation, the deterioration of natural habitats and the habitats of species as well as disturbance of the species for which the areas have been designated, in so far as such disturbance could be significant in relation to the objectives of this Directive.

3. Any plan or project not directly connected with or necessary to the management of the site but likely to have a significant effect thereon, either individually or in combination with other plans or projects, shall be subject to appropriate assessment of its implications for the site in view of the site's conservation objectives. In the light of the conclusions of the assessment of the implications for the site and subject to the provisions of paragraph 4, the competent national authorities shall agree to the plan or project only after having ascertained that it will not adversely affect the integrity of the site concerned and, if appropriate, after having obtained the opinion of the general public.

4. If, in spite of a negative assessment of the implications for the site and in the absence of alternative solutions, a plan or project must nevertheless be carried out for imperative reasons of overriding public interest, including those of a social or economic nature, the Member State shall take all compensatory measures necessary to ensure that the overall coherence of Natura 2000 is protected. It shall inform the Commission of the compensatory measures adopted.

Where the site concerned hosts a priority natural habitat type and/or a priority species, the only considerations which may be raised are those relating to human health or public safety, to beneficial consequences of primary importance for the environment or, further to an opinion from the Commission, to other imperative reasons of overriding public interest.'

7 Annex II to Directive 92/43, which is entitled 'Animal and plant species of Community interest whose conservation requires the designation of special areas of conservation', mentions, under animal species, the *Caretta caretta* sea turtle as a priority species.

8 Article 12 of Directive 92/43 provides:

'1. 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.

2. For these species, Member States shall prohibit the keeping, transport and sale or exchange, and offering for sale or exchange, of specimens taken from the wild, except for those taken legally before this Directive is implemented.

3. The prohibition referred to in paragraph 1(a) and (b) and paragraph 2 shall apply to all stages of life of the animals to which this Article applies.

4. Member States shall establish a system to monitor the incidental capture and killing of the animal species listed in Annex IV(a). In the light of the information gathered, Member States shall take further research or conservation measures as required to ensure that incidental capture and killing does not have a significant negative impact on the species concerned.'

9 Annex IV to Directive 92/43, which lists the animal and plant species of Community interest in need of strict protection, includes, in respect of animal species, the *Caretta caretta* sea turtle.

Greek law

10 By Law No 3937/2011 the Hellenic Republic declared the 'Dunes of Kyparissia' to be a 'special area of conservation'.

Pre-litigation procedure

11 The Commission, by letters of 9 August and 19 November 2010, asked the Hellenic Republic to provide it with information concerning the arrangements for implementing the provisions of Articles 6 and 12 of Directive 92/43 in the Natura 2000 area concerned, namely the Dunes of Kyparissia, which are included on the list of SCIs under code number GR 25 50005 ('the Kyparissia area').

12 Having regard to the answers provided by the Hellenic Republic on 29 September 2010 and 26 January 2011, the Commission took the view that the Member State had failed to fulfil its obligations under Article 6(2) and (3) and Article 12(1)(b) and (d) of Directive 92/43.

13 On 28 October 2011, the Commission therefore sent the Hellenic Republic a letter of formal notice calling on it to submit its observations on those complaints within a period of two months.

14 The Hellenic Republic replied to the letter of formal notice by letters of 27 December 2011 and 17 April 2012.

15 After analysing the replies set out in those letters and taking account of the results of the visit carried out by its agents in the Kyparissia area on 17 July 2012, the Commission issued a reasoned opinion on 1 October 2012 calling on the Hellenic Republic to comply with that opinion by 1 December 2012.

16 The Hellenic Republic replied to the reasoned opinion by letter of 27 November 2012 which it supplemented, following a letter from the Commission of 14 May 2013, with communications dated 13 June and 26 November 2013 and 28 March, 23 June and 17 September 2014.

17 Since the Commission was not satisfied with the Hellenic Republic's response, it brought the present action on 11 November 2014.

The request to produce evidence after the close of the written part of the procedure

18 Following the close of the written part of the procedure on 29 April 2015, the Commission, on 16 June 2015, sought leave under Article 128(2) of the Rules of Procedure of the Court to produce further evidence, namely Opinion No 32/2015 of the Symvoulío tis Epikrateias (Council of State, Greece) concerning a draft presidential decree concerning the designation of a regional park in Kyparissia Bay ('the presidential decree').

19 The Hellenic Republic requests that the Court reject the Commission's application for such leave.

20 Under the first and second sentences of Article 128(2) of the Rules of Procedure, the parties may, exceptionally, produce or offer further evidence after the close of the written procedure and must give reasons for the delay in submitting such evidence.

21 It is common ground between the parties that the opinion in question was issued on 8 April 2015 and that the Hellenic Republic referred to it in its rejoinder, the lodging of which before the Court on 29 April 2015 brought the written part of the procedure to a close.

22 The Commission maintains that it became aware of the opinion's existence only after the close of the written part of the procedure and gives this as the reason for the delay in submitting the opinion.

- 23 The Hellenic Republic, which does not challenge the Commission's assertion, asks the Court to reject the Commission's offer of evidence on the grounds (i) that Opinion No 32/2015 of the *Symvoulio tis Epikrateias* (Council of State) forms part of the adoption procedure for the presidential decree, which has not yet been concluded and (ii) that the opinion contains nothing new.
- 24 As regards the objections raised by the Hellenic Republic, it must be noted, first, that the opinion at issue is final and will not in principle be subject to further alteration, irrespective of the fact that the *Symvoulio tis Epikrateias* (Council of State) may issue a subsequent opinion on an amended draft of the presidential decree.
- 25 Secondly, the argument that the opinion does not contain anything new does not call its admissibility into question from the perspective of Article 128(2) of the Rules of Procedure, since the content of evidence falls to be assessed when the substance of the case is examined.
- 26 Accordingly, Opinion No 32/2015 of the *Symvoulio tis Epikrateias* (Council of State) is admissible in the present proceedings as evidence in so far as it concerns the factual and legal situation that existed at the time of expiry of the period prescribed in the reasoned opinion, namely 1 December 2012.

The action

*The first complaint, alleging infringement of Article 6(2) of Directive 92/43 by reason of the failure to take the measures necessary to prevent deterioration of natural habitats and the habitats of species and disturbance of the species *Caretta caretta**

- 27 In the context of its first complaint, the Commission, putting forward a number of concrete situations, claims that the Hellenic Republic has infringed the general prohibition on deterioration and disturbance laid down in Article 6(2) of Directive 92/43.
- 28 The Court observes in that regard that an activity can be considered to comply with Article 6(2) of Directive 92/43 only if it is guaranteed that it will not cause any disturbance that is likely significantly to affect the objectives of the directive, in particular its objectives concerning the conservation of natural habitats and of wild fauna and flora. In order to find an infringement of Article 6(2) of Directive 92/43, the Commission must demonstrate to a sufficient legal standard that the Member State concerned has not taken the appropriate protective measures to prevent the operational activities of projects — in so far as these took place after designation of the site in question — from giving rise to deterioration of the habitats of the species concerned and disturbance of those species likely to have significant effects in view of the directive's objective of ensuring the conservation of those species (see, by analogy, judgment of 14 January 2016, *Commission v Bulgaria*, C-141/14, EU:C:2016:8, paragraphs 56 and 57 and the case-law cited).
- 29 Nonetheless, in order to establish an infringement of Article 6(2) of Directive 92/43, the Commission does not have to establish the existence of a cause-and-effect relationship between the operation of installations resulting from a project and significant disturbance caused to the species concerned. It is sufficient for the Commission to establish that there is a probability or risk that that operation might cause such disturbance (judgment of 14 January 2016, *Commission v Bulgaria*, C-141/14, EU:C:2016:8, paragraph 58 and the case-law cited).
- 30 However, the fact that the Commission proves that there is such a probability or risk does not mean that it is impossible for the Member State concerned to establish that the measure in question meets the conditions laid down by Article 6(4) of Directive 92/43 and that its implications for the conservation objectives of the protected site have been assessed (see, to that effect, judgment of 14 January 2016, *Grüne Liga Sachsen and Others*, C-399/14, EU:C:2016:10, paragraphs 56 and 57).
- 31 The merits of the specific arguments advanced in the Commission's first complaint in the present action must be examined in the light of those considerations.

The first complaint: the allegation that the Hellenic Republic authorised or tolerated building projects in the Kyparissia area

- Arguments of the parties

- 32 The matters in respect of which the Commission has raised complaints against the Hellenic Republic are:

- the construction of buildings in Agiannaki (Greece) in 2006 and 2010;
- the authorisation to build three holiday houses in Vounaki (Greece) in 2012 and their actual construction in 2013;
- the commencement of work with a view to implementing a planned property development involving the construction of around 50 dwellings located between Agiannaki and Elaia (Greece), and
- the fact that a permit was to be issued for the construction of four holiday houses in Elaia (together 'the infrastructure at issue').

- 33 The Commission takes the view that the infrastructure at issue is detrimental to the dune habitats located in the Kyparissia

area and disturbs the *Caretta caretta* sea turtle, since it gives rise to pollution, vibrations, increased human presence and noise and light pollution. It adds that the construction work is taking place in close proximity to the turtles' nesting area.

34 The Hellenic Republic admits that the region in which the Kyparissia area is located has, in particular, been subject to some demand for land but it maintains that activity in the construction sector was stronger in the past and that, as a result of the financial crisis, all such activities in that area have, in practice, ceased. The Hellenic Republic also asserts that all construction without a prior building permit is prohibited and that no new permits will be issued until the presidential decree has been adopted.

– Findings of the Court

35 The Court finds that the infrastructure at issue, more specifically the development of building projects and the construction of dwellings, and its subsequent use, which are called in question by the Commission, are liable to have a significant effect on the habitats in the Kyparissia area. Likewise, the construction and use of that infrastructure, particularly on account of the noise, light and human presence entailed, are likely significantly to disturb the *Caretta caretta* sea turtle in the breeding period.

36 However, according to Article 4(5) of Directive 92/43, a site is subject to Article 6(2) to (4) of the directive only when it is placed on the list referred to in the third subparagraph of Article 4(2) thereof. The Dunes of Kyparissia were placed on the list of SCIs on 19 July 2006 by Decision 2006/613.

37 Moreover, the question whether a Member State has failed to fulfil its Treaty obligations must — except where the Commission, by reducing the scope of its application, accepts a later date — be determined by reference to the situation prevailing in the Member State at the end of the period laid down in the reasoned opinion and the Court cannot take account of any subsequent changes. In the present case, the period within which the Hellenic Republic was to comply with the Commission's reasoned opinion expired on 1 December 2012.

38 That being so, the relevant period, in respect of which a finding of infringement of Article 6(2) of Directive 92/43 may be made in the present action, runs only from 19 July 2006 to 1 December 2012.

39 First, as regards the complaint concerning the construction of buildings in Agiannaki in the course of 2006, it should be noted that the Commission has not demonstrated that the work concerned was authorised and carried out during the relevant period, that is to say, after 19 July 2006, and it is therefore not possible to establish that the work constitutes an infringement on the part of the Hellenic Republic.

40 In view of the findings made in paragraph 35 of this judgment, an infringement of Article 6(2) of Directive 92/43 must thus be found solely on account of the building work carried out in 2010.

41 Nevertheless, as regards the buildings completed before the relevant period, namely before 19 July 2006, in view of the findings made in paragraph 35 of this judgment, an infringement of Article 6(2) of Directive 92/43 must be found, as the Advocate General has observed in points 55 and 58 of her Opinion, because the Hellenic Republic has not sufficiently circumscribed the use of those buildings (see, by analogy, judgment of 24 November 2011, *Commission v Spain*, C-404/09, EU:C:2011:768, paragraphs 124, 125 and 128). Whilst that use might be justified by the principle of legal certainty, by applying the derogation laid down in Article 6(4) of Directive 92/43 *mutatis mutandis*, the Hellenic Republic has not advanced such a justification — which would require inter alia an examination of whether there are other, less detrimental solutions and a weighing up of the interests concerned, based on an assessment under Article 6(3) of the implications for the conservation objectives of the protected site (see judgment of 14 January 2016, *Grüne Liga Sachsen and Others*, C-399/14, EU:C:2016:10, paragraph 57 and the case-law cited).

42 Secondly, as regards the authorisation given in 2012 to build three holiday houses in Vounaki and their construction in 2013, whilst only the authorisation to build those houses comes within the relevant period for the purpose of assessing the alleged infringement, it is likely to cause appreciable damage to the dune habitats located in the Kyparissia area and to result in significant disturbance of the *Caretta caretta* sea turtle. That authorisation therefore constitutes an infringement of Article 6(2) of Directive 92/43.

43 Thirdly, as regards the commencement of work relating to the construction of around 50 dwellings located between Agiannaki and Elaia, it is true that the Commission has stated that the Greek authorities did not issue a permit for that purpose. However, there is no merit in the Hellenic Republic's argument that, since that building work was prohibited unless a permit was first obtained, the commencement of the work cannot be attributed to it and does not prove that it has infringed Article 6(2) of Directive 92/43. In fact, as the Commission submits, the Hellenic Republic has not established an appropriate system of protection and has not enforced the prohibition on construction, with the result that unregulated, unplanned building works are commenced.

44 Fourthly, as regards the assertion that a permit was to be issued for the construction of four holiday houses in Elaia, it is sufficient to state that an allegation that such an intention exists, without production of the necessary proof that a permit will actually be issued, is not a sufficient basis for a finding of a failure to fulfil obligations under Article 6(2) of Directive 92/43.

45 Consequently, it must be found that (i) by tolerating the construction of houses in Agiannaki in 2010, the use, without a sufficient regulatory framework, of other houses in Agiannaki which were built in 2006 and the commencement of building works relating to around 50 dwellings located between Agiannaki and Elaia and (ii) by authorising in 2012 the construction

of three holiday houses in Vounaki, the Hellenic Republic has failed to fulfil its obligations under Article 6(2) of Directive 92/43. The remainder of the present part of the first complaint should be rejected.

The first complaint: the allegation that the Hellenic Republic authorised the development of access routes to beaches in the Kyparissia area

– Arguments of the parties

- 46 The Commission complains that the Hellenic Republic tolerated, within the Kyparissia area:
- the opening up of five new roads to Agiannaki beach;
 - the construction of a road link between the beach at Kalo Nero and Elaia that runs alongside the existing railway line, and
 - the asphaltting of certain existing roads.
- 47 The Commission argues that the opening up of roads to the beach has destructive effects on that area. It submits that, despite the imposition of fines and the rehabilitation called for by the Greek authorities, those roads have remained operational. As a result, vehicles easily gain access to the beach and there is noise and pollution.
- 48 Similarly, the Commission considers that the asphaltting of certain existing roads and the construction of a road link between the beach at Kalo Nero and Elaia that runs alongside the railway line are detrimental to the dune habitats and disturb the *Caretta caretta* sea turtle.
- 49 The Hellenic Republic contends that because of the morphology of the land, which is flat, and the fact that the Kyparissia area has been inhabited since very early times, access to the beach has always been easy. It maintains that there have long been a number of other thoroughfares in that area which arrive at right angles to the beach.
- 50 As regards the alleged opening up of five new roads to Agiannaki beach, the Hellenic Republic submits that those roads have existed since the early 1970s and that their existence and the fact that they are for common use are confirmed by a court ruling. In any event, since no prior environmental authorisation was obtained either for construction of four of the five roads or for the work carried out on the fifth road, fines were imposed on the construction company in question in 2012. The Hellenic Republic argues that several sets of criminal proceedings have been brought by the authorities and that a number of court cases are also pending which are concerned with those fines and the lawfulness of the roads.
- 51 As regards the road under construction alongside the railway line which would link the beach at Kalo Nero with Elaia, the Hellenic Republic maintains that Directive 92/43 does not require that an area which has been inhabited since very early times should become inaccessible and that, under Article 2(3) of the directive, measures taken pursuant to the directive must take account of economic, social and cultural requirements and regional and local characteristics. It submits that the railway line and the thoroughfare parallel to it are a long way from the beach and that the thoroughfare is necessary in order to gain access to each of the properties.
- 52 As to the complaint that parts of certain existing coastal roads have been asphalted, the Hellenic Republic maintains that that has reduced dust and noise. It argues that access to the beach depends on whether the road is passable rather than on whether the road is asphalted and that changing the road surface has no effect at all on the egg-laying ability of the *Caretta caretta* sea turtle.
- Findings of the Court
- 53 First, the opening up of new roads to the sea facilitates vehicle access to the beach and is therefore a factor in increasing motor traffic. In fact, according to Opinion No 32/2015 of the Symvoulío tis Epikrateias (Council of State), which the Commission has put forward, the unregulated parking of cars at the ends and on the verges of the access roads causes damage to the dune habitats of the species listed for the Kyparissia area. As a result of that easier access and the increased number of motor vehicles, there is an escalation in noise and light, which disturbs the *Caretta caretta* sea turtle during egg-laying and the hatching of young turtles. The Hellenic Republic itself has, moreover, found that the opening up and construction of those roads was unlawful and has had damaging effects, as is apparent from the file before the Court, and more particularly from the documents in Annexes 17h and 17i to the application initiating these proceedings.
- 54 Although the Hellenic Republic neither authorised nor carried out the opening up of those roads in the Kyparissia area, it does not challenge the Commission's complaint that the roads are operational despite the fact that criminal proceedings have been brought and various court cases are pending.
- 55 By confining itself (i) to bringing criminal proceedings against the executives of the company that built the roads in question and imposing administrative penalties on that company and (ii) to claiming, before the national courts, that the roads concerned are illegal and must be removed, the Hellenic Republic has failed to fulfil the specific obligation imposed on it by Article 6(2) of Directive 92/43 (see, by analogy, judgment of 9 November 1999, *Commission v Italy*, C-365/97, EU:C:1999:544, paragraph 109).
- 56 As the Commission submits, the Hellenic Republic should have acted to ensure that those thoroughfares did not remain operational and that use of them did not significantly disturb the *Caretta caretta* sea turtle or impair the dune habitats

located in the Kyparissia area.

- 57 By failing to take provisional measures for the protection of that area in order to restrict use of the thoroughfares at issue until the conclusion of the above-mentioned court proceedings concerning the legality and possible closure of those thoroughfares, when, as the Advocate General has noted at point 77 of her Opinion, there is nothing to suggest that such measures would not be possible either for practical reasons or for reasons relating to EU law, the Hellenic Republic has failed to fulfil its obligations under Article 6(2) of Directive 92/43.
- 58 Secondly, as regards the road under construction alongside the railway line which would connect the beach at Kalo Nero with Elaia, it should be noted that it follows the existing railway line and that the Hellenic Republic has not been challenged by the Commission as to the fact that, with the exception of two places, that road is located at a distance of over 200 metres from the coast and is not linked to thoroughfares giving access to the beach. In those circumstances, the Commission has not demonstrated that there is a sufficient likelihood that the road under construction alongside the railway line which would connect the beach at Kalo Nero with Elaia will have a significant effect on the dune habitats and the *Caretta caretta* sea turtle.
- 59 Thirdly, as regards the asphaltting of certain coastal roads, the paving of sandy tracks facilitates their use, especially by motor vehicles; that is likely to have a significant effect on the dune habitats located in the Kyparissia area and to increase appreciably disturbance of the *Caretta caretta* sea turtle. The Hellenic Republic, by tolerating the asphaltting of roads within the site, has thus infringed Article 6(2) of Directive 92/43.
- 60 Consequently, the Court finds that, by having tolerated the opening up of five new roads to Agiannaki beach and the asphaltting of certain existing roads and thoroughfares, the Hellenic Republic has not prevented the development of access routes to that beach, which is located in the Kyparissia area, and has therefore failed to fulfil its obligations under Article 6(2) of Directive 92/43. This complaint must, however, be rejected in so far as it concerns the construction of a road link between the beach at Kalo Nero and Elaia alongside the existing railway line.

The first complaint: the allegation that the Hellenic Republic tolerated illegal wild camping in the Kyparissia area

– Arguments of the parties

- 61 The Commission complains that the Hellenic Republic has tolerated:
- the road behind Kalo Nero beach being used as a camping area for caravans, and
 - ‘wild camping’ in a pine forest in the dune land at Elaia beach.
- 62 According to the Commission, wild camping is problematic from the point of view of dune conservation and the conservation of forest habitats. It also disturbs the *Caretta caretta* sea turtle.
- 63 The Hellenic Republic, while stating that wild camping is prohibited throughout the country, acknowledges that, despite the prohibition and police patrols, the practice still goes on. It maintains that there has been wild camping in the Kyparissia area for at least 30 or 40 years but that it has gradually been reduced.

– Findings of the Court

- 64 It is common ground that the Hellenic Republic does not dispute that it has failed to take adequate measures to enforce the prohibition on wild camping in the Kyparissia area. It is also common ground that wild camping within that area is likely to cause appreciable damage to the dune habitats concerned and to entail significant disturbance of the *Caretta caretta* sea turtle.
- 65 Consequently, the Court finds that, by failing to take adequate measures to enforce the prohibition on wild camping close to the beaches at Kalo Nero and Elaia, the Hellenic Republic has failed to fulfil its obligations under Article 6(2) of Directive 92/43.

The first complaint: the allegation that the Hellenic Republic tolerated the operation of beach bars in the Kyparissia area

– Arguments of the parties

- 66 The Commission complains that the Hellenic Republic has tolerated the operation of at least three bars between Elaia and Kalo Nero. It submits that at night those bars are noisy and lit up and consequently disturb the *Caretta caretta* sea turtle during egg-laying and are a danger to the young, newly hatched turtles.
- 67 The Commission claims that there was a beach party at Kalo Nero on 13 August 2011. Whilst accepting that the Greek authorities have stated that they intend to close these bars, the Commission asserts that when its agents carried out their visit on 17 July 2012, the bars were still in existence. According to the Commission, the bars were not in operation in 2013 but the structures were still there.
- 68 The Hellenic Republic contends that, during 2013 and 2014, no outlet operated on the beach in question and all the illegal bars and their fixtures had been removed. It states that the only exception is the beach at Kalo Nero where wooden

structures of that kind will only subsequently be removed.

– Findings of the Court

69 Given that the question whether a Member State has failed to fulfil obligations must be determined by reference to the situation prevailing in the Member State at the end of the period laid down in the reasoned opinion and that the Court cannot take account of any subsequent changes, the various matters of fact put forward by the parties which post-date 1 December 2012, the date by which the Hellenic Republic was to comply with the Commission's reasoned opinion, will not be taken into account in the Court's assessment of the alleged failure to fulfil obligations.

70 The Court finds that the Hellenic Republic has not produced any evidence to show that, before the expiry of the period prescribed in the reasoned opinion, it had taken the measures necessary to prevent the breeding of the *Caretta caretta* sea turtle from being disturbed by the operation of the bars at issue.

71 Consequently, by failing to take the measures necessary to restrict the operation of bars between Elaia and Kalo Nero, on the breeding beaches of the *Caretta caretta* sea turtle, and to ensure that the various forms of pollution caused by those bars do not disturb that species, the Hellenic Republic has failed to fulfil its obligations under Article 6(2) of Directive 92/43.

The first complaint: the allegation that the Hellenic Republic allowed beach furniture and structures to remain on the beaches in the Kyparissia area

– Arguments of the parties

72 The Commission complains that the Hellenic Republic tolerated, within the Kyparissia area, an excessive amount of beach furniture, namely umbrellas and sunbeds. It also maintains that although the Greek authorities issued an order for the demolition of a number of platforms put up on the beaches in that area, that demolition never took place and authorisation was even given, on 28 July 2011, for the installation of a platform for use by the Messina Mare Hotel.

73 According to the Commission, these beach facilities, inasmuch as they are fixed on the beach or left there at night, have a negative impact on the breeding areas of the *Caretta caretta* sea turtle, since they reduce the space available for nests and make it difficult for the turtles to move around.

74 The Hellenic Republic argues that, in 2013 and 2014, there were no umbrellas or sunbeds on the beaches at Vounaki, Elaia and Agiannaki. There were still some umbrellas and sunbeds on the beach at Kalo Nero but they were outside the breeding area of the *Caretta caretta* sea turtle. As regards the platform near the Messina Mare Hotel, the Hellenic Republic asserts that it is a ramp for the assistance of disabled persons visiting the hotel.

– Findings of the Court

75 First, so far as umbrellas and sunbeds are concerned, the Hellenic Republic merely states that, since 2013, in other words after the expiry of the period prescribed by the reasoned opinion, such beach furniture has been present solely on the beach at Kalo Nero, away from the breeding area of the *Caretta caretta* sea turtle. The Hellenic Republic thus implicitly accepts that it had not previously reduced the amount of beach furniture in the turtles' breeding area.

76 Secondly, as regards the platforms constructed on the beaches within the Kyparissia area, the Hellenic Republic — which disputes neither their presence at the end of the period set in the Commission's reasoned opinion nor the likelihood of them causing appreciable damage to the dune habitats in the Kyparissia area and entailing significant disturbance of the *Caretta caretta* sea turtle — merely asserts that the platform near the Messina Mare Hotel for which authorisation was given is a ramp for the use of disabled persons.

77 The Commission does not dispute that the platform is intended for that purpose. Whilst the construction of a platform designed to facilitate the movement of disabled persons may, in principle, be regarded as having been carried out for imperative reasons of overriding public interest relating to human health, for the purposes of Article 6(4) of Directive 92/43, such a justification requires there to be inter alia an examination of whether there are other, less detrimental solutions and a weighing up of the interests concerned, based on an assessment under Article 6(3) of the directive of the implications for the conservation objectives of the protected site (see, to that effect, judgment of 14 January 2016, *Grüne Liga Sachsen and Others*, C-399/14, EU:C:2016:10, paragraph 57 and the case-law cited). As the Hellenic Republic has failed to provide any explanation in that regard, the platform near the Messina Mare Hotel for which authorisation was given must be considered also to constitute an infringement of Article 6(2) of Directive 92/43.

78 Consequently, the Court finds that, by failing to take the measures necessary to reduce, within the Kyparissia area, the furniture and various structures on the breeding beaches of the *Caretta caretta* sea turtle and by authorising the construction of a platform near the Messina Mare Hotel, the Hellenic Republic has failed to fulfil its obligations under Article 6(2) of Directive 92/43.

The first complaint: the allegation that the Hellenic Republic tolerated the use of heavy vehicles for beach cleaning in the Kyparissia area

– Arguments of the parties

79 The Commission complains that the Hellenic Republic has tolerated the use of heavy vehicles, by the Municipality of

Avlona (Greece), for beach cleaning: it submits that the weight of the vehicles compacts the sand and that vibration destroys the nests of the *Caretta caretta* sea turtle.

- 80 The Hellenic Republic contends that this is not a permanent practice but an isolated case and that no further cases have been observed since the letter of formal notice was sent. Furthermore, the national rules adopted in July 2013 and May 2014 by the Ministry of the Environment are intended to prevent such incidents and provide that, during the turtles' breeding period, beach cleaning must be carried out manually.

– Findings of the Court

- 81 Although the national rules relied on by the Hellenic Republic were adopted after the expiry of the period set in the reasoned opinion and cannot be taken into account by the Court for the purpose of assessing the alleged infringement, this complaint cannot be accepted. Not only does the Commission fail to challenge the Hellenic Republic's statement that the case in question was an isolated case but it also fails to put forward any evidence to show that there was a repetition of such incidents or a need to take specific measures in order to prevent them.

The first complaint: the allegation that the Hellenic Republic tolerated unlawful sand extraction on the beaches in the Kyparissia area

– Arguments of the parties

- 82 The Commission complains that the Hellenic Republic tolerated unregulated sand extraction on the beaches in the Kyparissia area.

- 83 The Hellenic Republic contends that the Commission has failed to produce any evidence concerning any such sand extraction.

- 84 The Commission reproduces, however, in its reply a table that allegedly shows that the Hellenic Republic itself acknowledges that there is a likelihood of significant damage to the Kyparissia area as a result of sand extraction.

– Findings of the Court

- 85 Article 128(1) of the Rules of Procedure provides that, in reply or rejoinder, a party may produce or offer further evidence in support of his arguments and that he must give reasons for the delay in submitting such evidence.

- 86 As the Commission has not given reasons for the delay in submitting the table concerned, the latter cannot be taken into account, as evidence, when the Court determines whether the Hellenic Republic has failed to fulfil its obligations as alleged by the Commission.

- 87 Since the Commission puts forward no other material capable of substantiating the complaint in question, the action must be dismissed so far as this point is concerned.

The first complaint: the allegation that the Hellenic Republic tolerated the extension of agricultural activities in the Kyparissia area

– Arguments of the parties

- 88 The matters in respect of which the Commission has raised complaints against the Hellenic Republic are:

- extended agricultural use of the dunes;
- ploughing of the dunes between Elaia and Agiannaki, and
- sheep herding on the breeding beaches of the *Caretta caretta* sea turtle.

- 89 The Commission argues that the extended agricultural use of the dunes destroys the dune land where the turtles breed and that water from irrigation is liable to affect their nearby nests. The increase in humidity caused by that cultivation changes the underground temperature, which results in a greater number of young male hatchlings and is thus likely to bring about an imbalance in the *Caretta caretta* sea turtle population.

- 90 The Commission asserts that, between Agiannaki and Elaia, ploughing of the dunes took place from 20 February to 3 March 2013, which destroyed a number of the habitats of the *Caretta caretta* sea turtle, no remedial action having been taken.

- 91 The Commission submits that sheep herding on the beaches where those turtles breed results in the direct and indirect destruction of nests. The nests are trampled on and the eggs are destroyed by the ground vibrations that ensue.

- 92 The Hellenic Republic submits that agricultural activity has considerably decreased over the last 20 years and that, up to 2001, the reduction in cultivated land was around 25% to 30% depending on the places concerned. In the Kyparissia area, there has, in its submission, been no extension of land cultivation to the dunes, given that the sandy substratum is not suitable for that purpose and that the region beyond that area is particularly fertile.

- 93 The Hellenic Republic maintains that the ploughing to which the Commission refers was carried out on agricultural land.
- 94 Sheep herding on the beaches where the *Caretta caretta* sea turtle breeds is, in its view, impossible, given that no plants grow on the beach. In any event, according to the Hellenic Republic, the turtles bury their eggs at a depth that is such that the nests cannot be destroyed because of the trampling of sheep and the ensuing ground vibrations.

– Findings of the Court

- 95 In the first place, as regards the alleged extended agricultural use of the dunes, it should be stated that, as the Advocate General has observed at point 105 of her Opinion, the Commission has adduced no evidence capable of rebutting the Hellenic Republic's claim that no such extension of agricultural usage is to be found in the Kyparissia area. It follows that the Commission's complaint cannot be accepted so far as this point is concerned.
- 96 In the second place, since the Commission places the alleged ploughing of the dunes at a date following the expiry of the period that it set in its reasoned opinion, nor may that objection be raised against the Hellenic Republic, with the result that the Commission's complaint must also be rejected so far as this point is concerned.
- 97 In the third place, the Court notes that the Commission does not dispute the Hellenic Republic's assertion that no plants grow on the beach where the *Caretta caretta* sea turtle breeds and that the photographs produced by the Commission merely show the presence of a few sheep on that beach rather than any sheep-herding activity. In any event, the Commission has not produced any evidence establishing that the presence of sheep, as shown in those photographs, would be likely to damage turtle nests buried at a depth of between 40 cm and 60 cm in the sand. In those circumstances, the Commission's complaint must also be rejected as far as this point is concerned.

The first complaint: the allegation that the Hellenic Republic tolerated light pollution in the Kyparissia area

– Arguments of the parties

- 98 The Commission complains that the Hellenic Republic has failed to take appropriate steps to prevent municipal street lighting and lighting near the beach, as well as light from restaurants, hotels and shops close to the Kyparissia area, from disturbing the *Caretta caretta* sea turtle during egg-laying and, above all, from affecting the newly hatched turtles as they move towards the sea. It maintains that those phenomena were observed when its agents conducted their on-the-spot visit on 17 July 2012.
- 99 According to the Hellenic Republic, the street lighting has been in place for many years and was installed before national rules were adopted requiring there to be an appropriate assessment, as provided for in Directive 92/43. It contends that, in order to address this problem, rules were adopted in 2014, which apply to the beaches where the turtles breed and lay down, in particular, an obligation to make sure that light emanating from private and public sources does not reach the beach, thereby ensuring that the young turtles are not disorientated. Similarly, beach-front businesses and hotels are prohibited from using spotlights. There is also a plan to install shading panels and to use special lamps.

– Findings of the Court

- 100 As regards the Hellenic Republic's argument that street lighting was in place before such facilities were subject to an appropriate assessment pursuant to Directive 92/43, it is sufficient to note that, under that directive, the prohibition on deterioration laid down therein is not limited to an obligation, on the part of the Member State concerned, to prohibit or bring to an end only 'new' harmful activities.
- 101 It must therefore be found that, by failing to take the appropriate protective measures in order to prevent, as of 19 July 2006 when the Kyparissia area was placed on the list of SCIs, existing street lighting from disturbing the *Caretta caretta* sea turtle, the Hellenic Republic has failed to fulfil its obligations under Article 6(2) of Directive 92/43 (see, by analogy, judgment of 24 November 2011, *Commission v Spain*, C-404/09, EU:C:2011:768, paragraphs 127 and 128).
- 102 The Court also upholds the Commission's complaint in so far as it concerns the disturbance of the *Caretta caretta* sea turtle caused by the lights from restaurants, hotels and shops around the Kyparissia area.
- 103 Indeed, the Hellenic Republic merely states in that regard that in 2014 — that is, after the expiry of the period prescribed by the Commission in its reasoned opinion — it adopted rules to address this problem, which tends, by implication, to show that that Member State had not previously taken the requisite measures to deal with the disturbance of the *Caretta caretta* sea turtle to which such light pollution gave rise.
- 104 Consequently, by failing to take the measures necessary so as to ensure that the light pollution affecting the breeding beaches of the *Caretta caretta* sea turtle in the Kyparissia area is adequately curtailed, the Hellenic Republic has failed to fulfil its obligations under Article 6(2) of Directive 92/43.

The first complaint: the allegation that the Hellenic Republic has allowed fishing in close proximity to the Kyparissia area

– Arguments of the parties

- 105 The Commission submits that fishing in close proximity to the breeding beaches of the *Caretta caretta* sea turtle in the

Kyparissia area is a source of disturbance for the species since turtles which are on the way to lay eggs or are returning from nests may be caught up in the nets or collide with the fishing vessels. The Commission relies in this regard on a report annexed to its application, according to which there is fishing directly off the beach using bottom-set gillnets and, sometimes, vessels fishing with trawl nets at barely one kilometre from the beach.

106 The Hellenic Republic contends that since the system of protection was established in this area, fishing has decreased and various EU instruments have also played a part in reducing fishing in the region. There are very few fishing vessels and an information campaign is designed to prevent turtles being caught accidentally.

– Findings of the Court

107 A general statement of that kind relating to a reduction in fishing and to information given to fishermen does not call in question the Commission's contentions, which are supported by the findings in the report annexed to its application.

108 Consequently, by failing to take the measures necessary so as to ensure that fishing in the waters off the breeding beaches of the *Caretta caretta* sea turtle in the Kyparissia area is adequately curtailed, the Hellenic Republic has failed to fulfil its obligations under Article 6(2) of Directive 92/43.

The first complaint: the allegation that the Hellenic Republic has tolerated the use of pleasure craft and pedalos off the beaches in the Kyparissia area

– Arguments of the parties

109 According to the Commission, the use of pleasure craft and pedalos in close proximity to the breeding beaches of the *Caretta caretta* sea turtle in the Kyparissia area is a source of disturbance for the turtles. Some of them have even been killed following collisions with these craft. The Commission considers that the material put forward in Annexes 18 and 21 to its application substantiate this complaint.

110 In the Hellenic Republic's submission, that material does not prove the Commission's case and the latter has not established that the turtles have died as a result of injuries caused by pleasure craft and pedalos.

– Findings of the Court

111 In proceedings for a declaration of 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 (judgment of 9 July 2015, *Commission v Ireland*, C-87/14, EU:C:2015:449, paragraph 22 and the case-law cited).

112 However, it must be stated (i) that the Commission, in referring in its application to annexes thereto, without providing any specific explanations that might be relevant in that regard, does not produce the information necessary for the Court to determine whether the alleged infringement has been made out and, in any event, (ii) that those annexes do not clearly identify such information.

113 The first complaint raised by the Commission in support of this action must therefore be rejected so far as this point is concerned.

114 That being the case, it should be declared that:

- by tolerating the construction of houses in Agiannaki in 2010, the use, without a sufficient regulatory framework, of other houses in Agiannaki which were built in 2006 and the commencement of building works relating to around 50 dwellings located between Agiannaki and Elaia, and by authorising in 2012 the construction of three holiday houses in Vounaki;
- by tolerating the development of access routes to the beach in the Kyparissia area, namely the opening up of five new roads to Agiannaki beach and the asphaltting of certain existing roads and thoroughfares;
- by failing to take adequate measures to enforce the prohibition on wild camping close to the beaches at Kalo Nero and Elaia;
- by failing to take the measures necessary to restrict the operation of bars between Elaia and Kalo Nero, on the breeding beaches of the *Caretta caretta* sea turtle, and by failing to ensure that the various forms of pollution caused by those bars do not disturb that species;
- by failing to take the measures necessary to reduce, within the Kyparissia area, the furniture and various structures found on the breeding beaches of the *Caretta caretta* sea turtle and by authorising the construction of a platform near the Messina Mare Hotel;
- by failing to take the measures necessary so as to ensure that the light pollution affecting the breeding beaches of the *Caretta caretta* sea turtle in the Kyparissia area is adequately curtailed; and
- by failing to take the measures necessary so as to ensure that fishing in the waters off the breeding beaches of the

Caretta caretta sea turtle in the Kyparissia area is adequately curtailed,

the Hellenic Republic has failed to fulfil its obligations under Article 6(2) of Directive 92/43.

The second complaint alleging infringement of Article 6(3) of Directive 92/43

Arguments of the parties

- 115 By the second complaint in support of its action the Commission alleges that the Hellenic Republic has infringed Article 6(3) of Directive 92/43.
- 116 The Commission complains that the Hellenic Republic has failed to fulfil its obligations under that provision by omitting to undertake an appropriate assessment of the implications of projects not directly connected with or necessary to the management of the Kyparissia area but likely to have a significant effect thereon. According to the Commission such an assessment of the implications should in particular have been carried out before:
- the grant of a building permit and the construction of various dwellings within the Kyparissia area;
 - the opening up of new roads and the asphaltting of certain existing roads within that area;
 - the construction of new bars on breeding beaches of the *Caretta caretta* sea turtle in that area;
 - the installation of street lighting along the beach in the Kyparissia area, and
 - the increase in the land under cultivation in the sand dune system in the Kyparissia area.
- 117 According to the Commission, those actions were undertaken without any prior assessment, whether that be an assessment of the individual implications for each of those actions or an assessment of the cumulative implications as a whole. It submits that none of those actions is directly connected with or necessary to the management of the Kyparissia area and maintains that they are likely to have a significant impact on that area given its importance for the *Caretta caretta* sea turtle and for the natural habitat concerned.
- 118 The Hellenic Republic contends that all the plans or projects that have been implemented in the region without an ‘appropriate assessment’ concerned construction activities that were completed before the introduction of the obligation to carry out such an assessment. It maintains, with regard to the plans and projects implemented after that date, that either the requirements of Article 6(3) of Directive 92/43 have been complied with or, when that was not the case, administrative and criminal proceedings have been commenced.
- 119 The Hellenic Republic asserts that the requirements and procedures laid down in Article 6(3) of Directive 92/43 have been implemented under national law and that the issue of building permits and the carrying out of construction work have been suspended until the presidential decree is adopted. Thus it has not failed to fulfil its obligations under Article 6(3) of Directive 92/43.

Findings of the Court

- 120 Article 6(3) of Directive 92/43 establishes an assessment procedure intended to ensure, by means of a prior examination, that a plan or project not directly connected with or necessary to the management of the site concerned but likely to have a significant effect on it is authorised only to the extent that it will not adversely affect the integrity of that site (judgment of 11 September 2012, *Nomarchiaki Aftodioikisi Aitolokarnanias and Others*, C-43/10, EU:C:2012:560, paragraph 110).
- 121 Accordingly, that provision is relevant only when the competent national authorities grant authorisation for a project, as that authorisation must in such a case be preceded by an appropriate assessment of the implications of the project for the site concerned.
- 122 Consequently, Article 6(3) of Directive 92/43 does not apply in respect of any action whose implementation was subject to authorisation but which was carried out without authorisation and thus unlawfully. That being the case, there can in this regard be no finding of failure to fulfil obligations on account of an infringement of Article 6(3).
- 123 By contrast, that provision does apply to actions which were undertaken with a prior authorisation, namely (i) the houses in Agiannaki work on which was carried out in 2010, (ii) the three holiday houses in Vounaki in 2012 and (iii) the platform near the Messina Mare Hotel.
- 124 Since those actions were likely to entail a loss of dune surface and also to disturb the *Caretta caretta* sea turtle, a prior assessment of their implications should have been carried out prior to their authorisation.
- 125 In those circumstances, given that the Hellenic Republic does not maintain that those authorisations were granted before 19 July 2006, the date on which the Kyparissia site was placed on the list of SCIs, or that they were preceded by assessments of their implications for the site in accordance with Article 6(3) of Directive 92/43, the Court finds that, by issuing permits for houses built in 2010 in Agiannaki, for three holiday houses in Vounaki in 2012 and for the construction of a platform near the Messina Mare Hotel, the Hellenic Republic has failed to fulfil its obligations under that provision.

126 The complaint is rejected as to the remainder.

The third complaint, alleging failure to comply with Article 12(1)(b) and (d) of Directive 92/43

127 The Commission alleges that the Hellenic Republic has failed to fulfil its obligations under Article 12(1)(b) and (d) of Directive 92/43 by not taking the requisite measures to establish and apply an effective system of strict protection for the *Caretta caretta* sea turtle in the Kyparissia area so as to prevent any disturbance to that species during its breeding period and any activity likely to degrade or damage its breeding sites.

128 The Commission recalls that, under that provision, a system of strict protection for the animal species listed in Annex IV(a) of Directive 92/43 must be established in order to prohibit deliberate disturbance of these species, particularly during the period of breeding, and deterioration or destruction of breeding sites or resting places. That system of strict protection requires the establishment of a comprehensive legal framework as well as the adoption and implementation of concrete and specific protection measures.

129 The Hellenic Republic contends that it has not infringed Article 12(1)(b) and (d) of Directive 92/43.

The third complaint: the allegation that the Hellenic Republic has failed to establish a comprehensive and coherent legal framework

– Arguments of the parties

130 The Commission maintains that a system of strict protection, as provided for in Article 12(1) of Directive 92/43, presupposes the adoption of coherent and coordinated measures of a preventive nature. It states that the Hellenic Republic has acknowledged that such a comprehensive and coherent legal framework has not yet been adopted but is currently being developed.

131 The Commission submits that, overall, the legal instruments concerning this area that are in force in the Member State are insufficient for the purposes of the protection provided for in Article 12(1)(b) and (d) of Directive 92/43. It submits that the first mention of the existence of those legal instruments was made by the Hellenic Republic in the defence. Furthermore, some of those instruments predate the entry into force of Directive 92/43 and therefore do not include specific provisions capable of meeting the requirements of Article 12 of the directive.

132 The Commission maintains that, in the absence of an integrated and coherent national legislative framework, the strict protection of the *Caretta caretta* sea turtle and its breeding sites cannot be ensured. A system of protection cannot be established by a piecemeal set of isolated measures which concern environmental protection in general but are not designed to prevent, by specific means, all deliberate disturbance of the species concerned during the period of breeding and all activity likely to cause the deterioration or destruction of its breeding sites.

133 The Commission stresses that the fact that there does not appear to have been a drop in the number of nests of the *Caretta caretta* sea turtle within the Kyparissia area cannot, in itself, call in question the finding that the Hellenic Republic has not adopted measures for effective protection. It argues that the high number of nests that have recently been observed is accounted for by the fact that the *Caretta caretta* sea turtle has been protected since 1992 and that, as a general rule, the effects on that species become apparent 20 years later. In addition, it is apparent from the judgments of 30 January 2002, *Commission v Greece* (C-103/00, EU:C:2002:60), and of 16 March 2006, *Commission v Greece* (C-518/04, not published, EU:C:2006:183) that a decline in the number of nests is not necessary in order for there to be a finding of disturbance of such a kind as to constitute an infringement of Article 12 of Directive 92/43.

134 The Hellenic Republic contends that the Commission is incorrect in maintaining that the Hellenic Republic has not adopted an adequate legislative system of protection and that it has not succeeded in implementing specific and efficient protective measures. It submits that the Commission cannot claim that deterioration of habitats and disturbances having a significant impact on species are occurring in the Kyparissia area when an appropriate assessment of the implications of the activities carried out in that area has not even been undertaken.

135 According to the Hellenic Republic, since the *Caretta caretta* sea turtle population is steadily increasing and there is no risk of its natural range being reduced, there is no ground for invoking an infringement of Article 12(1)(b) and (d) of Directive 92/43.

136 The Hellenic Republic considers that the Greek legal order contains a broad, coherent institutional framework, which is particularly strict and extremely efficient so far as protection of the *Caretta caretta* sea turtle is concerned. It refers in that regard to the various legislative and regulatory measures which together will provide an adequate legal framework until the presidential decree is adopted.

137 The Hellenic Republic contends that it has never maintained that that set of measures was adopted specifically for the Kyparissia area and the species in question but that the measures protect them effectively and thus ensure a system of sufficient and strict protection for the purposes of Article 12 of Directive 92/43. That provision does not require that the system of strict protection be set out in a single piece of legislation.

138 Lastly, the Hellenic Republic describes the main features, measures and effects of the draft presidential decree and indicates that it will be adopted shortly, once the Symvoulío tis Epikrateias (Council of State) has issued an opinion. It nevertheless points out that the existence of this draft presidential decree does not mean that there was not previously a system of strict

and effective protection in the Greek legal order.

– Findings of the Court

- 139 It should be recalled that Article 12(1)(b) and (d) of Directive 92/43 requires Member States to take the requisite measures to establish a system of strict protection for the animal species listed in Annex IV(a) to the directive, in their natural range, prohibiting deliberate disturbance of specimens of those species, particularly during the periods of breeding, rearing, hibernation and migration, and deterioration or destruction of breeding sites or resting places.
- 140 The Court has already held that the transposition of that provision requires the Member States not only to adopt a comprehensive legislative framework but also to implement practical and specific protection measures in that regard and that the system of strict protection presupposes the adoption of coherent and coordinated measures of a preventive nature (judgment of 15 March 2012, *Commission v Cyprus*, C-340/10, EU:C:2012:143, paragraphs 60 and 61 and the case-law cited).
- 141 A collection of legal instruments does not constitute a comprehensive legislative and regulatory framework when those instruments do not prevent breaches of the prohibition on deterioration laid down in Article 6(2) of Directive 92/43 or when the instruments must regularly be supplemented so that the protection required by Article 12 of the directive can be ensured.
- 142 The fact that the Court has found, in paragraph 114 of this judgment, a number of breaches of the prohibition on deterioration laid down in Article 6(2) of Directive 92/43 gives reason to suppose that a comprehensive and coherent legislative framework is lacking so far as protection of the Kyparissia area is concerned.
- 143 That supposition is confirmed by the fact that the Hellenic Republic has adopted various ministerial orders, including on 23 May 2013, 23 July 2013, 14 February 2014 and 8 May 2014, concerning in particular appropriate use of the beaches, the cessation of certain agricultural activities, the restriction of light emanating from private beach establishments, suspension of the issue of building permits, a ban on certain building activities and a ban on the opening up and asphaltting of roads in the Kyparissia area.
- 144 The fact that legal instruments of that kind were adopted after the expiry of the period prescribed in the reasoned opinion sufficiently demonstrates that, before that deadline, the national legislative framework was incomplete.
- 145 The Hellenic Republic is thus not justified in maintaining that the presidential decree, currently under adoption, for the protection of that area, is solely intended to gather together and consolidate legislation which was already in force at the end of that period.
- 146 On the contrary, it is apparent from the opinion of the *Symvoulío tis Epikrateias* (Council of State) that the Hellenic Republic's obligations arising under EU law demand new regulations for the protection of the Kyparissia area and require that a new draft decree be lodged before that body as soon as possible.
- 147 Similarly, there is no merit in the Hellenic Republic's claim that, given that the *Caretta caretta* sea turtle population is steadily increasing, an allegation that it has failed to fulfil its obligations under Article 12(1)(b) and (d) of Directive 92/43 cannot be made against it.
- 148 As the Commission has argued, a factor such as the stability of the population of the species cannot, in itself, call in question a finding that the relevant national legislative framework is incomplete (see, by analogy, judgment of 16 March 2006, *Commission v Greece*, C-518/04, EU:C:2006:183, paragraph 21).
- 149 In those circumstances, the Court finds that, by failing to adopt a comprehensive, coherent and strict legislative and regulatory framework for the protection of the *Caretta caretta* sea turtle in the Kyparissia area, the Hellenic Republic has failed to fulfil its obligations under Article 12(1)(b) and (d) of Directive 92/43.

The third complaint: the allegation that the Hellenic Republic has failed to implement concrete, specific and effective protection measures

– Arguments of the parties

- 150 According to the Commission, the Hellenic Republic does not apply any specific, effective measures so as to prevent, on the one hand, disturbance of the *Caretta caretta* sea turtle during the breeding period and, on the other, activities likely to cause deterioration or destruction of its breeding areas.
- 151 It submits that Article 12(1)(d) of Directive 92/43 provides for stricter protection than the protection envisaged in points (a) to (c) of Article 12(1) and that point (d) does not limit the prohibition to deliberate acts.
- 152 Accordingly, in order to assess to what extent a given activity is 'of such a kind as to cause deterioration or destruction of breeding sites', the Commission submits that account must be taken of the fact that the *Caretta caretta* sea turtle only lays eggs every two or three years and that it is particularly sensitive and vulnerable to noise and light pollution throughout its breeding process, that is to say, during the incubation period and when the young turtles head towards the sea.

- 153 The Commission maintains that, in the Kyparissia area, the breeding sites of the *Caretta caretta* sea turtle are likely to be degraded or destroyed by various human activities that it mentions in its action, which create obstacles impairing access to breeding sites and cause light and noise pollution.
- 154 According to the Hellenic Republic, its institutional and legal framework regulating activities within the Kyparissia area prohibits activities that are likely to affect the breeding sites of the *Caretta caretta* sea turtle deliberately or to harm the species.
- 155 It contends that, in accordance with the Commission's guidelines, the deterioration of an area is assessed on the basis of the conservation status of each of the species and habitats; the conservation status is evaluated by reference to the initial conditions at the time when the proposal to classify the area concerned as a protected area was made.
- 156 Moreover, the assessment of the possible implications for the integrity of the area, so far as its ecological functions are concerned, must be undertaken at the level of the protected area as a whole rather than on a more reduced scale by isolating small areas of the beach in order to be able to establish significant disturbance.

– Findings of the Court

- 157 As regards the alleged infringement of the prohibition on disturbance of protected species, laid down in Article 12(1)(b) of Directive 92/43, it should be stated that the infringements of Article 6(2) of the directive, as found in paragraph 114 of this judgment, all constitute prohibited disturbances of the *Caretta caretta* sea turtle.
- 158 As the Advocate General has stated in point 143 of her Opinion, the same is true so far as the construction of buildings in Agiannaki in 2006 is concerned. Unlike the general prohibition on deterioration and disturbance laid down in Article 6(2) of Directive 92/43, the protection of species referred to in Article 12 of the directive is not, by virtue of Article 4(5) thereof, conditional upon the Dunes of Kyparissia being placed on the list referred to in the third subparagraph of Article 4(2) of the directive. As is clear from Article 23(1) of the directive, that protection has been applicable since 1994.
- 159 Given that those responsible for those disturbances at least accepted the possibility of the *Caretta caretta* sea turtle being disturbed during the breeding period, the condition as to deliberate action in Article 12(1)(b) of Directive 92/43 is met (see, to that effect, judgment of 18 May 2006, *Commission v Spain*, C-221/04, EU:C:2006:329, paragraph 71).
- 160 Accordingly, the Court finds that, by failing to take, within the prescribed period, all the specific measures necessary to prevent the deliberate disturbance of the *Caretta caretta* sea turtle during its breeding period, the Hellenic Republic has failed to fulfil its obligations under Article 12(1)(b) of Directive 92/43.
- 161 The Commission's action must also be upheld in so far as it complains that the Member State has failed to take the measures necessary to enforce the prohibition on deterioration or destruction of breeding sites, as referred to in Article 12(1)(d) of Directive 92/43.
- 162 A number of infringements of Article 6(2) of Directive 92/43, as found in paragraph 114 of this judgment, constitute, in themselves, activities which necessarily cause deterioration of the breeding sites of the *Caretta caretta* sea turtle.
- 163 It follows from the foregoing considerations that the Hellenic Republic:
- by failing to adopt a comprehensive, coherent and strict legislative and regulatory framework for the protection of the *Caretta caretta* sea turtle within the Kyparissia area;
 - by failing to take, within the prescribed period, all the specific measures necessary to prevent the deliberate disturbance of the *Caretta caretta* sea turtle during its breeding period; and
 - by failing to take the measures necessary to enforce the prohibition on deterioration or destruction of the breeding sites of that species,
- has failed to fulfil its obligations under Article 12(1)(b) and (d) of Directive 92/43.

Costs

- 164 Under Article 138(3) of the Rules of Procedure, the parties are to bear their own costs where each party succeeds on some and fails on other heads.
- 165 Since the Commission and the Hellenic Republic have each succeeded on some and failed on other heads, they must be ordered to bear their own costs.

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

1. Declares that the Hellenic Republic,

- by tolerating the construction of houses in Agiannaki (Greece) in 2010, the use, without a sufficient regulatory framework, of other houses in Agiannaki which were built in 2006 and the commencement of building works relating to around 50 dwellings located between Agiannaki and Elaia (Greece), and by authorising in 2012 the construction of three holiday houses in Vounaki (Greece);
- by tolerating the development of access routes to the beach in the Dunes of Kyparissia area (Greece), namely the opening up of five new roads to Agiannaki beach and the asphaltting of certain existing roads and thoroughfares;
- by failing to take adequate measures to enforce the prohibition on wild camping close to the beaches at Kalo Nero (Greece) and Elaia;
- by failing to take the measures necessary to restrict the operation of bars between Elaia and Kalo Nero, on the breeding beaches of the *Caretta caretta* sea turtle, and by failing to ensure that the various forms of pollution caused by those bars do not disturb that species;
- by failing to take the measures necessary to reduce, within the Kyparissia area, the furniture and various structures found on the breeding beaches of the *Caretta caretta* sea turtle and by authorising the construction of a platform near the Messina Mare Hotel;
- by failing to take the measures necessary so as to ensure that the light pollution affecting the breeding beaches of the *Caretta caretta* sea turtle in the Kyparissia area is adequately curtailed; and
- by failing to take the measures necessary to ensure that fishing in the waters off the breeding beaches of the *Caretta caretta* sea turtle in the Kyparissia area is adequately curtailed,

has failed to fulfil its obligations under Article 6(2) 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;

2. Declares that, by issuing permits for houses built in 2010 in Agiannaki, for three holiday houses in Vounaki in 2012 and for the construction of a platform near the Messina Mare Hotel, the Hellenic Republic has failed to fulfil its obligations under Article 6(3) of Directive 92/43;
3. Declares that the Hellenic Republic,
 - by failing to adopt a comprehensive, coherent and strict legislative and regulatory framework for the protection of the *Caretta caretta* sea turtle in the Kyparissia area;
 - by failing to take, within the prescribed period, all the specific measures necessary to prevent the deliberate disturbance of the *Caretta caretta* sea turtle during its breeding period; and
 - by failing to take the measures necessary to enforce the prohibition on deterioration or destruction of the breeding sites of that species,

has failed to fulfil its obligations under Article 12(1)(b) and (d) of Directive 92/43;

4. Dismisses the remainder of the action;
5. Orders the European Commission and the Hellenic Republic to bear their own costs.

[Signatures]

* Language of the case: Greek.