

JUDGMENT OF THE COURT,  
19 January 1994 \*

In Case C-435/92,

REFERENCE to the Court under Article 177 of the EEC Treaty by the Administrative Court of Nantes for a preliminary ruling in the proceedings pending before that court between

**Association pour la Protection des Animaux Sauvages and Others**

and

**Préfet de Maine-et-Loire,**

**Préfet de la Loire-Atlantique,**

on the interpretation of Article 7(4) of Council Directive 79/409/EEC of 2 April 1979 on the conservation of wild birds (Official Journal 1979 L 103, p. 1),

\* Language of the case: French.

THE COURT,

composed of: O. Due, President, G.F. Mancini, J.C. Moitinho de Almeida, M. Díez de Velasco (Rapporteur), (Presidents of Chambers), F.A. Schockweiler, F. Grévisse, M. Zuleeg, P.J.G. Kapteyn and J.L. Murray, Judges,

Advocate General: W. Van Gerven,  
Registrar: D. Louterman-Hubeau, Principal Administrator,

after considering the written observations submitted on behalf of:

- the Rassemblement des Opposants à la Chasse, by F. Herbert, of the Brussels Bar,
- the Fédération Départementale des Chasseurs de Loire-Atlantique, by C. Lagier, of the Lyons Bar,
- the Commission of the European Communities, by V. Di Bucci, a member of its Legal Service, by B. Leplat, national civil servant on secondment to the Legal Service, acting as Agents,
- the French Government, by P. Pouzoulet, Deputy Director in the Legal Affairs Directorate of the Ministry of Foreign Affairs, and J.-L. Falconi, Secretary for Foreign Affairs in the same ministry, acting as Agents,

having regard to the Report for the Hearing,

after hearing the oral observations of the Rassemblement des Opposants à la Chasse, the Fédération Départementale des Chasseurs de Loire-Atlantique, the French Government, represented by J.-L. Falconi and J.-J. Lafitte, senior staff at the Ministry of the Environment, and the Commission of the European Communities at the hearing on 7 July 1993,

after hearing the Opinion of the Advocate General at the sitting on 21 September 1993,

gives the following

### Judgment

- 1 By judgments of 17 December 1992, which were received at the Court on 24 December 1992, the Administrative Court of Nantes referred to the Court for a preliminary ruling under Article 177 of the EEC Treaty three questions on the interpretation of Article 7(4) of Council Directive 79/409/EEC of 2 April 1979 on the conservation of wild birds (Official Journal 1979 L 103, p. 1) (hereinafter 'the Directive').
- 2 Those questions were raised in the course of six actions for annulment which were brought before the Administrative Court of Nantes by various associations for the protection of the environment and a hunters' association against the decisions of the Prefects of Maine-et-Loire and of Loire-Atlantique fixing the closing dates for their respective departments for the 1992/93 hunting season.
- 3 The proceedings essentially concern the compliance of those dates with the provisions of the Directive relating to the protection of migratory birds during their return to their rearing grounds.
- 4 Considering that the outcome of those proceedings depended in particular on the interpretation of Article 7(4) of the Directive, the Administrative Court of Nantes asked whether

1. the closing date for the hunting of migratory birds and waterfowl should be fixed as the date of the commencement of pre-mating migration or the varying date of commencement of migration;
2. the principle of staggering the closing dates for hunting seasons by reference to species is compatible with the system of protection provided by the Directive and, if so, within what limits; and
3. the power of the Prefects to set the closing dates for hunting in their department is compatible with the system of protection provided by the Directive.

### The first question

- 5 In its first question, the national court seeks guidance as to the criteria to be applied in fixing the closing date for the hunting of migratory birds and waterfowl, having regard to the fact that the commencement of pre-mating migration is liable to vary each year on the basis of a number of factors.
- 6 First, it should be noted that under Article 7(4) of the Directive the Member States are to see in particular that the species to which hunting laws apply are not hunted during the rearing season or during the various stages of reproduction (second sentence) and in particular in the case of migratory species to which hunting regulations apply that they are not hunted during their period of reproduction or during their return to their rearing grounds (third sentence).
- 7 Secondly, reference should be made to the judgment of the Court in Case C-157/89 *Commission v Italy* [1991] ECR I-57.

8 In that judgment, the Court first notes that birds' migratory movements are subject to a degree of variability which, owing to meteorological circumstances, affects in particular the periods during which migration takes place. Thus, a number of birds of a given migratory species may begin their return journey to their rearing grounds comparatively early relative to average migratory flows. That is particularly true where the species concerned regularly travels between migration and rearing grounds which are sometimes at a considerable distance from each other, crossing numerous borders and affecting different countries and where, within one species, there are different populations whose routes sometimes diverge and pass through separate areas.

9 In that judgment, the Court then states that Article 7(4) of the Directive is designed to secure a complete system of protection in the periods during which the survival of wild birds is particularly under threat.

10 Accordingly, it held that protection against hunting activities could not be confined to the majority of the birds of a given species, as determined by average migratory movements.

11 In this case, it should be observed that the findings contained in the abovementioned judgment as to the variability of migratory movements have been confirmed by the joint studies on the Court file, according to which the date of the commencement of pre-mating migration varies on the basis of several factors, namely the species of bird concerned, differences from year to year, geographical differences and the availability of feeding material.

12 In the light of the principles of interpretation set out in the judgment, it should be noted that, as the Advocate General has rightly emphasized, the method consisting in fixing the closing date for hunting by reference to the period during which migratory activity reaches its highest level cannot be considered to be compatible with Article 7(4) of the Directive. The same is true of those methods which take into account the moment at which a certain percentage of birds have started to

migrate and of those which consist in ascertaining the average date of the commencement of pre-mating migration.

- 13 Accordingly, the reply to the first question referred should be that pursuant to Article 7(4) of the Directive the closing date for the hunting of migratory birds and waterfowl must be fixed in accordance with a method which guarantees complete protection of those species during the period of pre-mating migration and that, as a result, methods whose object or effect is to allow a certain percentage of the birds of a species to escape such protection do not comply with that provision.

#### The second question

- 14 In its second question, the national court seeks guidance as to whether the national authorities are empowered by the Directive to fix closing dates for hunting which vary according to the species concerned.

- 15 It appears from the order for reference and the argument before the Court that there are two difficulties with such a method: first the disturbances caused by hunting to other species of bird for which hunting has already closed and secondly the risks of confusion between different species.

- 16 So far as concerns the first difficulty, it should be noted that any hunting activity is liable to disturb wildlife and that it may in many cases affect the state of conservation of the species concerned, independently of the extent to which it depletes numbers. The regular elimination of individuals keeps the hunted populations in a permanent state of alert which has disastrous consequences for numerous aspects of their living conditions.

- 17 It should be added that those consequences are particularly serious for groups of birds which, during the season of migration and wintering, tend to gather together in flocks and rest in areas which are often very confined or even enclosed. Disturbances caused by hunting force these animals to devote most of their energy to moving to other spots and to fleeing, to the detriment of time spent feeding and resting for the purpose of the migration. Those disturbances are reported to have an adverse impact on the level of energy of each individual and the mortality rate of all the populations concerned. The effect of disruption caused by hunting birds of other species is particularly significant for those species whose return migration takes place earlier.
- 18 With regard to the second difficulty, namely the risk that certain species for which hunting has already closed will be subject to indirect depletion owing to confusion with the species for which hunting is still open, it must be emphasized that the third sentence of Article 7(4) of the Directive is specifically intended to prevent those species from being exposed to the risk of depletion due to hunting during the period of pre-mating migration, requiring the Member States to take all necessary measures to prevent any hunting during that period.
- 19 It is no answer to the foregoing to argue that hunting is a recreational activity justifying an exception to Article 7(4).
- 20 It should be noted on this point that, as the Court stated in its judgments in Case 247/85 *Commission v Belgium* [1987] ECR 3029, at paragraph 8, and Case 262/85 *Commission v Italy* [1987] ECR 3073, at paragraph 8, it is clear from Article 2 of the Directive, which requires the Member States to take the requisite measures to maintain the population of all bird species at a level, or to adapt it to a level, which corresponds in particular to ecological, scientific and cultural requirements, while taking account of economic and recreational requirements, that the protection of birds must be balanced against other requirements, such as those of an economic nature. Therefore, although Article 2 does not constitute an autonomous derogation from the general system of protection, it none the less shows that the Directive takes into consideration, on the one hand, the necessity for effective protection of birds and, on the other hand, the requirements of public

health and safety, the economy, ecology, science, farming and recreation. In this case, that is true of the third sentence of Article 7(4) of the Directive which contains a clear and specific requirement, independent of the general requirement laid down in Article 2.

21 Fixing one single date for all the species concerned for the closing of hunting, which is equivalent to that fixed for the species which is the earliest to migrate, guarantees in principle that the objective laid down in the third sentence of Article 7(4) of the Directive is realized. However, it is possible that the Member State concerned may be able to adduce evidence, based on scientific and technical data relevant to each individual case, that staggering the closing dates for hunting does not impede the complete protection of the species of bird liable to be affected by such staggering.

22 Accordingly, the reply to be given to the second question is that the national authorities are not empowered by the Directive to fix closing dates for the hunting season which vary according to the species of bird, unless the Member State concerned can adduce evidence, based on scientific and technical data relevant to each individual case, that staggering the closing dates for hunting does not impede the complete protection of the species of bird liable to be affected by such staggering.

### The third question

23 In its third question, the national court essentially seeks guidance as to whether, first, the Directive permits the closing of hunting to be fixed at different dates in different parts of the territory of a Member State and, secondly, whether a Member State may delegate the implementation of the Directive to subordinate authorities.

24 It should be noted that the fact that the closing dates for hunting vary from region to another is in itself compatible with the third sentence of Article 7(4) of the Directive.

- 25 That provision requires only that the closing date for hunting be set in such a way as to make possible complete protection of migratory birds during their pre-mating migration. If it appears that the pre-mating migration begins at different times in different parts of the territory of a Member State, that Member State is permitted to set different closing dates for hunting.
- 26 Similarly, nothing prevents a Member State from conferring on subordinate authorities the power to fix the closing date for the hunting of migratory birds, provided that it guarantees, by legislation which is general in scope and not limited in time, that that date will be fixed in such a way as to ensure complete protection of the species of bird referred to in the Directive during pre-mating migration.
- 27 Accordingly, the reply to be given to the third question referred is that, on condition that complete protection of the species is guaranteed, the fixing of closing dates which vary between the different parts of the territory of a Member State is compatible with the Directive. If the power to fix the closing date for the hunting of migratory birds is delegated to subordinate authorities, the provisions which confer that power must ensure that the closing date can be fixed only in such a way as to make possible complete protection of the birds during pre-mating migration.

### Costs

- 28 The costs incurred by the French Government and the Commission of the European Communities, which have submitted observations to the Court, are not recoverable. Since these proceedings are, for the parties to the main proceedings, a step in the proceedings pending before the national court, the decision on costs is a matter for that court.

On those grounds,

THE COURT,

in answer to the questions referred to it by the Administrative Court of Nantes by judgments of 17 December 1992, hereby rules:

1. Pursuant to Article 7(4) of Council Directive 79/409/EEC of 2 April 1979 on the conservation of wild birds, the closing date for the hunting of migratory birds and waterfowl must be fixed in accordance with a method which guarantees complete protection of those species during the period of pre-mating migration. Methods whose object or effect is to allow a certain percentage of the birds of a species to escape such protection do not comply with that provision;
2. It is incompatible with the third sentence of Article 7(4) of the directive for a Member State to fix closing dates for the hunting season which vary according to the species of bird, unless the Member State concerned can adduce evidence, based on scientific and technical data relevant to each individual case, that staggering the closing dates for hunting does not impede the complete protection of the species of bird liable to be affected by such staggering;
3. On condition that complete protection of the species is guaranteed, the fixing of closing dates which vary between the different parts of the territory of a Member State is compatible with the directive. If the power to fix the closing date for the hunting of migratory birds is delegated to subordinate authorities, the provisions which confer that power must ensure that the closing date can be fixed only in such a way as to make possible complete protection of the birds during pre-mating migration.

Due

Mancini

Moitinho de Almeida

Díez de Velasco

Schockweiler

Grévisse

Zuleeg

Kapteyn

Murray

Delivered in open court in Luxembourg on 19 January 1994.

J.-G. Giraud

Registrar

O. Due

President