JUDGMENT OF THE COURT (Third Chamber)
8 February 1996 *

In Case C-149/94,

REFERENCE to the Court under Article 177 of the EC Treaty by the Tribunal de Grande Instance, Caen (France) for a preliminary ruling in the criminal proceedings pending before that court against

Didier Vergy

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

THE COURT (Third Chamber),

composed of: J.-P. Puissochet, President of the Chamber, J. C. Moitinho de Almeida and C. Gulmann (Rapporteur), Judges,

Advocate General: N. Fennelly,
Registrar: H. von Holstein, Assistant Registrar,

* Language of the case: French.

after considering the written observations submitted on behalf of:

— the French Government, by C. de Salins, Deputy Director in the Legal Affairs Department of the Ministry of Foreign Affairs, and J.-L. Falconi, Secretary of Foreign Affairs in that Department, acting as Agents,

— the Commission of the European Communities, by R. Wägenbaur, Principal Legal Adviser, and H. van der Woude, of its Legal Service, acting as Agents,

having regard to the Report for the Hearing,

after hearing the oral observations of Mr Vergy, represented by J. Delom de Mezerac, of the Caen Bar, of the French Government, represented by J.-M. Belorgey, Chargé de Mission in the Legal Affairs Department of the Ministry of Foreign Affairs, acting as Agent, and of the Commission, represented by R. Wägenbaur and H. van der Woude, assisted by S. Bouche, Administrator, as an expert, at the hearing on 14 September 1995,

after hearing the Opinion of the Advocate General at the sitting on 26 October 1995,

gives the following

Judgment

1 By decision of 22 March 1994, received at the Court on 6 June 1994, the Tribunal de Grande Instance (Regional Court), Caen, referred for a preliminary ruling under Article 177 of the EC Treaty two questions on the interpretation of Council

Directive 79/409/EEC of 2 April 1979 on the conservation of wild birds (OJ 1979 L 103, p. 1; hereinafter 'the Directive').

2 Those questions were raised in criminal proceedings against Mr Vergy, who is charged with having, in 1992, at Landes-sur-Ajonc (France), offered for sale and sold a live specimen of a species of bird protected under French legislation.

3 It is common ground that the specimen in question was born and reared in captivity.

4 Before the Tribunal de Grande Instance, Caen, Mr Vergy submitted that French legislation did not apply to such specimens and, if it did, it was contrary to the Directive.

5 Taking the view that the outcome of the criminal proceedings depended on the interpretation of the Directive, the national court decided to stay the proceedings and refer the following questions to the Court for a preliminary ruling:

'(1) Must Council Directive 79/409/EEC of 2 April 1979, and particularly Articles 1, 2, 5 and 6 thereof, be interpreted as permitting a Member State to enact rules restricting or prohibiting trade in specimens belonging to a species which is not listed in the annexes to that Directive?

(2) Would the answer to the first question be any different by reason of the fact that the specimens of the species in question were born and reared in captivity or that the natural habitat of the species in question did not occur in the country concerned?'

6 It should be noted *in limine* that the specimen concerned in the main proceedings is described in the order for reference as 'a black Canada goose'. However, that description does not correspond to any category recognized in avian taxonomy. Although it seems plausible that, as Mr Vergy submitted at the hearing, the specimen sold was a dwarf Canada goose, or *Branta canadensis minima*, the fact remains that its identification is one of the matters of fact falling within the competence of the national court.

Question 1

7 By its first question, the national court essentially asks whether the Directive precludes national legislation limiting or prohibiting trade in specimens belonging to a species of bird which is not listed in the annexes to that Directive.

8 Under Article 1(1) of the Directive, '[the] Directive relates to the conservation of all species of naturally occurring birds in the wild state in the European territory of the Member States to which the Treaty applies [and] covers the protection, management and control of these species and lays down rules for their exploitation'. Article 6, the provision primarily in point in the present case, requires Member States to impose a general prohibition on trade in the bird species referred to in Article 1, without prejudice, however, to the exceptions permitted in certain circumstances for the species listed in Annex III. Article 9 of the Directive provides for the possibility of derogating, for the reasons which it lists, from the provisions of Article 6.

9 It is clear from those provisions that, as the Court held in Case 247/85 *Commission* v *Belgium* [1987] ECR 3029, paragraphs 6 and 7, the Member States are under an obligation to impose a general prohibition on trade in all the species of naturally occurring birds in the wild state in the European territory of the Member

States to which the Treaty applies, subject to the exceptions permitted in certain circumstances for the species listed in Annex III, and to the option to derogate provided for by Article 9.

10 It should therefore be stated in reply to the first question that the Directive requires the Member States to prohibit trade in specimens belonging to a species of bird which is not listed in the annexes thereto — in so far as the species concerned is a species of naturally occurring birds in the wild state in the European territory of the Member States to which the Treaty applies — subject to the option to derogate provided for by Article 9.

Question 2

11 By its second question, the national court asks, first, whether the Directive is also applicable to specimens of bird born and reared in captivity and, secondly, whether it requires a Member State to ensure the protection of a species of naturally occurring birds in the wild state in the European territory of the Member States to which the Treaty applies, even when the natural habitat of the species in question does not occur in the Member State concerned.

The first part of the question

12 As regards specimens born and reared in captivity, the Commission, the French Government and Mr Vergy essentially argue that the aim of the Directive is to protect bird populations present in their natural environment and that the extension of the protective regime to specimens of wild birds born and reared in captivity is not consonant with that environmental objective.

13 Those arguments must be upheld. As the Advocate General has pointed out in paragraph 31 of his Opinion, to extend the protective regime in that way would serve neither the need for the conservation of the natural environment, as described in the second recital in the preamble to the Directive, nor the objective of long-term protection and management of natural resources as an integral part of the heritage of the peoples of Europe, referred to in the eighth recital.

14 In so far as it may be relevant, it should be added that, since the Community legislature has taken no action with regard to trade in specimens of species of wild birds which have been born and reared in captivity, the Member States remain competent to regulate that trade, subject to Article 30 et seq. of the EC Treaty concerning products imported from other Member States.

15 It should therefore be stated in reply to the first part of the second question referred by the national court that the Directive is not applicable to specimens of birds born and reared in captivity.

The second part of the question

16 As regards the second part of the second question, the Commission, the French Government and Mr Vergy maintain that each Member State is required to extend the protection prescribed by the Directive to species whose natural or usual habitat does not occur in the territory of that State, but which live in the wild in the European territory of another Member State.

17 In this respect, it should be pointed out that, as the Court stated in its judgment in Case 252/85 *Commission* v *France* [1988] ECR 2243, paragraph 15, the importance of complete and effective protection of wild birds throughout the Community,

irrespective of the areas they stay in or pass through, causes any national legislation which delimits the protection of wild birds by reference to the concept of national heritage to be incompatible with the Directive.

18 Consequently, it should be stated in reply to the second part of the second question that the Directive requires each Member State to ensure the protection of a species of bird naturally occurring in the wild state in the European territory of the Member States to which the Treaty applies, even if the natural habitat of the species in question does not occur in the territory of the Member State concerned.

Costs

19 The costs incurred by the French Government and the Commission, 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 (Third Chamber)

in answer to the questions referred to it by the Tribunal de Grande Instance, Caen, by decision of 22 March 1994, hereby rules:

1. Council Directive 79/409/EEC of 2 April 1979 on the conservation of wild birds requires the Member States to prohibit trade in specimens belonging to

a species of bird which is not listed in the annexes thereto — in so far as the species concerned is a species of naturally occurring birds in the wild state in the European territory of the Member States to which the Treaty applies — subject to the option to derogate provided for by Article 9.

2. Directive 79/409/EEC is not applicable to specimens of birds born and reared in captivity.

3. Directive 79/409/EEC requires each Member State to ensure the protection of a species of bird naturally occurring in the wild state in the European territory of the Member States to which the Treaty applies, even if the natural habitat of the species in question does not occur in the territory of the Member State concerned.

Puissochet Moitinho de Almeida Gulmann

Delivered in open court in Luxembourg on 8 February 1996.

R. Grass J.-P. Puissochet

Registrar President of the Third Chamber