JUDGMENT OF THE COURT (Fifth Chamber)

25 November 1999 *

In Case C-96/98,

Commission of the European Communities, represented by P. Stancanelli, of its Legal Service, and O. Couvert-Castéra, a national civil servant on secondment to the Commission's Legal Service, acting as Agents, with an address for service in Luxembourg at the office of C. Gómez de la Cruz, also of its Legal Service, Wagner Centre, Kirchberg,

applicant,

v

French Republic, represented by K. Rispal-Bellanger, Deputy Director of the Legal Affairs Directorate of the Ministry of Foreign Affairs, and R. Nadal, Assistant Foreign Affairs Secretary in that Directorate, acting as Agents, with an address for service in Luxembourg at the French Embassy, 8B Boulevard Joseph II,

defendant,

APPLICATION for a declaration that, by failing to adopt the special measures necessary for the conservation of bird habitats in the Marais Poitevin and by

* Language of the case: French.

failing to take the appropriate steps to avoid deterioration of those habitats, the French Republic has failed to fulfil its obligations under Article 4 of Council Directive 79/409/EEC of 2 April 1979 on the conservation of wild birds (OJ 1979 L 103, p. 1),

THE COURT (Fifth Chamber),

composed of: L. Sevón, President of the First Chamber, acting for the President of the Fifth Chamber, C. Gulmann (Rapporteur), J.-P. Puissochet, P. Jann and M. Wathelet, Judges,

Advocate General: N. Fennelly,
Registrar: D. Louterman-Hubeau, Principal Administrator,

having regard to the Report for the Hearing,

after hearing oral argument from the parties at the hearing on 10 June 1999,

after hearing the Opinion of the Advocate General at the sitting on 8 July 1999,

gives the following

Judgment

1 By application lodged at the Court Registry on 3 April 1998, the Commission of the European Communities brought an action under Article 169 of the EC Treaty (now Article 226 EC) in which it sought a declaration that, by failing to adopt the special measures necessary for the conservation of bird habitats in the Marais Poitevin ('the Poitevin Marsh') and by failing to take the appropriate steps to avoid deterioration of those habitats, the French Republic had failed to fulfil its obligations under Article 4 of Council Directive 79/409/EEC of 2 April 1979 on the conservation of wild birds (OJ 1979 L 103, p. 1) ('the Birds Directive').

2 Article 4 of the Birds Directive provides as follows:

'1. The species mentioned in Annex I shall be the subject of special conservation measures concerning their habitat in order to ensure their survival and reproduction in their area of distribution.

In this connection, account shall be taken of:

(a) species in danger of extinction;

(b) species vulnerable to specific changes in their habitat;

(c) species considered rare because of small populations or restricted local distribution;

(d) other species requiring particular attention for reasons of the specific nature of their habitat.

Trends and variations in population levels shall be taken into account as a background for evaluations.

Member States shall classify in particular the most suitable territories in number and size as special protection areas for the conservation of these species, taking into account their protection requirements in the geographical sea and land area where this Directive applies.

2. Member States shall take similar measures for regularly occurring migratory species not listed in Annex I, bearing in mind their need for protection in the geographical sea and land area where this Directive applies, as regards their breeding, moulting and wintering areas and staging posts along their migration routes. To this end, Member States shall pay particular attention to the protection of wetlands and particularly to wetlands of international importance.

3. ...

4. In respect of the protection areas referred to in paragraphs 1 and 2 above, Member States shall take appropriate steps to avoid pollution or deterioration of habitats or any disturbances affecting the birds, in so far as these would be

significant having regard to the objectives of this Article. Outside these protection areas, Member States shall also strive to avoid pollution or deterioration of habitats.'

3 Article 7 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) ('the Habitats Directive') provides that the obligations arising under Article 6(2), (3) and (4) thereof 'shall replace any obligations arising under the first sentence of Article 4(4) of Directive 79/409/EEC in respect of areas classified pursuant to Article 4(1) or similarly recognised under Article 4(2) thereof, as from the date of implementation of this Directive or the date of classification or recognition by a Member State under Directive 79/409/EEC, where the latter date is later'.

4 Article 6(2), (3) and (4) of the Habitats Directive provides as follows:

'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.'

5 Member States were required under Article 23(1) of the Habitats Directive to bring into force the laws, regulations and administrative provisions necessary to comply with the Directive within two years of its notification. Since the Directive was notified in June 1992, that period expired in June 1994.

6 On 23 December 1992, the Commission sent to the French Government a letter of formal notice in which it raised a complaint of failure to comply with, *inter alia*, Article 4 of the Birds Directive in regard to the Poitevin Marsh. In that letter the Commission expressed the view, in particular, that the 4 500 or so hectares classified in the Poitevin Marsh as a special protection area ('SPA') were insufficient to satisfy ornithological requirements and that the policy of hydraulic

and agricultural management pursued in the Poitevin Marsh had resulted in and continued to result in deterioration of habitats. The Commission also pointed out that the French authorities had failed to adopt the special protection measures which would make it possible to ensure the survival and reproduction of the protected species.

7 In its reply of 27 September 1993, the French Government acknowledged the ornithological importance of the Poitevin Marsh. It pointed out that the area covered by SPAs in that region had been increased to 28 693 hectares and also stated that a new extension was planned. It acknowledged a number of instances of deterioration in the Poitevin Marsh to which the Commission had referred in its letter of formal notice. It pointed out, however, that measures had been taken in the *département* of Charente-Maritime to avoid pollution and deterioration of habitats and disturbance of birds, and that other measures were designed to preserve the Poitevin Marsh.

8 By an amending letter of 7 December 1993, the French Government informed the Commission that the total area of the SPAs in the Poitevin Marsh was in fact 26 250 hectares.

9 By letter of 28 June 1994, the French Ministry of the Environment also forwarded to the Commission an amended map concerning the demarcation of and the area covered by the 'Marais Poitevin intérieur' SPA, together with a letter dated 19 April 1994 by which the Ministry of the Environment informed the Prefect of the Pays de Loire Region that the land acquired for the A 83 motorway was to be considered as excluded from that SPA.

10 On 28 November 1995 the Commission issued a reasoned opinion in which it found that, by failing to adopt either the special measures necessary to conserve bird habitats in the Poitevin Marsh or the measures appropriate to prevent deterioration of those habitats, the French Republic had failed to fulfil its obligations under Article 4 of the Birds Directive. The Commission stated that

the 26 250 hectares classified as SPAs represented only one-third of the area of the Poitevin Marsh which was of ornithological interest and that the protection regime for the SPAs had to satisfy mandatory requirements of bird conservation and could not be changed in favour of projects for infrastructures, as appeared to be the case in the Marsh. The Commission also pointed out that the entire ecosystem of the Poitevin Marsh had, for several years, been under threat from systematic drainage and intensive cultivation, without appropriate measures having been adopted to prevent deterioration of habitats and disturbance of the species of wild birds intended to benefit from protection of the area. The Commission also pointed out that the proposed route of the A 83 motorway across the Poitevin Marsh was incompatible with the Community provisions.

11 By letter of 11 June 1996, the French Government pointed out in particular that a further 3 540 hectares in the *département* of Charente-Maritime had been classified as an SPA and that, because of the drainage and cultivation of the meadows of the Poitevin Marsh, it was no longer possible, except in marginal respects, to designate new areas under existing environmental circumstances. The French Government also disputed the finding that it had not adopted appropriate measures to conserve the habitats of protected species. Finally, it stressed that the proposed (north) route of the A 83 motorway avoided all contact with an SPA. The problem concerning the network of the A 83 motorway was, it claimed, the result of a cartographical oversight, because the declaration that this infrastructure was in the public interest predated the designation of the SPA.

Substance

12 The Commission complains, first, that the French Republic failed to classify a sufficiently large area in the Poitevin Marsh as SPAs, second, that it failed to confer a sufficient legal status on the SPAs classified, third, that it failed to take the appropriate steps to avoid deterioration of the Poitevin Marsh, and, fourth,

that it declassified part of a classified SPA in order to allow construction of a section of motorway.

The extent of the SPAs

13 The Commission points out that the Poitevin Marsh, which consists of various natural environments favourable to ensuring the conservation of many bird species listed in Annex I to the Birds Directive as well as a significant number of migratory species, is an area of outstanding ornithological interest at both Community and international level. The classification of 26 250 hectares of the Poitevin Marsh as SPAs fails, in the Commission's submission, to meet the French Republic's obligations under Article 4(1) and (2) of the Birds Directive. 77 900 hectares of the Poitevin Marsh were recognised by the French authorities in 1994 as constituting an important area for bird conservation (*zone importante pour la conservation des oiseaux*, hereinafter 'ZICO'). In addition, 57 830 hectares of the Poitevin Marsh were included in the European ornithological inventory entitled 'Important Bird Areas in Europe' published in 1989 ('the IBA'). According to the Commission, the entire ZICO of the Poitevin Marsh or, at the very least, the entire area featuring in the IBA inventory should be classified as an SPA.

14 The French Government contends that, in April 1996, the total area of the sites in the Poitevin Marsh classified as SPAs was 33 742 hectares. It maintains that such a classification already satisfied in large measure the Community obligations devolving on the French Republic. The French Government does not, however, deny that it is desirable to classify more of the territory of the Poitevin Marsh as SPAs. It points out in this regard that it intends in the near future to notify the further classification of almost 15 000 hectares considered relevant both in the light of ornithological criteria and at the operational level. The French Government states that a study by the Bird Protection League dated November 1998 shows that the SPAs in the Poitevin Marsh which have already been classified and those areas which are to be classified shortly will, by reason of their ornithological interest, make it possible to preserve in its entirety the reproduc-

tion habitat of the wild birds present in the Poitevin Marsh. The French Republic is thus in a position to meet in full its Community obligations under the Birds Directive.

15 It should first be observed that it is common ground that the Poitevin Marsh is a natural area of very great ornithological value for many bird species covered by Article 4(1) and (2) of the Birds Directive and that the French Government does not, in substance, deny that the area of land in the Poitevin Marsh classified as SPAs is inadequate in the light of Article 4 of the Birds Directive.

16 Accordingly, without its being necessary to address the question as to the area over which the SPAs in the Poitevin Marsh ought to extend in order for the obligations under the Birds Directive to be satisfied, it must be held that the French Republic failed, within the prescribed period, to classify as SPAs, within the meaning of Article 4(1) and (2) of the Birds Directive, a sufficient area in the Poitevin Marsh. The Commission's application must for that reason be upheld on that point.

The legal status of the protection of the SPAs already classified

17 The Commission submits that those areas of the Poitevin Marsh which the French Republic has classified as SPAs do not have a legal status such as to guarantee protection of habitats and the survival and reproduction of the protected species. In particular, the agri-environmental measures and Law No 97-3 of 3 January 1992 on Water (JORF (Official Journal of the French Republic), 4 January 1992, p. 187, hereinafter 'the Law on Water'), to which the French Government refers, do not make it possible to ensure the effective protection of bird life required by Article 4 of the Birds Directive. So far as the other measures mentioned by the

French Government are concerned, these, the Commission argues, were adopted late.

18 The French Government contends that the agri-environmental measures are in fact contracts concluded between the State and farmers which are designed to develop environmentally-conscious farming methods, in particular by limiting the use of nitrogen-based fertilisers and the frequency of mowings and reapings. These contracts contribute to the maintenance of extensive farming and make it possible to avoid the ploughing-up of wet meadows and drainage and hydraulic modifications, thus ensuring the maintenance of wetlands and natural bird habitats. The French Government also submits that, to the extent to which it protects wetlands, the Law on Water contributes directly to the conservation of wild birds. Finally, it points out that the three prefectorial decrees on biotope protection concerning the Marais doux de Charente-Maritime, the Terrées du Pain Béni and the Pointe de l'Aiguillon were adopted on 7 October 1997, 29 December 1997 and 12 February 1998 respectively, and that 2 300 hectares in the Baie de l'Aiguillon were classified as a nature reserve in July 1996.

19 In this connection, it is settled case-law that the question whether a Member State has failed to fulfil its obligations must be determined by reference to the situation prevailing in that State at the end of the period laid down in the reasoned opinion (see, in particular, Case C-60/96 *Commission* v *France* [1997] ECR I-3827, paragraph 15, and Case C-166/97 *Commission* v *France* [1999] ECR I-1719, paragraph 18).

20 The three prefectorial decrees on biotope protection and the creation of the nature reserve in the Baie de l'Aiguillon mentioned in paragraph 18 of the present judgment were adopted after the two-month period laid down in the reasoned opinion of 28 November 1995 had expired.

21 Those measures should therefore not be taken into consideration for the purposes of the present infringement proceedings.

22 With regard to the other measures which, according to the French Government, are intended to provide the SPAs with a sufficient protection regime, it must be borne in mind that, according to the Court's case-law, Article 4(1) and (2) of the Birds Directive requires the Member States to provide SPAs with a legal protection regime that is capable, in particular, of ensuring both the survival and reproduction of the bird species listed in Annex I to the Directive and the breeding, moulting and wintering of migratory species not listed in Annex I which are, nevertheless, regular visitors (see, to this effect, Case C-355/90 *Commission* v *Spain* [1993] ECR I-4221, paragraphs 28 to 32, and Case C-166/97 *Commission* v *France*, cited above, paragraph 21).

23 As Article 2 of the Law on Water makes clear, that legislation is intended to achieve a balanced management of water resources, designed to ensure, in particular, the conservation of aquatic ecosystems, wet sites and wetlands, protection against all pollution and the restoration of the quality of surface and underground water and marine territorial waters, proper respect for water as an economic resource, in such a way as to meet or reconcile requirements relating to health, public health, public safety, the provision of public drinking water, the preservation and free flow of water, flood protection, protection of agriculture, fisheries and sea-farming, fresh-water fishing, industry, energy protection, transport, tourism, recreation and water sports, as well as all other lawfully-pursued human activities.

24 Under Article 10(II) of the Law on Water, installations, works and activities involving the removal of surface or underground water, whether replaced or not, alterations to the level or method of disposal of water or overflows, waste outflows, or direct or indirect waste water, continuous or occasional, even non-polluting, are defined in the nomenclature drawn up by decree of the Conseil d'État following consultation with the National Water Board, and subject to authorisation or declaration depending on the danger which they pose and the serious nature of the effects which they may have on water resources and aquatic ecosystems.

25 Even if it were to be assumed that the SPAs classified consist entirely of wetlands and that the Law on Water enables water resources in these areas to be preserved

in an efficient manner, the fact still remains that, to the extent to which it includes only provisions relating to water management, that Law is not in itself such as to ensure sufficient protection for the purposes of Article 4(1) and (2) of the Birds Directive.

26 So far as the agri-environmental measures are concerned, it must be held, as the Commission has argued and as the Advocate General has pointed out in paragraph 26 of his Opinion, that these are voluntary and purely hortatory in nature in relation to farmers working holdings in the Poitevin Marsh.

27 Those measures cannot therefore, in any event, be capable of supplementing effectively the protection regime for the classified SPAs.

28 It must for that reason be held that, by failing to adopt measures conferring a sufficient legal protection regime on the SPAs classified in the Poitevin Marsh, the French Republic has failed to fulfil its obligations under Article 4(1) and (2) of the Birds Directive. The Commission's application must therefore also be upheld on this point.

The deterioration of the Poitevin Marsh

29 The Commission maintains that the natural habitats of wild birds have suffered deterioration throughout the Poitevin Marsh. It points out in this connection that the natural meadows, which form the most important habitat for the conservation of wild birds in the Poitevin Marsh and which covered an area of 55 450 hectares in 1973, had an area of some 26 750 hectares in 1990, with approximately 28 700 hectares being placed under cultivation during the

intervening period. With a view to facilitating agricultural activity, drainage was carried out, wetlands were reclaimed and ditches filled in.

30 According to the Commission, one of the important direct consequences of the reduction of wetlands has been the appreciable fall in certain bird populations such as wintering ducks and black-tailed godwits in the SPA of the Baie de l'Aiguillon.

31 The Commission points out that it had found, in its reasoned opinion, that the French Republic had not adopted the measures necessary to prevent deterioration of the Poitevin Marsh in regard to both the areas already classified as SPAs and those which were to be so classified, thereby failing to fulfil its obligations under Article 4 of the Birds Directive.

32 According to the French Government, the preservation of the Poitevin Marsh is directly linked to the conditions under which the wetlands are used and, consequently, to an agricultural context which has, over the last number of years, been particularly marked by the reduction in the extensive breeding of cattle, which is best suited to making proper use of such areas. The French Government thus acknowledges that the protection regime for the area has not always been effective. However, it argues that the responsibility for the reduction in the wetlands rests primarily with the common agricultural policy ('CAP') and not solely with the French authorities.

33 Agri-environmental aid, the French Government submits, requires a considerable financial effort on the part of the State, whereas even aid for intensive agriculture, aid which is often more substantial, is financed entirely by the Community budget under the CAP. This difference in manner of implementation between the European policies on intensive agriculture and those supporting environmentally friendly agriculture lies, in the French Government's submission, behind the difficulties in conserving the Poitevin Marsh. Thus, the Community aid package

for agriculture, which does not favour breeders, runs contrary to the policy of safeguarding wetlands.

34 The French Government does, however, point out that, while wetlands were frequently placed under cultivation up to 1990, this trend practically ceased at the beginning of the 1990s, owing in particular to the implementation of agri-environmental measures.

35 It should first be pointed out in this regard that the first sentence of Article 4(4) of the Birds Directive, in both its original version and as amended by the Habitats Directive, requires Member States to take appropriate steps to avoid, *inter alia*, deterioration of habitats in the SPAs classified pursuant to Article 4(1).

36 It is settled case-law that, in proceedings under Article 169 of the Treaty for failure to fulfil an obligation, it is incumbent on the Commission to prove that the obligation has not been fulfilled and to place before the Court the information necessary to enable it to determine whether that is so (see, *inter alia*, Case 96/81 *Commission* v *Netherlands* [1982] ECR 1791, paragraph 6, and Case C-166/97 *Commission* v *France*, cited above, paragraph 40).

37 The Court must therefore consider whether there is sufficient evidence before it for a finding that the French Republic has failed, contrary to the first sentence of Article 4(4) of the Birds Directive, to adopt the measures necessary to avoid deterioration of those areas of the Poitevin Marsh already classified as SPAs.

38 It is common ground that, at the expiry of the period laid down in the reasoned opinion, the French authorities had classified the Baie de l'Aiguillon, the Pointe d'Arçay and the Marais Poitevin intérieur as SPAs.

39 It is clear from an examination of, *inter alia*, the French Government's response of 11 June 1996 to the reasoned opinion, the reasoned opinion itself, and the maps placed on the case-file that the nature reserve of Saint-Denis du Payré and the common land of Poiré-sur-Velluire, which form part of the Marais Poitevin intérieur SPA, are at present drying out. So far as the SPAs of the Baie de l'Aiguillon and the Pointe d'Arçay are concerned, the documents before the Court show that marine-farming construction and embankment works have been extended in those areas, thereby disturbing bird life. Furthermore, the study by the Bird Protection League mentioned in paragraph 14 of this judgment indicates that the average population of wintering ducks in the Baie de l'Aiguillon and the Pointe d'Arçay has fallen from 67 845 for the period 1977-1986 to 16 551 for the period 1987-1996.

40 It follows that the French Republic has failed in its obligation to take appropriate measures to avoid deterioration of the areas in the Poitevin Marsh classified as SPAs, in breach of the first sentence of Article 4(4) of the Birds Directive. As for the French Government's argument that Community aid measures for agriculture are disadvantageous to agriculture compatible with the conservation requirements laid down by the Birds Directive, it should be pointed out that, even assuming that this were the case and a certain lack of consistency between the various Community policies were thus shown to exist, this still could not authorise a Member State to avoid its obligations under that directive, in particular under the first sentence of Article 4(4) thereof.

41 Second, it must be pointed out that, according to the Court's case-law, the first sentence of Article 4(4) of the Birds Directive requires Member States to take appropriate steps to avoid, *inter alia*, deterioration of habitats in the areas which are most suitable for the conservation of wild birds, even where the areas in question have not been classified as SPAs, provided that they should have been so classified (see, to this effect, Case C-355/90 *Commission* v *Spain*, cited above, paragraph 22, and Case C-166/97 *Commission* v *France*, cited above, paragraph 38).

42 It follows, with regard to those areas which have not been classified as SPAs, that any infringement of the first sentence of Article 4(4) of the Birds Directive presupposes that the areas in question are among the most suitable territories in

number and size for the conservation of protected species, within the meaning of the fourth subparagraph of Article 4(1) (see Case C-166/97 *Commission* v *France*, cited above, paragraph 39), and that these areas have suffered deterioration.

43 It is thus necessary to consider whether the Court has sufficient evidence before it to find that the French Republic has failed, contrary to the first sentence of Article 4(4) of the Birds Directive, to adopt the measures necessary to avoid deterioration of those areas in the Poitevin Marsh which should have been classified as SPAs.

44 It must be pointed out that there is nothing on the case-file to establish that all of the areas in the Poitevin Marsh which should have been classified as SPAs have suffered deterioration within the meaning of the first sentence of Article 4(4) of the Birds Directive. In particular, the fact that approximately 28 700 hectares of wetlands in the Poitevin Marsh were placed under cultivation between 1973 and 1990 does not constitute conclusive evidence in this regard. There is nothing to suggest, in any event, that these wetlands include all the areas in the Poitevin Marsh which should have been classified as SPAs. Furthermore, it appears that an unspecified portion of these wetlands was placed under cultivation before the Birds Directive entered into force.

45 It is clear, however, from an examination of, in particular, the French Government's reply of 11 June 1996 to the reasoned opinion, the reasoned opinion itself, the Commission's letter of formal notice, the French Government's reply of 27 September 1993, and the maps placed on the case-file that a number of areas suitable for classification as SPAs, such as, in particular, the common lands of Vouillé, Vix and Ille d'Elle, had been destroyed by the time the two-month period laid down in the reasoned opinion expired.

46 It follows that the French Republic did not take the measures necessary to avoid deterioration of some, but not all, areas in the Poitevin Marsh which should have

been classified as SPAs, and thereby failed to meet its obligations under the first sentence of Article 4(4) of the Birds Directive.

47 This plea in law must accordingly be upheld to the extent indicated in the preceding paragraph.

The declassification of part of the Marais Poitevin intérieur SPA

48 The Commission notes that the French authorities approved the project for the motorway link between Sainte-Hermine and Oulmes by decree of 19 October 1993. This project, the Commission claims, led the French authorities, by decision of 19 April 1994 notified to the Commission on 28 June 1994, to declassify a portion of the Marais Poitevin intérieur SPA, corresponding to a 300-metre wide strip at the point where the motorway was to cut across the SPA at Auzay.

49 According to the Commission, this declassification of the SPA in question not only results in a reduction in its surface area but will also disturb birds in the region by reason of the completion of works and the isolation of the remainder of the SPA east of the project towards Fontenay-le-Comte, which will be cut off entirely from the SPA by the motorway.

50 That declassification, the Commission argues, therefore amounts to a failure to fulfil the obligations which applied at the time and which follow from Article 4(4) of the Birds Directive, as interpreted by the Court in its judgments

in Case C-57/89 *Commission* v *Germany* [1991] ECR I-883, paragraphs 20 to 22, and in Case C-355/90 *Commission* v *Spain*, cited above, paragraph 35.

51 In reply, the French Government states that the Sainte-Hermine to Oulmes motorway link did not involve declassification of the Marais Poitevin intérieur SPA. The classification of that area as an SPA dates from November 1993 and is thus subsequent both to the studies conducted for realising that motorway project and to the decree declaring the works necessary to complete it to be of public utility and urgent. The route finally chosen avoided all areas which the French Government intended to classify as SPAs.

52 The French Government explains that, as the result of a mistake, a 300-metre wide area was included in the Marais Poitevin intérieur SPA when it was notified to the Commission in November 1993. The French authorities notified the Commission of this mistake as soon as they became aware of it. Thus, what is involved here is not a declassification but rather the correction of a mistake in notified information, since the area in question had not been selected for classification as an SPA.

53 It should be noted in this regard that, for a complaint of infringement of Article 4(4) of the Birds Directive by reason of the declassification, through a reduction in size, of a portion of an area which has been classified as an SPA to be upheld, it is necessary, in any event, for the area in question to have been part of the classified SPA.

54 In the present case, it is, first of all, common ground that the decree declaring construction work on the Sainte-Hermine to Oulmes section to be of public utility and urgent and detailing the compatibility of the land use in the municipalities affected was adopted on 19 October 1993 and was preceded by public inquiries and studies, including an impact assessment pursuant to Council Directive 85/337/EEC of 27 June 1985 on the assessment of the effects of certain public and private projects on the environment (OJ 1985 L 175, p. 40). Second, the

statement by the French Government that the Marais Poitevin intérieur SPA was designated in November 1993 is confirmed by the Commission's reasoned opinion.

55 In those circumstances, it is evident, as the French Government submits, that the strip of land earmarked for construction of the motorway was mistakenly referred to as forming part of the Marais Poitevin intérieur SPA at the time when that SPA was notified to the Commission and that the declaration by the Minister for the Environment in his letter of 19 April 1994 to the Prefect of the Pays de Loire Region, to the effect that 'the land acquired for the motorway ... must ... be regarded as being excluded from the SPA', did not involve a reduction in the surface area of the SPA classified but simply the rectification of an error in the particulars forwarded to the Commission.

56 It follows that the complaint alleging infringement of Article 4(4) of the Birds Directive by reason of the declassification of part of the Marais Poitevin intérieur SPA through a reduction in its surface area must be rejected.

57 In light of the foregoing, it must be held that, by failing, within the prescribed period, to classify a sufficient area in the Poitevin Marsh as SPAs, by failing to adopt measures conferring a sufficient legal status on the SPAs classified in the Poitevin Marsh, and by failing to adopt appropriate measures to avoid deterioration of the sites in the Poitevin Marsh classified as SPAs and of certain of those which should have been so classified, the French Republic has failed to fulfil its obligations under Article 4 of the Birds Directive.

58 The remainder of the application must be dismissed.

Costs

59 Under Article 69(2) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs. Since the French Republic has been unsuccessful in all essential respects, it must be ordered to pay the costs.

On those grounds,

THE COURT (Fifth Chamber),

hereby:

1. **Declares that, by failing, within the prescribed period, to classify a sufficient area in the Poitevin Marsh as special protection areas, by failing to adopt measures conferring a sufficient legal status on the special protection areas classified in the Poitevin Marsh, and by failing to adopt appropriate measures to avoid deterioration of the sites in the Poitevin Marsh classified as special protection areas and of certain of those which should have been so classified, the French Republic has failed to fulfil its obligations under Article 4 of Council Directive 79/409/EEC of 2 April 1979 on the conservation of wild birds;**

2. **Dismisses the remainder of the application;**

3. **Orders the French Republic to pay the costs.**

Sevón Gulmann Puissochet

Jann Wathelet

Delivered in open court in Luxembourg on 25 November 1999.

R. Grass D.A.O. Edward

Registrar President of the Fifth Chamber