JUDGMENT OF THE COURT

7 November 2000 *

In Case C-371/98,

REFERENCE to the Court under Article 177 of the EC Treaty (now Article 234 EC) by the Queen's Bench Division (Divisional Court) of the High Court of Justice of England and Wales for a preliminary ruling in the proceedings pending before that court between

The Queen

and

Secretary of State for the Environment, Transport and the Regions,

ex parte First Corporate Shipping Ltd,

interveners:

World Wide Fund for Nature UK (WWF)

and

Avon Wildlife Trust,

* Language of the case: English.

on the interpretation of Articles 2(3) and 4(1) 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 COURT,

composed of: G.C. Rodríguez Iglesias, President, C. Gulmann (Rapporteur), M. Wathelet, V. Skouris (Presidents of Chambers), D.A.O. Edward, J.-P. Puissochet, P. Jann, L. Sevón and R. Schintgen, Judges,

Advocate General: P. Léger,
Registrar: H.A. Rühl, Principal Administrator,

after considering the written observations submitted on behalf of:

— First Corporate Shipping Ltd, by G. Barling QC, M. Shaw and M. Hoskins, Barristers, instructed by Arnheim Tite & Lewis, Solicitors,

— World Wide Fund for Nature UK (WWF) and Avon Wildlife Trust, by P. Sands and J.H. Marks, Barristers, instructed by Leigh Day & Co., Solicitors,

— the United Kingdom Government, by J.E. Collins, Assistant Treasury Solicitor, acting as Agent, and Richard Drabble QC,

— the Finnish Government, by H. Rotkirch and T. Pynnä, Valtionasiamiehet, acting as Agents,

— the Commission of the European Communities, by R.B. Wainwright, Principal Legal Adviser, and P. Stancanelli, of its Legal Service, acting as Agents,

having regard to the Report for the Hearing,

after hearing the oral observations of First Corporate Shipping Ltd, World Wide Fund for Nature UK (WWF) and Avon Wildlife Trust, the United Kingdom Government, the Finnish Government and the Commission at the hearing on 7 December 1999,

after hearing the Opinion of the Advocate General at the sitting on 7 March 2000,

gives the following

Judgment

1 By order of 21 July 1998, received at the Court on 16 October 1998, the Queen's Bench Division (Divisional Court) of the High Court of Justice of England and Wales referred to the Court for a preliminary ruling under Article 177 of the EC Treaty (now Article 234 EC) a question on the interpretation of Articles 2(3) and

4(1) 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, hereinafter 'the Habitats Directive').

2 The question arose in proceedings brought by First Corporate Shipping Ltd (hereinafter 'FCS') for judicial review of the act by which the Secretary of State for the Environment, Transport and the Regions indicated that he was minded to propose the Severn Estuary to the Commission of the European Communities as a site eligible for designation as a special area of conservation (SAC) under Article 4(1) of the Habitats Directive.

The Community legislation

3 According to Article 2 of the Habitats Directive:

'1. The aim of this Directive shall be to contribute towards ensuring biodiversity 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.'

4 Article 4 of the Habitats Directive states:

'1. On the basis of the criteria set out in Annex III (Stage 1) and relevant scientific information, each Member State shall propose a list of sites indicating which natural habitat types in Annex I and which species in Annex II that are native to its territory the sites host. For animal species ranging over wide areas these sites shall correspond to the places within the natural range of such species which present the physical or biological factors essential to their life and reproduction. For aquatic species which range over wide areas, such sites will be proposed only where there is a clearly identifiable area representing the physical and biological factors essential to their life and reproduction. Where appropriate, Member States shall propose adaptation of the list in the light of the results of the surveillance referred to in Article 11.

The list shall be transmitted to the Commission, within three years of the notification of this Directive, together with information on each site. That information shall include a map of the site, its name, location, extent and the data resulting from application of the criteria specified in Annex III (Stage 1) provided in a format established by the Commission in accordance with the procedure laid down in Article 21.

2. On the basis of the criteria set out in Annex III (Stage 2) and in the framework both of each of the five biogeographical regions referred to in Article 1(c)(iii) and of the whole of the territory referred to in Article 2(1), the Commission shall establish, in agreement with each Member State, a draft list of sites of

Community importance drawn from the Member States' lists identifying those which host one or more priority natural habitat types or priority species.

Member States whose sites hosting one or more priority natural habitat types and priority species represent more than 5% of their national territory may, in agreement with the Commission, request that the criteria listed in Annex III (Stage 2) be applied more flexibly in selecting all the sites of Community importance in their territory.

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.

3. The list referred to in paragraph 2 shall be established within six years of the notification of this Directive.

4. Once a site of Community importance has been adopted in accordance with the procedure laid down in paragraph 2, the Member State concerned shall designate that site as a special area of conservation as soon as possible and within six years at most, establishing priorities in the light of the importance of the sites for the maintenance or restoration, at a favourable conservation status, of a natural habitat type in Annex I or a species in Annex II and for the coherence of Natura 2000, and in the light of the threats of degradation or destruction to which those sites are exposed.

5. As soon as a site is placed on the list referred to in the third subparagraph of paragraph 2 it shall be subject to Article 6(2), (3) and (4).'

5 Annex III to the Habitats Directive reads as follows:

'Criteria for selecting sites eligible for identification as sites of Community importance and designation as special areas of conservation

Stage 1: Assessment at national level of the relative importance of sites for each natural habitat type in Annex I and each species in Annex II (including priority natural habitat types and priority species)

A. *Site assessment criteria for a given natural habitat type in Annex 1*

(a) Degree of representativity of the natural habitat type on the site.

(b) Area of the site covered by the natural habitat type in relation to the total area covered by that natural habitat type within national territory.

(c) Degree of conservation of the structure and functions of the natural habitat type concerned and restoration possibilities.

(d) Global assessment of the value of the site for conservation of the natural habitat type concerned.

B. *Site assessment criteria for a given species in Annex II*

(a) Size and density of the population of the species present on the site in relation to the populations present within national territory.

(b) Degree of conservation of the features of the habitat which are important for the species concerned and restoration possibilities.

(c) Degree of isolation of the population present on the site in relation to the natural range of the species.

(d) Global assessment of the value of the site for conservation of the species concerned.

C. On the basis of these criteria, Member States will classify the sites which they propose on the national list as sites eligible for identification as sites of Community importance according to their relative value for the conservation of each natural habitat type in Annex I or each species in Annex II.

D. That list will show the sites containing the priority natural habitat types and priority species selected by the Member States on the basis of the criteria in A and B above.

...'

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

'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.'

The main proceedings and the question referred for a preliminary ruling

7 FCS is the statutory port authority for the port of Bristol, on the Severn Estuary, and owns considerable land in the neighbourhood of the port. Since acquiring the port, FCS has invested, in partnership with other undertakings, nearly GBP 220 million in capital in developing its facilities. It employs 495 permanent full-time employees. The number of workers employed at the port, including FCS's own employees, is between 3 000 and 5 000.

8 The Secretary of State indicated that he was minded to propose the Severn Estuary to the Commission as a site eligible for designation as an SAC under Article 4(1) of the Habitats Directive, most of the intertidal part of the estuary having already been classified as a special protection area under Council Directive 79/409/EEC of 2 April 1979 on the conservation of wild birds (OJ 1979 L 103, p. 1). FCS thereupon applied to the Queen's Bench Division (Divisional Court) of the High Court of Justice of England and Wales for leave to apply for judicial review.

9 FCS submitted before that court that Article 2(3) of the Habitats Directive obliged the Secretary of State to take account of economic, social and cultural requirements when deciding which sites should be proposed to the Commission pursuant to Article 4(1) of that directive.

10 The Secretary of State contended that, in the light of the Court's reasoning in Case C-44/95 *R* v *Secretary of State for the Environment, ex parte Royal Society for the Protection of Birds* [1996] ECR I-3805, he could not take economic, social and cultural requirements into account when deciding which sites should be proposed to the Commission pursuant to Article 4(1) of the Habitats Directive.

11 In those circumstances, the High Court of Justice stayed proceedings and referred the following question to the Court for a preliminary ruling:

'Is a Member State entitled or obliged to take account of the considerations laid down in Article 2(3) of Council Directive 92/43/EEC on the conservation of natural habitats and of wild fauna and flora (OJ 1992 L 206, p. 7), namely, economic, social and cultural requirements and regional and local characteristics, when deciding which sites to propose to the Commission pursuant to Article 4(1) of that Directive and/or in defining the boundaries of such sites?'

The question referred for a preliminary ruling

12 It should be noted that the question of interpretation referred for a preliminary ruling relates only to Stage 1 of the procedure for classifying natural sites as SACs laid down by Article 4(1) of the Habitats Directive.

13 Under that provision, on the basis of the criteria set out in Annex III (Stage 1) together with relevant scientific information, each Member State is to propose and transmit to the Commission a list of sites, indicating which natural habitat types in Annex I and native species in Annex II are to be found there.

14 Annex III to the Habitats Directive, which deals with the criteria for selecting sites eligible for identification as sites of Community importance and designation as SACs, sets out, as regards Stage 1, criteria for the assessment at national level of the relative importance of sites for each natural habitat type in Annex I and each species in Annex II.

15 Those assessment criteria are defined exclusively in relation to the objective of conserving the natural habitats or the wild fauna and flora listed in Annexes I and II respectively.

16 It follows that Article 4(1) of the Habitats Directive does not as such provide for requirements other than those relating to the conservation of natural habitats and of wild fauna and flora to be taken into account when choosing, and defining the boundaries of, the sites to be proposed to the Commission as eligible for identification as sites of Community importance.

17 FCS submits that identifying and defining the boundaries of the sites to be notified to the Commission with a view to designation as SACs, as required by Article 4(1) of the Habitats Directive, constitute a measure taken pursuant to the directive within the meaning of Article 2(3). It follows that Article 2(3) imposes an obligation on a Member State to take account of economic, social and cultural requirements and regional and local characteristics when it applies the criteria in Annex III to the directive when drawing up the list of sites to be transmitted to the Commission.

18 According to the Finnish Government, it is open to a Member State, when proposing its list of sites to the Commission, to take account of economic, social and cultural requirements and regional and local characteristics, provided that it does not compromise realisation of the Habitats Directive's nature protection objectives. The Government observes that there may, for example, be such a large number of sites eligible to be considered of Community importance within the territory of a Member State that that State is entitled to exclude some of them from its list of proposed sites without jeopardising realisation of those objectives.

19 It should be noted that the first subparagraph of Article 3(1) of the Habitats Directive provides for the setting up of a coherent European ecological network of SACs to be known as 'Natura 2000', composed of sites hosting the natural habitat types listed in Annex I and habitats of the species listed in Annex II, to enable them to be maintained or, where appropriate, restored at a favourable conservation status in their natural range.

20 Moreover, Article 4 of the Habitats Directive sets out the procedure for classifying natural sites as SACs, divided into several stages with corresponding legal effects, which is intended in particular to enable the Natura 2000 network to be realised, as provided for by Article 3(2) of the directive.

21 In particular, the first subparagraph of Article 4(2) prescribes that the Commission is to establish, on the basis of the lists drawn up by the Member States and in agreement with each Member State, a draft list of sites of Community importance.

22 To produce a draft list of sites of Community importance, capable of leading to the creation of a coherent European ecological network of SACs, the Commission

must have available an exhaustive list of the sites which, at national level, have an ecological interest which is relevant from the point of view of the Habitats Directive's objective of conservation of natural habitats and wild fauna and flora. To that end, that list is drawn up on the basis of the criteria laid down in Annex III (Stage 1) to the directive.

23 Only in that way is it possible to realise the objective, in the first subparagraph of Article 3(1) of the Habitats Directive, of maintaining or restoring the natural habitat types and the species' habitats concerned at a favourable conservation status in their natural range, which may lie across one or more frontiers inside the Community. It follows from Article 1(e) and (i), read in conjunction with Article 2(1), of the directive that the favourable conservation status of a natural habitat or a species must be assessed in relation to the entire European territory of the Member States to which the Treaty applies. Having regard to the fact that, when a Member State draws up the national list of sites, it is not in a position to have precise detailed knowledge of the situation of habitats in the other Member States, it cannot of its own accord, whether because of economic, social or cultural requirements or because of regional or local characteristics, delete sites which at national level have an ecological interest relevant from the point of view of the objective of conservation without jeopardising the realisation of that objective at Community level.

24 In particular, if the Member States could take account of economic, social and cultural requirements and regional and local characteristics when selecting and defining the boundaries of the sites to be included in the list which, pursuant to Article 4(1) of the Habitats Directive, they must draw up and transmit to the Commission, the Commission could not be sure of having available an exhaustive list of sites eligible as SACs, with the risk that the objective of bringing them together into a coherent European ecological network might not be achieved.

25 The answer to the national court's question must therefore be that, on a proper construction of Article 4(1) of the Habitats Directive, a Member State may not

take account of economic, social and cultural requirements or regional and local characteristics, as mentioned in Article 2(3) of that directive, when selecting and defining the boundaries of the sites to be proposed to the Commission as eligible for identification as sites of Community importance.

Costs

26 The costs incurred by the United Kingdom and Finnish Governments and by 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

in answer to the question referred to it by the the Queen's Bench Division (Divisional Court) of the High Court of Justice of England and Wales by order of 21 July 1998, hereby rules:

On a proper construction of Article 4(1) of Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora,

a Member State may not take account of economic, social and cultural requirements or regional and local characteristics, as mentioned in Article 2(3) of that directive, when selecting and defining the boundaries of the sites to be proposed to the Commission as eligible for identification as sites of Community importance.

Rodríguez Iglesias	Gulmann	Wathelet
Skouris	Edward	Puissochet
Jann	Sevón	Schintgen

Delivered in open court in Luxembourg on 7 November 2000.

R. Grass — Registrar

G.C. Rodríguez Iglesias — President