# JUDGMENT OF THE COURT (Sixth Chamber)
26 November 2002 *

In Case C-202/01,

**Commission of the European Communities,** represented by G. Valero Jordana and J. Adda, acting as Agents, with an address for service in Luxembourg,

applicant,

v

**French Republic,** represented by G. de Bergues and D. Colas, acting as Agents, with an address for service in Luxembourg,

defendant,

APPLICATION for a declaration that, by failing in sufficient measure to classify as special protection areas the territories most suitable for the conservation of the

* Language of the case: French.

species of wild bird referred to in Annex I to Council Directive 79/409/EEC of 2 April 1979 on the conservation of wild birds (OJ 1979 L 103, p. 1), as amended by Commission Directive 97/49/EC of 29 July 1997 (OJ 1997 L 223, p. 9), and of migratory species, and, in particular, by failing to classify a sufficiently large area of land on the Plaine des Maures (France) as a special protection area, the French Republic has failed to comply with its obligations under the Directive and has failed to fulfil its obligations under the EC Treaty,

THE COURT (Sixth Chamber),

composed of: J.-P. Puissochet, President of the Chamber, C. Gulmann (Rapporteur), F. Macken, N. Colneric and J.N. Cunha Rodrigues, Judges,

Advocate General: S. Alber,

Registrar: R. Grass,

having regard to the report of the Judge-Rapporteur,

after hearing the Opinion of the Advocate General at the sitting on 27 June 2002,

gives the following

## Judgment

1 By application lodged at the Court Registry on 16 May 2001, the Commission of the European Communities brought an action under Article 226 EC for a declaration that, by failing in sufficient measure to classify as special protection areas (hereinafter 'SPAs') the territories most suitable for the conservation of the species of wild bird referred to in Annex I to Council Directive 79/409/EEC of 2 April 1979 on the conservation of wild birds (OJ 1979 L 103, p. 1), as amended by Commission Directive 97/49/EC of 29 July 1997 (OJ 1997 L 223, p. 9, hereinafter 'the Directive'), and of migratory species, and, in particular, by failing to classify a sufficiently large area of land on the Plaine des Maures (France) as a special protection area, the French Republic has failed to comply with its obligations under the Directive and has failed to fulfil its obligations under the EC Treaty.

### Legal framework

2 Article 4(1), (2) and (4) of the Directive provides:

'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.

...

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.'

## Pre-litigation procedure

*Procedure relating to the alleged inadequacy of territories classified as SPAs*

3 By letter of formal notice sent on 23 April 1998 to the French Government, the Commission set out a complaint concerning the incorrect implementation of Article 4 of the Directive. In that letter, the Commission claimed that the French authorities had not classified territories as SPAs in sufficient measure, in terms of either number or size, and that the classified areas were not sufficiently varied and representative to offer protection to all the species of wild bird listed in Annex I to the Directive and to migratory species not listed in the Annex. In that

letter, the Commission also maintained that protection of the territories classified as SPAs was in many cases not ensured.

4 The French Government replied to the letter of formal notice by letter of 13 November 1998. In several letters sent between November 1998 and 25 February 2000, the Government informed the Commission of the designation of eight new SPAs. It also notified a circular of 29 July 1999 from the ministre de l'Aménagement du territoire et de l'Environnement (Minister for Regional Planning and the Environment) to departmental prefects, which stated that the French Republic had undertaken to designate additional SPAs.

5 By letter of 4 April 2000, the Commission issued a reasoned opinion in which it stated that, by failing in sufficient measure to classify as SPAs the territories most suitable for the conservation of the species of wild bird referred to in Annex I to the Directive, and of migratory species, the French Republic had failed to comply with its obligations under the Directive. The Commission requested the Member State to take the measures necessary to comply with the reasoned opinion within two months of its notification and to inform it of them.

6 On 23 June 2000, the French Government replied to the reasoned opinion.

*The procedure relating to the alleged failure to classify the Plaine des Maures as an SPA*

7 On 22 June 1994, the Commission sent a letter of formal notice to the French Government alleging failure to comply with its obligations under Articles 3 and 4

of the Directive. In that letter, the Commission noted that, in view of its ornithological importance, the Plaine des Maures, 7 500 hectares of which are included in the national inventory of sites of importance for the conservation of birds in France (hereinafter 'ZICOs'), published in 1994 by the French Ministry of Environment and the League for the Protection of Birds, should have been classified as an SPA. The Commission also observed that part of that site was threatened by pollution and deterioration as the result of several development projects which had been carried out, including a recreational park at Bois de Bouis.

8 By letter of 9 April 1996, the French authorities informed the Commission, *inter alia*, that proceedings had been brought against illegal clearing and construction works undertaken in the designated development zone of Bois de Bouis, and that, in order definitively to protect the Plaine des Maures against any public or private short- or long-term damage, a procedure for a project of public interest had been initiated and that the decree establishing that project was planned for 1996.

9 By letter of 19 December 1997, the Commission delivered a reasoned opinion in which it stated that, by failing to classify the Plaine des Maures as an SPA, take special conservation measures relating to the habitats of the birds in question and take the necessary measures to preserve, maintain or re-establish a sufficient diversity and area of habitats for birds and to avoid the pollution or deterioration of those habitats, owing to completion of the recreational park at Bois de Bouis, the French Republic had failed to fulfil its obligations under Articles 3 and 4 of the Directive. The Commission asked the Member State to take the necessary measures to comply with that reasoned opinion within two months of its notification.

10 By letter of 5 November 1998, the French authorities stated that they had classified 879 hectares of the Plaine des Maures as an SPA. In their letter of 29 November 1999, the French authorities announced a considerable enlargement of that SPA.

11 By letter of 23 June 2000, the French authorities signalled their intention eventually to extend the area of the Plaine des Maures SPA to more than 4 700 hectares.

12 Since it considered that the replies by the French authorities did not enable it to conclude that the French Republic had adopted, within the periods laid down in the reasoned opinions of 4 April 2000 and 19 December 1997, the necessary measures to put an end to the alleged infringements, the Commission decided to bring the present action before the Court.

## The application

*Alleged inadequacy of the territories classified as SPAs*

13 The Commission claims that Article 4 of the Directive necessitates the classification as SPAs of areas of land sufficient in both quantitative and qualitative terms in light of the scientifically determined characteristics of sites. However, during the pre-litigation procedure, the French Government did not, in essence, challenge the claim that the SPAs designated in France do not satisfy that requirement. Therefore, the application should in any event be upheld.

14 The Commission adds that the best means of attaining the objective laid down in Article 4(1) and (2) of the Directive is to classify as SPAs territories scientifically

listed for their objective ornithological importance as habitats for the wild birds mentioned in Annex I to the Directive or for migratory birds.

15 Therefore, with reference to the scientific information available and, in particular, to the inventory of ZICOs, the Commission claims that the French Government has failed to fulfil its obligation in sufficient measure to classify as SPAs the most suitable territories within the meaning of Article 4(1) and (2) of the Directive. That inventory, which should, moreover, be compatible with the 'Important Bird Areas' inventory drawn up at Community level by the Commission, in its March 2000 version (hereinafter 'the 2000 IBA inventory'), which identifies 285 ZICOs in the metropolitan area of France, constitutes the best scientific evidence available for the comprehensive assessment of the classifications carried out by the French Government throughout the whole of its territory. Since the French Government has not produced inventories contradicting the conclusions of the inventory of ZICOs, it should have classified as SPAs all the zones regarded as ZICOs by that inventory.

16 The French Government states that, as at 17 July 2001, there were 117 SPAs, with an area of almost 900 000 hectares, representing 41% of the number of ZICOs and 19% of their surface area. However, it acknowledges that it must carry out additional SPA classifications in order to comply with the obligation in Article 4 of the Directive.

17 Nevertheless, the French Government considers that the Directive does not require it to classify as SPAs all of the territory referred to in the inventory of ZICOs or the 2000 IBA inventory. According to the French Government, the territories identified in those inventories are not all suitable for identification as 'the most suitable territories' to be classified as SPAs within the meaning of Article 4 of the Directive. In addition, the approach taken in the 1994 inventory of ZICOs and the 2000 IBA inventory is broader and more comprehensive than that which guided the drawing up of the IBA inventory in 1989. The latter is the

only one to concentrate on 'the most suitable territories', while the other inventories cover much wider ground.

18 The French Government also acknowledges that six of the 116 species of wild birds listed in Annex I to the Directive which are found on French territory are not protected in at least one French SPA.

19 It should be pointed out that the French Government does not deny that it has not in sufficient measure classified as SPAs the most suitable territories for the conservation of the species of wild bird listed in Annex I to the Directive and of migratory species.

20 In addition, it is clear that the lesser spotted eagle, the Terek sandpiper, the black-shouldered kite, the red-breasted flycatcher, the Manx shearwater and the Thekla lark, which are among the species set out in Annex I to the Directive, were not in any event protected by any SPA designation on French territory at the end of the period laid down in the reasoned opinion.

21 Therefore, without its being necessary to consider whether all the territories listed as ZICOs should be classified as SPAs, it must be held that the French Republic did not, within the period laid down, in sufficient measure classify as SPAs, within the meaning of Article 4(1) and (2) of the Directive, the territories most suitable for the conservation of the species of wild bird listed in Annex I to the Directive and of migratory species. Consequently, the Commission's application must be upheld on that point.

*Alleged inadequacy of the classification of the Plaine des Maures as an SPA*

22 The Commission claims that, by classifying only 879 hectares of the Plaine des Maures as an SPA although, for that site, the ZICO covers 7 500 hectares, the French Republic has also failed to fulfil its obligation under Article 4(1) and (2) of the Directive to classify as SPAs the most suitable territories in number and size. By undertaking to extend the SPA of the Plaine des Maures from 879 to 4 700 hectares, the French Government at the same time acknowledged the inadequacy of the land area then classified as an SPA on that site. Moreover, since 7 500 hectares of the Plaine des Maures are listed in the inventory of ZICOs, the French authorities must classify them in their entirety as an SPA, unless it can demonstrate that classification of the whole of the site as an SPA is not necessary under the Directive.

23 The French Government contends that the application does not put forward any legal argument specifically relating to an insufficiently large area on the Plaine des Maures being classified as an SPA. The Commission does not even briefly set out in its application the points of law which would lead it to conclude that there had been an infringement specifically relating to the Plaine des Maures. Accordingly, that complaint should be rejected as inadmissible.

24 As to the substance, the French Government acknowledges that the classification, in force at the end of the period laid down in the reasoned opinion, of 879 hectares in the Plaine des Maures as an SPA was not sufficient for compliance, as regards that site, with the obligations following from Article 4 of the Directive. None the less, the infringement had ended with the enlargement of the SPA of the Plaine des Maures to 4 537 hectares, notified on 17 May 2001.

25 As regards the plea of inadmissibility, it should be recalled that according to Article 19 of the Protocol on the Statute of the Court of Justice of the EC and Article 38(1)(c) of the Rules of Procedure, the application must state, *inter alia*, the grounds on which the application is based. Accordingly, in any application made under Article 226 EC, the Commission must indicate the specific complaints on which the Court is called upon to rule and, at the very least in summary form, the legal particulars on which those complaints are based (see Case C-347/88 *Commission* v *Greece* [1990] ECR I-4747, paragraph 28).

26 The Commission, in its application, stated to the requisite legal standard the legal basis for the claim that the Plaine des Maures had not been classified as an SPA in sufficient measure. The French Government itself acknowledged, in its rejoinder, that the points of law on which that claim was based could be inferred from the Commission's arguments relating to the first claim.

27 The plea of inadmissibility must therefore be rejected.

28 As regards the substance, it should be recalled that the French Government acknowledges unreservedly that it had not, at the end of the period laid down in the reasoned opinion, classified as an SPA a sufficient part of the territory of the Plaine des Maures in light of the obligations under the Directive.

29 In addition, it is not in dispute that the Plaine des Maures shelters 23 species of wild bird listed in Annex I to the Directive, as well as several migratory species not listed in that annex, some of which, in particular the ortolan bunting, the

little bittern, the roller, the nightjar and the red-backed shrike, make that zone one of great ornithological interest.

30 Consequently, without its being necessary to consider whether, as regards the Plaine des Maures, all the territory listed as a ZICO should be classified as an SPA, it must be held that the French Republic has failed, within the period laid down, to classify as SPAs, within the meaning of Article 4(1) and (2) of the Directive, a sufficient area of land on the Plaine des Maures. Accordingly, the Commission's application must, on that point, be upheld.

31 In light of the foregoing considerations, it must be held that, by not in sufficient measure classifying as SPAs the territories most suitable for the conservation of the species of wild bird referred to in Annex I to the Directive, and of migratory species, and, in particular, by not classifying a sufficiently large area of the Plaine des Maures as an SPA, the French Republic has failed to comply with its obligations under Article 4(1) and (2) of the Directive.

## Costs

32 Under Article 69(2) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings. Since the Commission has applied for costs and the French Republic has been unsuccessful, the latter must be ordered to pay the costs.

On those grounds,

THE COURT (Sixth Chamber)

hereby:

1. **Declares that, by not in sufficient measure classifying as special protection areas the territories most suitable for the conservation of the species of wild bird referred to in Annex I to Council Directive 79/409/EEC of 2 April 1979 on the conservation of wild birds, as amended by Commission Directive 97/49/EC of 29 July 1997, and of migratory species, and, in particular, by not classifying a sufficiently large area of the Plaine des Maures (France) as a special protection area, the French Republic has failed to comply with its obligations under Article 4(1) and (2) of that directive;**

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

Puissochet Gulmann Macken

Colneric Cunha Rodrigues

Delivered in open court in Luxembourg on 26 November 2002.

R. Grass J.-P. Puissochet

Registrar President of the Sixth Chamber