JUDGMENT OF THE COURT (Sixth Chamber)

23 October 2003 *

In Case C-154/02,

REFERENCE to the Court under Article 234 EC by Hässleholms tingsrätt (Sweden) for a preliminary ruling in the criminal proceedings pending before that court against

Jan Nilsson,

on the interpretation of Council Regulation (EC) No 338/97 of 9 December 1996 on the protection of species of wild fauna and flora by regulating trade therein (OJ 1997 L 61, p. 1), as amended by Commission Regulation (EC) No 2307/97 of 18 November 1997 (OJ 1997 L 325, p. 1), and of Commission Regulation (EC) No 1808/2001 of 30 August 2001 laying down detailed rules concerning the implementation of Regulation No 338/97 (OJ 2001 L 250, p. 1),

* Language of the case: Swedish

THE COURT (Sixth Chamber),

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

Advocate General: C. Stix-Hackl,
Registrar: R. Grass,

after considering the written observations submitted on behalf of:

— the Italian Government, by I.M. Braguglia, acting as Agent, assisted by M. Fiorilli, avvocato dello Stato,

— the Commission of the European Communities, by L. Ström, acting as Agent,

having regard to the report of the Judge-Rapporteur,

after hearing the Opinion of the Advocate General at the sitting on 15 May 2003,

gives the following

Judgment

1 By order of 22 April 2002, received at the Court on 29 April 2002, Hässleholms tingsrätt (Hässleholm District Court) referred to the Court for a preliminary ruling under Article 234 EC four questions on the interpretation of Council Regulation (EC) No 338/97 of 9 December 1996 on the protection of species of wild fauna and flora by regulating trade therein (OJ 1997 L 61, p. 1), as amended by Commission Regulation (EC) No 2307/97 of 18 November 1997 (OJ 1997 L 325, p. 1) (hereinafter 'Regulation No 338/97'), and of Commission Regulation (EC) No 1808/2001 of 30 August 2001 laying down detailed rules concerning the implementation of Regulation No 338/97 (OJ 2001 L 250, p. 1).

2 The questions were raised in criminal proceedings against Mr Nilsson based on the alleged infringement by him of the Lagen om åtgärder beträffende djur och växter som tillhör skyddade arter (Swedish Law (1994:1818) on protected species of fauna and flora, hereinafter 'the 1994 Law').

Legal framework

International law

3 The Convention on International Trade in Endangered Species of Wild Flora and Fauna (hereinafter 'CITES'), the purpose of which is to protect certain endangered species of wild flora and fauna, was signed on 3 March 1973. The Convention introduced a number of restrictions and controls on international trade in specimens of those species.

4 CITES contains several appendices. Appendix I applies to all species which are threatened with extinction and, consequently, subject to the strictest rules.

5 The concept of 'specimen' is defined in Article I of CITES, which provides:

'For the purpose of the present Convention, unless the context otherwise requires:

...

(b) "specimen" means:

(i) any animal or plant, whether alive or dead;

(ii) in the case of an animal: for species included in Appendices I and II, any readily recognisable part or derivative thereof; and for species included in Appendix III, any readily recognisable part or derivative thereof specified in Appendix III in relation to the species;...

...'.

6 Article VII(2) of CITES provides:

'Where a management authority of the State of export or re-export is satisfied that a specimen was acquired before the provisions of the present Convention applied to that specimen, the provisions of Articles III, IV and V shall not apply to that specimen where the management authority issues a certificate to that effect.'

7 Resolution 5.11 of the Fifth Conference of the Parties to CITES, held in 1985, recommends in section (a) that:

'for the purposes of Article VII, paragraph 2, of the Convention, the date on which a specimen is acquired be:

(i) for live and dead animals or plants taken from the wild: the date of their initial removal from their habitat; or

(ii) for parts and derivatives: the date of their introduction to personal possession, whichever date is the earliest'.

Community law

8 CITES was implemented in the Community with effect from 1 January 1984 by Council Regulation (EEC) No 3626/82 of 3 December 1982 on the implementation in the Community of the Convention on international trade in endangered species of wild fauna and flora (OJ 1982 L 384, p. 1).

9 Regulation No 338/97, Article 21(1) of which repealed Regulation No 3626/82, provides in the second paragraph of Article 1:

'This regulation shall apply in compliance with the objectives, principles and provisions of [CITES].'

10 Article 8 of Regulation No 338/97, entitled 'Provisions relating to the control of commercial activities', reads as follows:

'1. The purchase... of specimens of the species listed in Annex A shall be prohibited.

...

3.... exemption from the prohibitions referred to in paragraph 1 may be granted by issuance of a certificate to that effect by a management authority of the Member State in which the specimens are located, on a case-by-case basis, where the specimens:

(a) were acquired in, or were introduced into, the Community before the provisions relating to species listed in Appendix I to the Convention or in Annex C1 to Regulation (EEC) No 3626/82 or in Annex A became applicable to the specimens;

or

(b) are worked specimens that were acquired more than 50 years previously;

...'.

11 Article 2 of Regulation No 338/97 provides:

'...

(t) "specimen" shall mean any animal or plant, whether alive or dead, of the species listed in Annexes A to D, any part or derivative thereof, whether or not contained in other goods...

...

(w) "worked specimens that were acquired more than 50 years previously" shall mean specimens that were significantly altered from their natural raw state for jewellery, adornment, art, utility, or musical instruments, more than 50 years before the entry into force of this regulation and that have been, to the satisfaction of the management authority of the Member State concerned, acquired in such conditions. Such specimens shall be considered as worked only if they are clearly in one of the aforementioned categories and require no further carving, crafting or manufacture to effect their purpose'.

12 Article 3(1)(a) of Regulation No 338/97 provides *inter alia* that Annex A is to contain the species listed in Appendix I to CITES for which the Member States have not entered a reservation and any species which is, or may be, in demand for utilisation in the Community or for international trade and which is either threatened with extinction or so rare that any level of trade would imperil its survival.

13 On 26 May 1997, the Commission adopted Regulation (EC) No 939/97 laying down detailed rules concerning the implementation of Regulation No 338/97 (OJ 1997 L 140, p. 9).

14 Article 1 of Regulation No 939/97 provides:

'For the purposes of this regulation and in addition to the definitions in Article 2 of Regulation No 338/97: "date of acquisition" shall mean the date on which a specimen was taken from the wild, born in captivity or artificially propagated.'

15 Articles 29 to 33 of Regulation No 939/97 contain certain rules relating to the exemptions provided for in Article 8(3) of Regulation No 338/97.

16 Article 29(1) of Regulation No 939/97 provides:

'The exemption for specimens referred to in Article 8(3)(a) of Regulation (EC) No 338/97 shall only be granted when the applicant has satisfied the competent management authority that the conditions referred to therein are met.'

17 Article 32 of Regulation No 939/97 provides:

'The prohibitions of Article 8(1) of Regulation (EC) No 338/97 and the provision in Article 8(3) thereof that exemptions therefrom shall be granted by the issuance of a certificate on a case-by-case basis shall not apply to:

...

(d) worked specimens that were acquired more than 50 years previously as defined in Article 2(w) of Regulation (EC) No 338/97.'

18 Regulation No 939/97 was repealed with effect from 22 September 2001 by Article 42 of Regulation No 1808/2001.

19 Article 29(1) of Regulation No 1808/2001 provides:

'The exemption for specimens referred to in Article 8(3)(a) to (c) of Regulation (EC) No 338/97 shall only be granted when the applicant has satisfied the competent management authority that the conditions referred to therein are met.'

20 Article 32 of Regulation No 1808/2001 provides:

'The prohibitions of Article 8(1) of Regulation (EC) No 338/97 and the provision in Article 8(3) thereof that exemptions therefrom shall be granted by the issuance of a certificate on a case-by-case basis shall not apply to:

...

(c) worked specimens that were acquired more than 50 years previously as defined in Article 2(w) of Regulation (EC) No 338/97.

In these cases no certificate is required.'

National legislation

21 Paragraph 8a of the 1994 Law contains a provision on liability in the event of negligent or wilful infringements of Regulation No 338/97, making punishable by a fine or imprisonment the introduction into Sweden, export or re-export from Sweden, purchase, sale or other commercial transactions. When the infringement is not serious, there is to be no penalty.

22 The 1994 Law was repealed with effect from 1 January 1999, in accordance with the Environment Code (SFS 1998:808), with the reservations expressed in the promulgating legislation (SFS 1998:811). The penal provisions apparently remained the same, however.

Main proceedings and questions referred for a preliminary ruling

23 The prosecutor indicted Mr Nilsson for the following:

— first, for having in Tyringe (Sweden), in August 1998, unlawfully and either intentionally or recklessly purchased the following mounted specimens: two sparrow hawks, two hobbies, two hen harriers, one Ural owl, four tawny owls, one goshawk, two kestrels, one snowy owl, one hawk owl, one short-eared owl, one barn-owl, one marsh harrier, four buzzards, one long-eared owl, one crane, one golden eagle and one sea-eagle despite the fact that those species are included in Annex A to Council Regulation (EC) No 338/97,

— second, for having in Tyringe, in July 1998, unlawfully and either intentionally or recklessly purchased a mounted brown bear despite the fact that this species is included in Annex A to Council Regulation (EC) No 338/97.

24 The national court considers that there are arguments in favour of an interpretation to the effect that the specimens in question are not 'worked' within the meaning of Article 2(w) of Regulation No 338/97. It notes that it is not

entirely clear whether receiving specimens as a gift or inheriting them, or whether killing animals and then taking them into one's possession, is to 'acquire' them within the meaning of that regulation. In addition, the court asks whether the exemptions in Article 32 of Regulation No 1808/2001 also cover the assessment by the management authority provided for in Article 2(w) of Regulation No 338/97.

25 The Hässleholms tingsrätt decided to stay the proceedings and refer the following questions to the Court for a preliminary ruling:

'1. Do stuffed animals listed in Annex A [to Regulation No 338/97] fall within the definition of "worked specimens"?

2. What is covered by the term "acquire" in Article 8(3) of Regulation No 338/97?

3. Must the person who acquired the specimen more than 50 years previously be the present owner?

4. Do the provisions on exemption in Article 32 of Regulation No 1808/2001 mean that no assessment by the management authority in accordance with Article 2(w) of Regulation No 338/97 is required?'

The first question

26 By its first question, the national court asks whether Articles 2(w) and 8(3)(b) of Regulation No 338/97 are to be interpreted as meaning that the animals referred to in Annex A to that regulation but which have been stuffed fall within the definition of 'worked specimens' for the purpose of those provisions.

27 Such animals are specimens within the meaning of Article 2(t) of Regulation No 338/97.

28 According to the definition in Article 2(w) of that regulation, specimens that were significantly altered from their natural raw state for jewellery, adornment, art, utility, or musical instruments are to be considered as worked specimens if they are clearly in one of those categories and require no further carving, crafting or manufacture to effect their purpose.

29 Consequently, for a stuffed animal to be considered as a worked specimen, four conditions must be satisfied: first, it must be significantly altered from its natural raw state; second, the purpose of that alteration must be the production of jewellery, items of adornment, art or utility, or musical instruments; third, it must be clearly in one of those categories; and, fourth, no further carving, crafting or manufacture must be needed for it to effect its purpose.

30 As regards the first condition, the Italian Government submits that the raw natural state of animals which have been 'mounted' or 'stuffed' is not altered, even if they have been worked as part of taxidermy (mounting); on the contrary, their state is as close as possible to the live state.

31 However, the issue of whether the raw natural state has been 'significantly altered' within the meaning of Article 2(w) of Regulation No 338/97 does not depend on the outer appearance of the specimen in question, but rather on whether its general state has undergone alteration. Both conventional stuffing, where the hide is stripped and the pelt is tanned and stuffed, and modern taxidermy methods alter the specimens in a complete and profound manner.

32 Consequently, the first of the four conditions in paragraph 29 of this judgment, according to which a specimen, in order be considered as 'worked', must be significantly altered, is certainly met in the case of a stuffed animal.

33 As regards the three other conditions, it is clear that whether the animal was stuffed for jewellery, adornment, art, utility, or musical instruments, whether it must be clearly in one of those categories, and whether no further carving, crafting or manufacture is needed for it to effect its purpose depends on the facts of the individual case. It is for the national court to ascertain whether that is the case.

34 Accordingly, the first question must be answered to the effect that Articles 2(w) and 8(3)(b) of Regulation No 338/97 are to be interpreted as meaning that the

animals referred to in Annex A to that regulation but which have been stuffed fall within the definition of 'worked specimens' for the purpose of those provisions.

Second and third questions

35 By its second and third questions, which should be examined together, the national court asks whether receiving specimens as a gift or inheriting them, and whether killing animals and then taking them into one's possession, makes them 'acquired' within the meaning of Article 8(3)(b) of Regulation No 338/97. It also asks whether the person who acquired the specimen more than 50 years previously must be the present owner.

36 That provision provides for exemption from the prohibitions laid down in Article 8(1) of Regulation No 338/97 in the case of worked specimens that were acquired more than 50 years previously.

37 According to the definition in Article 2(w) of Regulation No 338/97, that category includes only specimens that were significantly altered from their natural raw state more than 50 years before the entry into force of that regulation and that have been, to the satisfaction of the management authority of the Member State concerned, acquired in such conditions.

38 Article 1 of Regulation No 939/97 provides that, for the purposes of that regulation and in addition to the definitions in Article 2 of Regulation No 338/97, the 'date of acquisition' is to mean the date on which a specimen was taken from

the wild, born in captivity or artificially propagated. None of those dates can possibly be the date of acquisition of worked specimens, however.

39 It should be borne in mind that the second paragraph of Article 1 of Regulation No 338/97 provides that that regulation is to apply in compliance with the objectives, principles and provisions of CITES. Although the Community is not a party to that convention, the Court cannot disregard those elements, in so far as they have to be taken into account in order to interpret the provisions of that regulation (see Case C-510/99 *Tridon* [2001] ECR I-7777, paragraph 25).

40 Article VII(2) of CITES provides for an exemption for specimens which were acquired before the provisions of that convention applied to them, which could thus be termed 'pre-Convention specimens'. Resolution 5.11(a)(i) of the Conference of the Parties to CITES recommends not only that, for the purposes of Article VII(2) of CITES the date on which a specimen is acquired is to be, for live and dead animals taken from the wild, the date of their initial removal from their habitat, but also, for parts and derivatives, that of their 'introduction to personal possession'. Although the dates prior to which acquisition must be effected according to CITES and Regulation No 338/97 are different (1 July 1975 and 3 March 1947 respectively), the definition of specimens 'acquired' before those respective dates may be considered as identical.

41 It follows that the concept of 'acquired' for the purposes of Article 8(3)(b) of Regulation No 338/97 concerns any taking into possession with a view to personal possession.

42 Consequently, Article 8(3)(b) of Regulation No 338/97 must be interpreted as meaning that receiving specimens as a gift or inheriting them, or killing animals and then taking them into one's possession, makes them 'acquired'.

43 As for the question of whether the person who acquired the specimen more than 50 years previously must be the present owner, the purpose of Article 8(3)(b) of Regulation No 338/97 is to exclude old items, that is, worked specimens created before 3 March 1947, from the scope of the prohibitions provided for in Article 8(1) of that regulation.

44 Accordingly, Article 8(3)(b) of that regulation must be interpreted as meaning that it also applies to worked specimens which were first acquired before 3 March 1947 and which were the subject of a new acquisition thereafter.

45 Accordingly, the second and third questions must be answered to the effect that Article 8(3)(b) of Regulation No 338/97 is to be interpreted as meaning that receiving specimens as a gift or inheriting them, and killing animals and then taking them into one's possession, makes them 'acquired' within the meaning of that provision. It is not necessary that the person who acquired the specimen more than 50 years previously be the present owner.

Fourth question

46 By its fourth question, the national court asks whether the provisions on exemption in Article 32 of Regulation No 1808/2001 mean that no assessment by the management authority of the Member State concerned in accordance with Article 2(w) of Regulation No 338/97 is required.

47 It is apparent from Article 32(d) of Regulation No 939/97 that the provision in Article 8(3) of Regulation No 338/97, according to which the exemption to the prohibitions in Article 8(1) is to be granted only by the issuance of a certificate, is not to apply to specimens that were acquired more than 50 years previously as defined in Article 2(w) of the latter regulation. Article 32(c) of Regulation No 1808/2001 maintained that rule, stating in the second subparagraph of that article that 'in these cases no certificate is required'.

48 However, Article 2(w) of Regulation No 338/97 is not as such affected by those amendments and thus the condition that they must have been, 'to the satisfaction of the management authority of the Member State concerned, acquired in such conditions' continues to apply.

49 Thus, the conditions provided for in Article 2(w) remain the conditions of applicability of the exemption in Article 8(3)(b) of Regulation No 338/97.

Consequently, for that provision to apply, it is necessary that the specimens in question were acquired, to the satisfaction of the management authority, in accordance with the conditions laid down in Article 2(w) of Regulation No 338/97.

50 This interpretation is supported by the fact that Article 29(1) of Regulation No 1808/2001 states expressly that the exemption for specimens referred to in Article 8(3)(a) to (c) of Regulation No 338/97 are to be granted only 'when the applicant has satisfied the competent management authority that the conditions referred to therein are met'.

51 The fourth question must therefore be answered to the effect that, notwithstanding the provision in the second paragraph of Article 32 of Regulation No 1808/2001, Article 8(3)(b) of Regulation No 338/97 must be interpreted as meaning that the management authority of the Member State concerned must have been able to ascertain that the specimen in question was acquired in accordance with the conditions laid down in Article 2(w) of Regulation No 338/97.

Costs

52 The costs incurred by the Italian Government and by the Commission, which have submitted observations to the Court, are not recoverable. Since these proceedings are, for the parties to the main action, 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 (Sixth Chamber),

in answer to the questions referred to it by the Hässleholms tingsrätt by order of 22 April 2002, hereby rules:

1. Articles 2(w) and 8(3)(b) of Council Regulation (EC) No 338/97 of 9 December 1996 on the protection of species of wild fauna and flora by regulating trade therein, as amended by Commission Regulation (EC) No 2307/97 of 18 November 1997 are to be interpreted as meaning that the animals referred to in Annex A to that regulation but which have been stuffed fall within the definition of 'worked specimens' for the purposes of those provisions.

2. Article 8(3)(b) of Regulation No 338/97, as amended by Regulation No 2307/97, is to be interpreted as meaning that receiving specimens as a gift or inheriting them, and killing animals and then taking them into one's possession, makes them 'acquired' within the meaning of that provision. It is not necessary that the person who acquired the specimen more than 50 years previously be the present owner.

3. **Notwithstanding the provision in the second paragraph of Article 32 of Commission Regulation (EC) No 1808/2001 of 30 August 2001 laying down detailed rules concerning the implementation of Regulation No 338/97, Article 8(3)(b) of the latter regulation must be interpreted as meaning that the management authority of the Member State concerned must have been able to ascertain that the specimen in question was acquired in accordance with the conditions laid down in Article 2(w) of Regulation No 338/97, as amended by Regulation No 2307/97.**

Puissochet Gulmann Macken

Colneric Cunha Rodrigues

Delivered in open court in Luxembourg on 23 October 2003.

R. Grass — Registrar

V. Skouris — President