JUDGMENT OF THE COURT
29 November 1990 *

In Case C-182/89,

Commission of the European Communities, represented by Marie Wolfcarius and Thomas van Rijn, members of its Legal Department, acting as Agents, with an address for service in Luxembourg at the office of Guido Berardis, a member of its Legal Department, Wagner Centre, Kirchberg,

applicant,

v

French Republic, represented by Edwige Belliard, Deputy Director in the Directorate for Legal Affairs in the Ministry of Foreign Affairs, and Marc Giacomini, Secretary for Foreign Affairs in the Ministry of Foreign Affairs, acting as Agents, with an address for service in Luxembourg at the French Embassy, 9 boulevard Prince-Henri,

defendant,

APPLICATION for a declaration that, by issuing import permits for skins of the *Felis wiedii* and *Felis geoffroyi* species originating in Bolivia, France has failed to fulfil its obligations under Article 10(1)(b) of Council Regulation (EEC) No 3626/82 of 3 December 1982 on the implementation in the Community of the Convention on international trade and endangered species of wild fauna and flora (Official Journal 1982 L 384, p. 1) and Articles 5 and 189 of the Treaty,

THE COURT,

composed of: O. Due, President, T. F. O'Higgins, J. C. Moitinho de Almeida and M. Díez de Velasco (Presidents of Chambers), C. N. Kakouris, F. A. Schockweiler, F. Grévisse, M. Zuleeg and P. J. G. Kapteyn, Judges,

Advocate General: J. Mischo
Registrar: J. A. Pompe, Deputy Registrar,

* Language of the case: French.

having regard to the Report for the Hearing,

after hearing oral argument presented by the parties at the hearing on 9 October 1990,

after hearing the Opinion of the Advocate General delivered at the sitting on 18 October 1990,

gives the following

Judgment

1 By an application lodged at the Court Registry on 25 May 1989, the Commission brought an action under Article 169 of the Treaty for a declaration that by issuing in February 1986 import permits for more than 6 000 wild-cat skins of the *Felis geoffroyi* and *Felis wiedii* species originating in Bolivia, the French Republic had failed to fulfil its obligations under Article 10(1)(b) of 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 (Official Journal 1982 L 384, p. 1) and Articles 5 and 189 of the Treaty. At the hearing the Commission withdrew the submission alleging infringement of Articles 5 and 189 of the Treaty.

2 The Convention on international trade in endangered species of wild fauna and flora of 3 March 1973 (Official Journal 1982 L 384, p. 7, hereinafter referred to as 'the Convention') regulates international trade in animals and plants of certain species and in readily recognizable parts and derivatives thereof. During the period concerned in these proceedings, wild cats of the *Felis geoffroyi* and *Felis wiedii* species were listed in Appendix II to the Convention. This appendix includes species which might become threatened with extinction unless trade in such species is subject to strict regulation in order to avoid utilization incompatible with their survival.

3 Regulation No 3626/82, cited above, was adopted in order to ensure the uniform application of the measures of commercial policy which implement the provisions of the Convention. For certain species, including the wild cats in question, the regulation provides for stricter protective measures than those provided for by the Convention. At the material time, the importation of *Felis geoffroyi* and *Felis wiedii* into the Community was subject, by virtue of Article 3(2) of the regulation, to the presentation of an import permit issued in accordance with the conditions laid down in Article 10(1)(b) of the regulation.

4 The first indent of Article 10(1)(b) of the regulation provides as follows:

'The import permit referred to in Article 3(2) shall be issued only where:

(i) it is clear, or where the applicant presents trustworthy evidence, that the capture or collection of the specimen in the wild will not have a harmful effect on the conservation of species or on the extent of the territory occupied by the populations in question of the species . . .'

5 On 6 February 1986, the competent French authorities issued import permits for wild-cat skins of the species in question. These permits refer to export permits issued by the Bolivian authorities on 5 August 1985. The Commission considers that the import permits were wrongly issued on the ground that the conditions laid down in Article 10(1)(b) were not satisfied.

6 Reference is made to the Report for the Hearing for a fuller account of the facts and background to the dispute and the submissions and arguments of the parties, which are mentioned or discussed hereinafter only in so far as is necessary for the reasoning of the Court.

7 In support of its view, the Commission refers to the factual context in which the decision of the French authorities was adopted. According to the Commission, the facts are essentially as follows:

(i) the application of the Convention in Bolivia was the subject of discussions at the Conference of the contracting parties to the Convention which took place in Buenos Aires between 22 April and 3 May 1985. The contracting parties found that there was substantial illegal trade in products covered by the Convention originating in Bolivia and that there were a large number of false export or re-export permits. The recitals to the resolution dated 30 April 1985, to which those discussions led, refer to the concern expressed by certain countries, in particular countries bordering on Bolivia whose wild fauna and flora are directly threatened. The same resolution therefore recommended that the contracting parties should no longer accept shipments of specimens covered by the Convention accompanied by Bolivian documents or declared to originate in Bolivia until the Bolivian Government had demonstrated to the Conference of the Parties to the Convention or to its Standing Committee that it had adopted all the measures within its power properly to apply the Convention. At its meeting between 28 October and 1 November 1985 the Standing Committee stated that the measures subsequently adopted by the Bolivian Government were significant. Accordingly, it requested the Convention Secretariat to recommend that the contracting parties which had imposed an import ban on specimens from Bolivia should consider suspending it;

(ii) following the adoption of the aforesaid resolution of 30 April 1985, the Commission had on the same date sent to the Convention management authorities in the Member States a telex message which stated that import permits should no longer be issued for the Bolivian specimens concerned;

(iii) imports of those specimens were then placed on the agenda of a meeting of the Community's Committee on the Convention, which took place between 12 and 14 November 1985. It is clear from a draft opinion drawn up by that meeting that, according to the information available to the Committee at that time, Bolivia would no longer issue export permits for the wild-cat skins concerned as long as the scientific and trade data necessary for establishing

export quotas and for implementing other measures agreed between the Bolivian Government and the Convention Secretariat were unavailable.

8 According to the Commission, it follows from all those facts that, when the import permits concerned were issued in February 1986, the French authorities were not entitled to consider that the conditions imposed by Article 10(1)(b) of Regulation No 3626/82 were satisfied.

9 The French Government challenges this view by putting forward a number of arguments which appear in the Report for the Hearing and the Opinion of the Advocate General of 18 October 1990. Those arguments are for the most part based on a misinterpretation of the Commission's claim, which relates solely to the incorrect application of Article 10(1)(b) of the regulation in question.

10 On this point, the French Government contends that the only decisive factor as regards the granting of import permits is the favourable opinion of the national scientific authority in the importing country which was obtained in this case.

11 This argument must be rejected. There is no provision of the regulation which subjects the issue of import permits to the opinion of such an authority, which can therefore constitute only one of the factors for determining whether the criteria laid down in Article 10(1)(b) are satisfied.

12 Under Article 10(1)(b), there are two cases in which the competent authorities may issue import permits, namely where it is clear that the capture of the specimen will not have a harmful effect on the conservation of the species or on the extent of the territory occupied by the populations in question of the species, or where the applicant presents trustworthy evidence that this is the case.

13 In the light of all the abovementioned factors which were known to the French authorities, it must be accepted that they could not reasonably have reached the conclusion that it was clear that the capture of the wild cats in question would not have a harmful effect on their conservation or on the extent of the territory occupied by them.

14 Furthermore, it is clear from the documents before the Court that the only export permits submitted to the French authorities by the applicant were issued by the Bolivian authorities on 5 August 1985, that is to say during the period in which the application of the Convention in Bolivia was giving rise to serious problems. Therefore the French authorities could reasonably have considered that the applicant had presented trustworthy evidence that the aforesaid requirements were satisfied.

15 Lastly, it should be stated that the opinion of the French scientific authority is not sufficiently clear and favourable to form a valid basis of assessment.

16 It must therefore be held that by issuing in February 1986 import permits for more than 6 000 skins of the *Felis geoffroyi* and *Felis wiedii* species originating in Bolivia, the French Republic failed to fulfil its obligations under Article 10(1)(b) of Regulation No 3626/82.

Costs

17 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 failed in its submissions, it must be ordered to pay the costs.

On those grounds,

THE COURT

hereby:

(1) Declares that, by issuing in February 1986 import permits for more than 6 000 skins of the *Felis geoffroyi* and *Felis wiedii* species originating in Bolivia, the French Republic failed to fulfil its obligations under Article 10(1)(b) of 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;

(2) Orders the French Republic to pay the costs.

Due O'Higgins Moitinho de Almeida Díez de Velasco

Kakouris Schockweiler Grévisse Zuleeg Kapteyn

Delivered in open court in Luxembourg on 29 November 1990.

J.-G. Giraud
Registrar

O. Due
President