JUDGMENT OF THE COURT

24 June 2003 *

In Case C-72/02,

Commission of the European Communities, represented by A. Caeiros, acting as Agent, with an address for service in Luxembourg,

applicant,

v

Portuguese Republic, represented by L. Fernandes, M. Telles Romão and M. João Lois, acting as Agents, with an address for service in Luxembourg,

defendant,

* Language of the case: Portuguese.

APPLICATION for a declaration that, by failing to implement in national law:

— Article 3(3), Article 10, Article 11 and Article 12(4) 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), and

— Article 7, Article 8 and Article 12 of Council Directive 79/409/EEC of 2 April 1979 on the conservation of wild birds (OJ 1979 L 103, p. 1), and

by failing to implement correctly:

— Article 1, Article 6(1) to (4) and Article 12(1)(d) of Directive 92/43, and

— Article 2, Article 4(1) and (4) and Article 6 of Directive 79/409,

the Portuguese Republic has failed to fulfil its obligations under Article 23 of Directive 92/43 and Article 18 of Directive 79/409,

THE COURT,

composed of: G.C. Rodríguez Iglesias, President, J.-P. Puissochet, M. Wathelet, R. Schintgen and C.W.A. Timmermans (Presidents of Chambers), C. Gulmann (Rapporteur), D.A.O. Edward, A. La Pergola, P. Jann, V. Skouris, F. Macken, N. Colneric, S. von Bahr, J.N. Cunha Rodrigues and A. Rosas, 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 6 March 2003,

gives the following

Judgment

1 By application lodged at the Court Registry on 4 March 2002, the Commission of the European Communities brought an action under Article 226 EC in which it sought a declaration that, by failing to implement in national law:

— Article 3(3), Article 10, Article 11 and Article 12(4) 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), and

— Article 7, Article 8 and Article 12 of Council Directive 79/409/EEC of 2 April 1979 on the conservation of wild birds (OJ 1979 L 103, p. 1), and

by failing to implement correctly:

— Article 1, Article 6(1) to (4) and Article 12(1)(d) of Directive 92/43, and

— Article 2, Article 4(1) and (4) and Article 6 of Directive 79/409,

the Portuguese Republic has failed to fulfil its obligations under Article 23 of Directive 92/43 and Article 18 of Directive 79/409.

Legal background

Directive 79/409

2 Article 2 of Directive 79/409 provides that Member States are to 'take the requisite measures to maintain the population of [all species of naturally occurring birds in the wild state in the European territory of the Member States to which the Treaty applies] at a level which corresponds in particular to ecological, scientific and cultural requirements, while taking account of economic and recreational requirements, or to adapt the population of these species to that level'.

3 Article 4(1) of Directive 79/409 requires the Member States to take special conservation measures in respect of the species of bird mentioned in Annex I to that directive and, in particular, classify the most suitable territories as special protection areas for their conservation. Article 4(4) requires Member States to take appropriate steps to avoid certain harmful effects in the special protection areas.

4 Article 6 of Directive 79/409 prohibits, subject to derogations, the marketing of the species of birds protected by the directive. Article 7 sets out the rules applicable to the hunting of wild birds. Article 8 of the directive prohibits the use of all non-selective methods of catching wild birds.

5 Article 12 of the directive provides:

'1. Member States shall forward to the Commission every three years, starting from the date of expiry of the time limit referred to in Article 18(1), a report on the implementation of national provisions taken thereunder.

2. The Commission shall prepare every three years a composite report based on the information referred to in paragraph 1. That part of the draft report covering the information supplied by a Member State shall be forwarded to the authorities of the Member State in question for verification. The final version of the report shall be forwarded to the Member States.'

6 Under Article 18 of Directive 79/409 the Member States are to bring into force the laws, regulations and administrative provisions necessary to comply with the directive within two years of its notification and communicate to the Commission the texts of the main provisions of national law which they adopt in the field governed by the directive. The directive was notified to the Member States on 6 April 1979.

7 As regards the Portuguese Republic, notification of Directive 79/409 is deemed to have taken place on accession, pursuant to Article 392 of the Act concerning the conditions of accession of the Kingdom of Spain and the Portuguese Republic and the adjustments to the Treaties (OJ 1985 L 302, p. 23). Under Article 395 of that Act of Accession, in conjunction with Annex XXXVI thereof, the Portuguese Republic was to take all the measures necessary to comply with the directive on its accession to the European Communities.

Directive 92/43

8 Article 1 of Directive 92/43 defines the main terms used in it.

9 Article 3(1) and (3) of Directive 92/43 provides:

'1. A coherent European ecological network of special areas of conservation shall be set up under the title Natura 2000. This network, composed of sites hosting the natural habitat types listed in Annex I and habitats of the species listed in Annex II, shall enable the natural habitat types and the species' habitats concerned to be maintained or, where appropriate, restored at a favourable conservation status in their natural range.

...

3. Where they consider it necessary, Member States shall endeavour to improve the ecological coherence of Natura 2000 by maintaining, and where appropriate developing, features of the landscape which are of major importance for wild fauna and flora, as referred to in Article 10.'

10 Article 6 of Directive 92/43 concerns the measures necessary for the protection of the special conservation areas. Article 10 of the directive concerns measures to improve the ecological coherence of the Natura 2000 network. Article 11 of the directive concerns surveillance of the conservation status of the natural habitats

and species of Community interest. Article 12(1)(d) and (4) of the directive deals with the protection of certain animal species.

11 Under Article 23(1) of Directive 92/43 the Member States are to bring into force the laws, regulations and administrative provisions necessary to comply with the directive within two years of its notification and inform the Commission thereof immediately. The directive was notified to the Member States on 10 June 1992.

Pre-litigation procedure

12 By letter of 4 April 2000, the Commission sent the Portuguese Government its observations concerning Decree-Law No 140/99 of 24 April 1999 (the 'Decree-Law'), which had been notified to it by way of implementation in national law of Directives 79/409 and 92/43. In that letter it stated that the Decree-Law did not implement Article 3(3), Article 10, Article 11 and Article 12(4) of Directive 92/43, or Article 7, Article 8 and Article 12 of Directive 79/409, and that it implemented Article 1, Article 6(1) to (4) and Article 12(1)(d) of Directive 92/43 and Article 2, Article 4(1) and (4) and Article 6 of Directive 79/409 incorrectly. Accordingly, the Commission gave the Portuguese Republic formal notice that it should submit its observations in that regard within two months of its receipt of that letter.

13 On 14 June 2000 the Portuguese Government informed the Commission that a working group made up of technicians from the Instituto da Conservação da Natureza (Institute of Nature Conservation) had been set up to consider the various issues raised by the Commission in connection with the Decree-Law and to prepare a draft amendment to that legislation.

14 On 30 January 2001 the Commission sent a reasoned opinion to the Portuguese Republic pursuant to Article 226 EC reiterating the failures and deficiencies set out in the letter of formal notice and requesting that Member State to adopt the measures necessary to comply with that opinion within a period of two months from the date of its notification.

15 The Portuguese authorities replied on 31 May 2001 in a letter informing the Commission that examination of the new legislation implementing the directives in question in national law was at its final stage and its adoption by the Council of Ministers was scheduled for that month.

16 Taking the view that the Portuguese Republic had not adopted, within the period prescribed in the reasoned opinion, the measures necessary to comply with it, the Commission brought this action.

The action

17 As regards the claims made by the Commission other than that alleging failure to implement Article 12 of Directive 79/409, it is not disputed that Article 3(3), Article 10, Article 11 and Article 12(4) of Directive 92/43 and Article 7 and Article 8 of Directive 79/409 have not been implemented in Portuguese law. Nor is it disputed that Article 1, Article 6(1) to (4) and Article 12(1)(d) of Directive 92/43 and Article 2, Article 4(1) and (4) and Article 6 of Directive 79/409 were not correctly implemented in national law by the Portuguese authorities. Accordingly, the action brought by the Commission must be held to be well founded, in so far as it concerns those provisions.

The alleged failure to implement Article 12 of Directive 79/409

18 It should be recalled that, according to settled case-law, each of the Member States to which a directive is addressed is obliged to adopt, within the framework of its national legal system, all the measures necessary to ensure that the directive is fully effective, in accordance with the objective it pursues (see in particular Case C-336/97 *Commission* v *Italy* [1999] ECR I-3771, paragraph 19, Case C-97/00 *Commission* v *France* [2001] ECR I-2053, paragraph 9, and Case C-478/99 *Commission* v *Sweden* [2002] ECR I-4147, paragraph 15).

19 Article 12(1) of Directive 79/409 requires the Member States to draw up every three years a report on the implementation of national provisions taken under that directive and forward it to the Commission so that it can check that the directive has been complied with by the Member States. That provision thus concerns only the relations between those Member States and the Commission.

20 In the present case, the Commission has not established that compliance with that obligation requires the adoption of specific implementing measures in national law.

21 For the rest, it must be observed that, in its reply to a written question put by the Court, the Commission stated that, in the past, the Portuguese Republic drew up and forwarded the reports required under Article 12(1) of Directive 79/409 on the implementation of the national provisions taken pursuant to the directive.

22 Therefore, the claim alleging failure to implement Article 12 of Directive 79/409 must be rejected.

23 Accordingly, it must be held that, by failing to implement in national law:

— Article 3(3), Article 10, Article 11 and Article 12(4) of Directive 92/43, and

— Article 7 and Article 8 of Directive 79/409, and

by failing to implement correctly:

— Article 1, Article 6(1) to (4) and Article 12(1)(d) of Directive 92/43, and

— Article 2, Article 4(1) and (4) and Article 6 of Directive 79/409,

the Portuguese Republic has failed to fulfil its obligations under the EC Treaty.

24 The remainder of the application must be dismissed.

Costs

25 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 asked that the Portuguese Republic be ordered to pay the costs and the latter has been essentially unsuccessful, it must be ordered to pay the costs.

On those grounds,

THE COURT

hereby:

1. **Declares that by failing to implement in national law:**

   — **Article 3(3), Article 10, Article 11 and Article 12(4) of Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora, and**

   — **Article 7 and Article 8 of Council Directive 79/409/EEC of 2 April 1979 on the conservation of wild birds, and**

by failing to implement correctly:

— Article 1, Article 6(1) to (4) and Article 12(1)(d) of Directive 92/43, and

— Article 2, Article 4(1) and (4) and Article 6 of Directive 79/409,

the Portuguese Republic has failed to fulfil its obligations under the EC Treaty;

2. Dismisses the remainder of the application;

3. Orders the Portuguese Republic to pay the costs.

Rodríguez Iglesias	Puissochet	Wathelet
Schintgen	Timmermans	Gulmann
Edward	La Pergola	Jann
Skouris	Macken	Colneric
von Bahr	Cunha Rodrigues	Rosas

Delivered in open court in Luxembourg on 24 June 2003.

R. Grass — Registrar

G.C. Rodríguez Iglesias — President