OPINION OF MR ADVOCATE GENERAL VAN GERVEN
delivered on 8 November 1990 *

Mr President,
Members of the Court,

1. By this application the Commission seeks a declaration that the Italian Republic has failed to fulfil its obligations under Council Directive 79/409/EEC of 2 April 1979 on the conservation of wild birds (hereinafter referred to as 'the Directive').[1] The application consists of two complaints. First, it is claimed that the Italian legislation authorizes the hunting of a number of species of wild birds during the rearing season or during the various stages of reproduction, contrary to the second sentence of Article 7(4) of the Directive. Secondly, it is alleged that, contrary to the third sentence of that same provision, the legislation authorizes the hunting of a number of species of migratory birds during their return to their rearing grounds.

Relevant legislation

2. Under Article 5 of the Directive, the Member States are required to establish a general system of protection for all species of birds referred to in the Directive, that is to say, all species of naturally occurring birds in the wild state in the European territory of the Member States. That system involves in particular a ban in principle on the deliberate killing of the birds in question (Article 5(a)).

By way of derogation from the prohibition set out in Article 5, Article 7(1) of the Directive provides that the species of birds listed in Annex II may be hunted under national legislation. It is stated in the eleventh recital in the preamble to the Directive that, because of their high population level, geographical distribution and reproductive rate in the Community as a whole, certain species may be hunted, which constitutes acceptable exploitation.

However, certain limits must be respected. Whilst under Article 7(2) the species referred to in Annex II/1 may be hunted throughout the Community, under Article 7(3) the species referred to in Annex II/2 may be hunted only in the Member States indicated in that annex.

According to the last sentence of Article 7(1), Member States must ensure that the hunting of those species does not jeopardize conservation efforts in that distribution area. In addition, the first sentence of Article 7(4) provides that Member States must ensure that the practice of hunting complies with the principles of wise use and ecologically balanced control of the species of birds concerned and that this practice is compatible as regards the population of these species with the measures resulting from Article 2.[2]

* Original language: Dutch.

1 — OJ 1979, L 103, p. 1.

2 — Article 2 requires Member States to take the requisite measures to maintain the population of the species referred to in Article 1 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.

Under Article 8 of the Directive, Member States are to prohibit the use of all means, arrangements or methods used for the large-scale or non-selective capture or killing of birds and hunting from certain modes of transport. It is stated in the twelfth recital in the preamble to the Directive that that ban is necessary because of the excessive pressure which those methods of hunting exert on the numbers of the species concerned.

3. The second and third sentences of Article 7(4) of the Directive set out the provisions which Italy is alleged to have infringed:

'They [the Member States] shall see in particular that the species to which hunting rules apply are not hunted during the rearing season nor during the various stages of reproduction. In the case of migratory species, they shall see in particular that the species to which hunting regulations apply are not hunted during their period of reproduction or during their return to their rearing grounds.'

The preamble to the Directive contains no specific observations on those provisions. However, they do exhibit a certain similarity to Article 2(a) of the International Convention for the Protection of Birds, signed in Paris on 18 October 1950:

'With the exceptions specified in Articles 6 and 7 of this Convention: protection shall be given:

(a) to all birds, at least during their breeding season, and to migrants, during their return flight to their nesting ground, particularly in March, April, May, June and July:

(b) . . .'.[3],[4]

The Commission's complaints

4. The Commission's two complaints relate to provisions of the Italian legislation governing the opening and closing of the hunting season. As far as the first complaint is concerned, the Commission observes that under Article 11 of Law No 968 of 27 December 1977,[5] the following four species of birds may be hunted as from 18 August: the coot, the moorhen, the mallard and the blackbird. The Commission does not deny that the Directive authorizes the hunting of those species of birds in Italy.[6] Nevertheless, it considers that the requirement set out in the second sentence of Article 7(4) of the Directive, to the effect that the rearing season and the various stages of reproduction must be finished, is not yet fulfilled on 18 August. It bases that view on two scientific works, one by Cramp, Simmons and others,[7] the other by Bezzel.[8]

3 — United Nations Treaty Series Vol. 638, p. 185.

4 — In 1974 the Commission recommended the Member States, if they had not already done so, to accede to that Convention. See Commission Recommendation 75/66/EEC of 20 December 1974 to Member States concerning the protection of birds and their habitats (OJ 1975, L 21, p. 24).

5 — GURI No 3, 4.1.1978.

6 — The coot (No 19) and the mallard (No 7) are mentioned in Annex II/1 to the Directive, which sets out the species of birds which may be hunted in the Community as a whole. The moorhen (No 45) and the blackbird (No 68) appear in Annex II/2 to the Directive among the species of birds which may be hunted in Italy (and in certain other Member States).

7 — Cramp, S., Simmons, K. E. L., and others: *Handbook of the Birds of Europe, the Middle East and North Africa. The Birds of the Western Palearctic*, Oxford, 1977, Vols 1-5

8 — Bezzel, E.: *Kompendium der Vögel Mitteleuropas*, Wiesbaden, 1985.

5. As far as the second complaint is concerned, the Commission points out that Article 11 of Law No 968 of 27 December 1977, as amended by decrees of the President of the Council of Ministers dated 20 December 1979 [9] and 4 June 1982, [10] lays down the dates closing the hunting season for a number of migratory birds. Thus it authorizes the hunting until 28 February of the following birds (I have appended the classification in Annex II of the Directive of the species of birds concerned):

the coot (II/1-19),

the gadwall (II/1-5),

the teal (II/1-6),

the mallard (II/1-7),

the shoveler (II/1-10),

the pochard (II/1-11),

the redshank (II/2-57),

the ruff/reeve (II/2-51),

the curlew (II/2-55),

the fieldfare (II/2-69).

The following species may be hunted until 10 March:

the wigeon (II/1-4),

the pintail (II/1-8),

the garganey (II/1-9),

the tufted duck (II/1-12),

the golden plover (II/2-47),

the snipe (II/1-21),

the black-tailed godwit (II/2-52),

the song-thrush (II/2-70),

the redwing (II/2-71).

Neither does the Commission challenge the fact that the hunting of those species of birds in Italy is authorized under the Directive. However, it considers that on 28 February and 10 March, as the case may be, birds of the species in question are flying over Italy on the way to their rearing grounds. In support of that view, the Commission refers once again to the two works which I have already mentioned and to a report, which is appended to the reply, by the Istituto Nazionale di Biologia della Selvaggina (hereinafter referred to as 'the Institute') which was published for a conference held in May 1986. It maintains that the dates for the closure of the hunting season laid down by the Italian legislation

9 — GURI No 1, 2.1.1980.
10 — GURI No 155, 8.6.1982.

are contrary to the third sentence of Article 7(4) of the Directive, which prohibits the hunting of the migratory birds in question 'during their return to their rearing grounds'.

Admissibility

6. The Italian Government objects that the application is not admissible, on the ground that it is based on the same complaints as complaints in the application in Case 262/85 which were rejected by the Court in the judgment of 8 July 1987. [11]

In Case 262/85 the Commission sought a declaration to the effect that the Italian legislation did not take account of the various protection periods for birds covered by Article 7(4) of the Directive. The Court dismissed the relevant complaint on the ground that the Italian legislation did fix different dates for the opening and the closing of the hunting season for the various species of birds, having regard to their different rearing seasons and their different stages of reproduction and, in the case of migratory birds, their return to their rearing grounds (paragraph 23).

The proceedings had already reached the stage of the submission of the reply before the Commission also alleged that the dates laid down in the Italian legislation for the opening and the closing of the hunting season for certain species of birds were incompatible with the provisions of the Directive. That allegation, which coincides completely with the complaints set out in this case, extended the scope of the complaint made in the pre-litigation procedure and in the application in Case 262/85. It was for that procedural reason that the Court disregarded the question of the appropriateness of the dates for the opening and the closing of the hunting season for various species of birds (paragraph 24) without ruling on the substance of that complaint. Consequently the Commission was entitled to reassert that complaint in fresh proceedings brought under Article 169, as it has done in this case. Consequently, the judgment delivered by the Court in Case 262/85 does not seem to me to constitute any reason for declaring this application inadmissible.

The first complaint: The hunting season opens too early

7. The Italian Government puts forward essentially three arguments to challenge the first complaint: (a) when the hunting season opens most of the young birds are normally independent; (b) the Commission has not discharged the burden of proof incumbent upon it; (c) the regions are entitled to alter the statutory date for the opening of the hunting season.

(a) *The claim that most of the young birds are normally independent when the hunting season opens*

8. In its defence, the Italian Government acknowledges that in some areas some young mallards will perhaps not yet be independent of their parents when the hunting season begins. However, it maintains that these are minority cases. In the response to the documents produced by the Commission at the Court's request, it repeats the same argument as regards the three other species

11 — Judgment of 8 July 1987 in Case 262/85 *Commission v Italian Republic* [1987] ECR 3073

of birds: in its view, the great majority of young coots, moorhens and blackbirds are independent by 18 August.

That argument is based on the premise that the second sentence of Article 7(4) of the Directive may be interpreted as meaning that it is permitted to hunt the species of birds concerned once most of the birds are normally no longer breeding or being reared. The question at issue is therefore at what point in time does the prohibition of hunting become effective under the provision in question.

9. Up to now I have used the terminology of the Dutch version of the second sentence of Article 7(4) of the Directive. However, there are remarkable differences between the various language versions of that provision. In some versions, the prohibition of hunting covers three periods, that is to say, the 'nestperiode' (French: 'période nidicole', Italian: 'periodo della nidificazione', German: 'Nistzeit'), the 'broed-of voortplantingsperiode' (French: 'reproduction', Italian: 'riproduzione', German: 'Brutzeit') and the 'afhankelijkheidsperiode' (French: 'dépendance', Italian: 'dipendenza', German: 'Aufzuchtzeit'). According to other versions, the ban on hunting covers only two periods which, however, are not always referred to in the same terms. According to the English version, for example, hunting is prohibited during 'the rearing season' and during 'the various stages of reproduction', whilst the Dutch version prohibits hunting 'zolang de jonge vogels het nest nog niet hebben verlaten of gedurende de verschillende fasen van de broedperiode' (so long as the young birds have not left the nest and during the various phases of the breeding period).

In considering the first complaint it is unnecessary to establish the point from which the ban on hunting is effective. On the basis of most of the language versions this is the 'nestperiode' (nesting period) and it is not immediately clear from that expression what period precisely is meant. In contrast, this case raises the question of establishing until what point the prohibition of hunting is to remain effective.

10. In case of divergence between the different language versions, the provision in question must be interpreted by reference to the purpose and general scheme of the rules of which it forms a part.[12] The second sentence of Article 7(4) of the Directive forms part of a set of rules the aim of which is to protect species of wild birds with a view to maintaining their numbers. Under those rules, some species, in view of their numbers, geographical distribution and reproductive rates, may be hunted, provided, however, that the means of hunting used do not exert excessive pressure on their numbers (see the eleventh and twelfth recitals in the preamble to the Directive). In my view, hunting birds during the period of reproduction and rearing does exert such excessive pressure, inasmuch as not only does the hunting affect the birds that are being hunted but it also affects their breeding. That pressure continues even after the eggs have hatched out and does not disappear until the fledglings are no longer dependent on the parent birds. In view of

12 — See, *inter alia*, the Court's judgment of 27 October 1977 in Case 30/77 *R* v *Bouchereau* [1977] ECR 1999, paragraph 14.

the purpose and general scheme of the rules of which the second sentence of Article 7(4) is a part, that provision must therefore be interpreted as meaning that the species of birds concerned may not be hunted until the fledglings can survive independently or, in more concrete terms, until they have left the nest.

11. The question remains as to whether the condition on which hunting is allowed leaves the Member States a discretion in fixing the date on which the hunting season opens. In my view that is the case, since the Directive does not harmonize the date for the opening of the hunting season. Nevertheless, the Member States' discretion is limited inasmuch as they must take account of 'available scientific and technical data', just as the Community itself must when it takes action relating to the environment. [13] In any event, it appears to me that the parties agree on this point.

The differences of opinion arise with regard to the probative value of the available scientific data. Data are not always available for every species of bird and for each region concerned as to the time when the young birds leave the nest. Moreover, it appears from the available data that the time when the fledglings leave the nest depends for each species on variable biological and climatological circumstances. As for the question as to what factors the Member States must take into account when, as in this case, there are no specific data for the national territory, I shall return to this later when I consider the way in which the Commission has discharged the burden of proof incumbent upon it (see paragraph 13 et seq. below). I shall now examine to what extent the Member States must take account of the available data when it appears from them that the time when the young birds leave the nest may be staggered over time and vary depending on the circumstances.

12. It is noted by way of preliminary that the Italian legislature has not opted for rules providing that the dates for the opening and the closing of the hunting season should be fixed each year in the light of the circumstances but, instead, for rules which lay down those dates uniformly for each successive year. Is it permissible for a Member State which has opted for the latter solution to decree that the hunting season is to be open as from the time when, according to scientific data, most birds have normally left the nest? Or must it add to that 'normal' period for leaving the nest an extra period regarded by scientists as a safety margin in order to take account of birds which breed late and leave the nest late and of changeable circumstances? In view of the wording and rationale of the second sentence of Article 7(4) of the Directive I consider that the first question should be answered in the negative and the second in the affirmative. That provision lays down a general prohibition on the hunting of wild birds — it does not stipulate 'most' birds — so long as the young birds have not left the nest. In the light of this and of the rationale of the legislation as

13 — See Article 130R(3)(i) of the EEC Treaty

described above (in paragraph 10), I consider that the Member States may not fix the opening of the hunting season on a date on which, according to scientific opinion, young birds may still be in the nest, depending on specific, variable circumstances. That view is confirmed *inter alia* by the case-law of the Court to the effect that a faithful transposition into national law of the provisions of Directive 79/409 becomes particularly important in a case such as this in which the management of the common heritage is entrusted to the Member States in their respective territories.[14] In my view, faithful, and hence full, transposition of the provision at issue means that when they lay down the dates for the opening and the closing of the hunting season the Member States must take into account the safety margins indicated by scientific circles when determining the time when the young birds leave the nest. As a result, the Italian Government's argument to the effect that it is sufficient that most of the young birds should normally be independent at the time when the hunting season opens cannot be accepted.

(b) *The evidence provided by the Commission*

13. It is clear from the extracts provided by the Commission from Cramp & Simmons and, in particular, from the diagrams contained in those extracts that it is possible that the young of the four species of birds (listed in paragraph 4) are still in the nest on 18 August. The extract which the Commission took from Bezzel confirms this as regards the three species of birds mentioned in that work (namely the coot, the moorhen and the mallard).

The Italian Government objects that, by referring exclusively to Cramp & Simmons and to Bezzel, the Commission has not furnished sufficient proof that, having regard to the situation in Italy, each of the four species of birds are still in one of the periods referred to in the second sentence of Article 7(4) of the Directive.

14. There is no doubt at all that those two scientific works are authoritative in the field of ornithology and contain valuable data to which the Commission is entitled to refer in order to define in specific terms the periods of the birds' lifecycle which are defined in general terms in the Directive. Moreover, this is not disputed by the Italian Government. Its challenge is limited to the question as to whether those works have any probative force in this case. It maintains that Bezzel contains no specific data referring to birds in Italy. In addition, it argues that the extracts from Cramp & Simmons cited by the Commission are not based on observations carried out in Italy or are insufficiently based thereon.

15. I disagree with the Italian Government's view that Bezzel's work does not have probative force on the ground that Italy is not among the regions which it covers. In its defence, Italy concedes that the bio-geography of Italy is akin to that of Czechoslovakia, a country which Bezzel includes in the territory of central Europe,

14 — See in particular the Court's judgment in Case 262/85, *Commission* v *Italian Republic*, cited above, paragraph 9.

which is the subject-matter of the work. Moreover, Bezzel's 'Kompendium' refers for its source material to much more detailed works such as Cramp & Simmons and Glutz von Blotzheim. Furthermore, Bezzel is the co-author of the latter work, which the Italian Government agrees to be representative of the situation in Italy.

16. In my view, the Italian Government's argument that the diagrams taken from Cramp & Simmons are without probative force as far as Italy is concerned cannot be accepted. Whilst there are no scientific data relating to the territory of the Member State concerned,[15] the Commission is entitled to refer to general scientific works which are authoritative, contain data relating to the species of birds concerned and, while not relating specifically to a particular region, nevertheless are concerned with an area of distribution within which that specific region falls. If the Italian Government considers that the data relied on by the Commission are not representative of the situation in Italy, then it is for that Government to prove it. However, it has produced no scientific data to establish that the particulars taken from Cramp & Simmons are not representative of the situation in Italy. As I mentioned above (in paragraph 8), the Italian Government has admitted, however, that in Italy a minority of young birds of the four species in question may still be in the nest on 18 August. The argument that the Commission's complaint has not been sufficiently proven cannot therefore be accepted.

15 — The Commission stated at the hearing that, with the exception of the aforementioned report of the Institute, practically no scientific data are available for Italy. The Italian Government did not contradict the Commission on that point. The passages from Glutz von Blotzheim which it cites do not contain any specific data for Italy either but, in comparison with the extracts from Cramp & Simmons, they contain more detailed data with regard to Czechoslovakia.

(c) *The powers of the regions*

17. The Italian Government points out that Law No 968 of 27 December 1977 confers on the regions the power to derogate from the general dates laid down in that Law and to prohibit or restrict hunting if this is justified by exceptional circumstances. This means that there is a legal instrument whereby the opening of the hunting season can be postponed in regions where, exceptionally, young birds are not yet independent on 18 August. It maintains, moreover, that in more than half of the regions the opening of the hunting season has been postponed until after mid-September or even later.

Where a legal provision declares that the season for hunting certain species of birds is open in principle unless the regions having jurisdiction in that matter provide otherwise, and where all those regions — which is not the case here, as I have already mentioned — actually close the hunting season, in accordance with the provisions of the Directive, by means of a measure of a general nature which has been brought to the notice of all, it would appear that the result sought by the Directive is attained in the regions concerned. Nevertheless, in my view it is clear from paragraph 39 of the Court's judgment in Case 262/85, *Commission* v *Italian Republic*, cited above, that a Member State must amend its legislation if it embodies general rules which are incompatible with the Directive and merely empowers the regions to derogate from those general rules. Such legislation leaves in place general rules which are incompatible with the Directive and whose effects

are suspended only if and for such time as all the regions use their power to derogate from those rules in accordance with the Directive. Accordingly, neither does that argument defeat the Commission's complaint.

Second complaint: The hunting season is closed too late

18. As far as the second complaint is concerned, the Italian Government bases itself essentially on four arguments: (a) when the hunting season closes, most of the birds have, as a general rule, already begun their migration to their rearing grounds; (b) the Commission has not discharged the burden of proof which is incumbent upon it; (c) the date for the closure of the hunting season was fixed after consulting a scientific institution; (d) the Italian legislation complies with the Paris Convention and hence also with the Directive.

(a) *At the date when the hunting season is closed most of the birds have, as a general rule, already commenced their migration to their rearing grounds*

19. In its rejoinder, the Italian Government refers to the preamble to the aforementioned decree of 20 December 1979, in which it is stated that *normally* no *major* migratory phenomena occur in Italy in the first 10 days of March and that *normally* the species found up to that date in Italy have not yet embarked upon their journey back to their rearing grounds (my emphasis). In response to the documents produced by the Commission at the Court's request, the Italian Government adds that the migration of a number of species of birds reaches its peak outside the hunting season. That defence is based on the premise that the third sentence of Article 7(4) of the Directive may be interpreted as meaning that the hunting of the species concerned is prohibited during the period in which *most* of the birds in question *normally* fly over the territory of the Member State concerned. It is therefore necessary to examine the question as to the point in time from which the prohibition of hunting is to take effect according to the third sentence of Article 7(4).

20. The third sentence of Article 7(4) of the Directive leaves the Member States with a discretion for the purpose of fixing the date for the closure of the hunting season in so far as they have to take into account available scientific data. The parties seem to be in agreement on this point. In contrast, they disagree, as they disagreed over the first complaint, when it comes to determining the extent to which the Member States must take account of the available scientific data when it appears from those data that the departure of migratory birds to their rearing grounds is staggered over time and varies depending on the circumstances (in particular climatological conditions). It is pointed out once again that the national legislation at issue does not fix the dates for the opening and the closing of the hunting season each year in the light of the circumstances.

In accordance with the interpretation of the second sentence of Article 7(4) of the Directive which I have already given, I consider that the third sentence of Article

7(4) also requires the Member States to take into account, in fixing the date for the closure of the hunting season, not only the period during which most of the birds normally fly over the territory but also the scientifically recognized safety margins in order to protect those birds who begin their migration early. In my view, that interpretation follows from both the spirit and letter of the provision and from the case-law of the Court.

21. The third sentence of Article 7(4) of the Directive prohibits the hunting of migratory birds during their return to their rearing grounds. This provision is aimed at migratory birds in general and not only at most of them. The prohibition is prompted by concern that hunting migratory birds during that period places excessive pressure on the numbers of the migratory species concerned. This is true especially of certain species such as varieties of ducks [16] which migrate in large groups and could be killed in large numbers if the hunting season was opened during the period of their migration. The ban on hunting is also important in order to allow the birds to feed without disturbance in the areas which they fly over, to rest there and hence to recover the necessary energy in order to continue their exhausting migration to their rearing grounds. [17] It is also important for migratory birds which spend the winter in a particular region that the hunting season in that region should be closed on time. If the hunting season is closed as soon as migration starts, birds which have not yet started off can prepare for their departure undisturbed. [18] Lastly, it must be pointed out that migratory birds cross frontiers and the Member States concerned therefore manifestly share responsibility for the preservation of those species (third recital in the preamble to the Directive). As a result, it is necessary in this case too that the provisions of Directive 79/409 should be faithfully, and hence fully, transposed, as the Court has stressed in its case-law. In my view, it follows that the Member States must take into account safety margins as scientists do when they chart the whole of the period of migration.

As a result, the argument which I have just examined cannot be accepted.

(b) *The evidence provided by the Commission*

22. The Italian Government objects that the Commission has not shown conclusively that the species of birds mentioned in the application start their migration to their rearing grounds in the hunting season.

The Commission did not base its second complaint simply on a reference to Cramp & Simmons and to Bezzel, but also on the report of the Institute mentioned above, which, for each of the species of birds set out in the application, provides indications as to the period as from which the birds leave their winter quarters in Italy or as from which they fly over Italy in the course of their migration.

16 — See the report of the aforementioned institute, p. 10, paragraph 1.

17 — Ibid, p. 10, paragraphs 2 and 4.

18 — Ibid, p. 10, paragraph 3.

23. It appears from Cramp & Simmons that some of the species of birds concerned may be flying over Italy when the hunting season is open. That is so in the case of the following species, which may be hunted in Italy until 28 February:

the coot,

the gadwall,

the teal,

the mallard,

the shoveler,

the pochard,

the ruff/reeve,

the fieldfare,

and of the following species, which may be hunted in Italy until 10 March:

the wigeon,

the pintail,

the garganey,

the tufted duck,

the golden plover,

the snipe,

the black-tailed godwit,

the song-thrush,

the redwing.

The Court asked the Italian Government to provide scientific data calling in question the documents produced by the Commission. It has produced no evidence which would authorize the Italian legislature to close the hunting season on 28 February and 10 March, depending on the species, in the exercise of its discretion under the Directive. On the contrary, the report of the Institute which the Commission produced confirms the data taken from Cramp & Simmons.

Consequently there are in this case specific scientific data relating to the birds which may be hunted in the Member State in question and in so far as those data confirm the particulars given in the general reference work by Cramp & Simmons, I consider that the Commission's statement is proven as regards the aforementioned species of birds.

24. On the other hand, I consider that non-compliance with the Directive has not been made out sufficiently in the case of two species of birds, namely the redshank and the curlew, for which hunting is not prohibited until 28 February. Although it is

stated in Cramp & Simmons that birds of those two species may have already begun their return to their rearing grounds at that date, that statement is contradicted in the report of the Institute which the Commission itself produced, as it states that the redshank does not fly over Italy until the first half of March. The same report concludes from the data collected about the curlew that birds of that species fly over Italy between mid-March and mid-April. [19]

Where there are both general data and specific data relating to a specific territory, a Member State may, in my view, attach more importance to the latter than it does to the former. I therefore consider that as far as those two species of birds are concerned the Commission has not sufficiently made out its claim that Italy has infringed the relevant provision of the Directive.

(c) *Consultation of a scientific institution*

25. The Italian Government observes that the two decrees cited above were adopted after consulting the aforementioned Institute and the Comitato Tecnico Venatorio Nazionale.

As far as that argument is concerned, it is sufficient to point out that in the judgment in Case 262/85, *Commission* v *Italian Republic*, cited above, (paragraph 37) the Court held, with regard to a similar argument, that even though the regions are obliged to consult a scientific institute beforehand, that obligation does not guarantee that the requirements of the Directive will be respected, *a fortiori* where the advice given by the Institute in question is not binding.

(d) *The Paris Convention*

26. The Italian Government observes that Law No 968 of 27 December 1977 was amended by a decree of the President of the Council of Ministers of 20 December 1979 in order to bring the Italian legislation into line with the 1950 Paris Convention, which Italy ratified by a law of 24 November 1978. The Italian Government considers that since the Directive does not stipulate the time when the migration of the birds begins, the relevant provisions of the Paris Convention should be decisive for the interpretation of the third sentence of Article 7(4) of the Directive.

Under Article 2(a) of the Paris Convention (see paragraph 3 above), migrants must be protected during their return flight to their nesting ground *particularly* (rendered in the French version as 'notamment') in March, April, May, June and July. The term 'particularly' indicates that the Paris Convention does not authorize the Member States to hunt migrants returning to their nesting grounds during other months. *A fortiori*, the Directive, which was adopted 30 years later — after a sharp decline in the numbers of numerous species of birds — cannot be interpreted as meaning that the season for hunting migratory birds does not have to be closed before March.

19 — For completeness' sake, it must be pointed out that the Italian report does leave open certain doubts as to those two species of birds. As far as the redshank is concerned it appears from the graph set out in the report that specimens may be taken in Italy as from 15 February. As for the curlew, the Institute's finding is based on 'a few data', which might suggest that the sample was not representative.

Conclusion

In sum, I propose that the Court should:

(1) Declare the Commission's application admissible;

(2) Declare that by authorizing the hunting of various species of wild birds during the rearing season or during the various stages of reproduction and of various migratory species during their return to their rearing grounds, the Italian Republic has failed to fulfil its obligations under Article 7(4) of Council Directive 79/409/EEC of 2 April 1979 on the conservation of wild birds;

(3) Order the Italian Republic to pay the costs.