Reports of Cases

JUDGMENT OF THE COURT (Second Chamber)

4 September 2014*

(Reference for a preliminary ruling — Protection of species of wild fauna and flora — Regulation (EC) No 338/97 — Article 11 — Invalidity of an import permit restricted to the specimens of animals actually affected by the ground of invalidity)

In Case C-532/13,

REQUEST for a preliminary ruling under Article 267 TFEU from the Fővárosi közigazgatási és munkaügyi bíróság (Hungary), made by decision of 20 September 2013, received at the Court on 9 October 2013, in the proceedings

Sofia Zoo

v

Országos Környezetvédelmi, Természetvédelmi és Vízügyi Főfelügyelőség,

THE COURT (Second Chamber),

composed of R. Silva de Lapuerta, President of the Chamber, K. Lenaerts (Rapporteur), Vice-President of the Court, J.L. da Cruz Vilaça, J.-C. Bonichot and A. Arabadjiev, Judges,

Advocate General: E. Sharpston,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

— the Hungarian Government, by K. Szíjjártó and by M. Fehér and G. Szima, acting as Agents,

— the Belgian Government, by J. Van Holm and T. Materne, acting as Agents,

— the European Commission, by K. Mifsud-Bonnici and A. Sipos, acting as Agents,

having decided, after hearing the Advocate General, to proceed to judgment without an Opinion,

gives the following

* Language of the case: Hungarian.

Judgment

1 This request for a preliminary ruling concerns the interpretation of Article 11(2)(a) and (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 (OJ 1997 L 61, p. 1).

2 The request has been made in proceedings between Sofia Zoo (Bulgaria) and the Országos Környezetvédelmi, Természetvédelmi és Vízügyi Főfelügyelőség (Inspectorate General of the State for the conservation of the environment and nature and for the administration of water) (Hungary) ('the Inspectorate General'), concerning the latter's decision to order the confiscation of 17 specimens of wild animals originating from Tanzania.

Legal context

The Convention on International Trade in Endangered Species of Wild Fauna and Flora

3 The Convention on International Trade in Endangered Species of Wild Fauna and Flora, signed in Washington on 3 March 1973 (*United Nations Treaty Series*, vol. 993, No I-14537) ('CITES') seeks to ensure that international trade in species listed in its appendices, and in parts and derivatives thereof, does not damage the conservation of biodiversity and is based on a sustainable use of wild species.

4 That convention was implemented in the European Union as from 1 January 1984 by virtue 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 (OJ 1982 L 384, p. 1). That regulation was repealed by Regulation No 338/97, the second paragraph of Article 1 of which provides that that regulation is to apply in compliance with the objectives, principles and provisions of CITES.

5 Article VI(5) of CITES states:

'A separate permit or certificate shall be required for each consignment of specimens.'

EU law

6 Recitals 5 and 17 in the preamble to Regulation No 338/97 are worded as follows:

(5) ... the implementation of this Regulation necessitates the application of common conditions for the issue, use and presentation of documents relating to authorisation of the introduction into the [Union] and the export or re-export from the [Union] of specimens of the species covered by this Regulation; ... it is necessary to lay down specific provisions relating to the transit of specimens through the [Union];

...

(17) ..., in order to guarantee compliance with this Regulation, it is important that Member States impose sanctions for infringements in a manner which is both sufficient and appropriate to the nature and gravity of the infringement'.

7 Article 4 of that regulation provides:

‘1. The introduction into the [Union] of specimens of the species listed in Annex A shall be subject to completion of the necessary checks and the prior presentation, at the border customs office at the point of introduction, of an import permit issued by a management authority of the Member State of destination.

The import permit may be issued only in accordance with the restrictions established pursuant to paragraph 6 and when the following conditions have been met:

...

(b) (i) the applicant provides documentary evidence that the specimens have been obtained in accordance with the legislation on the protection of the species concerned which, in the case of import from a third country of specimens of a species listed in the Appendices to the Convention, shall be an export permit or re-export certificate, or copy thereof, issued in accordance with the Convention by a competent authority of the country of export or re-export;

...

...

(e) the management authority is satisfied, following consultation with the competent scientific authority, that there are no other factors relating to the conservation of the species which militate against issuance of the import permit;

and

(f) in the case of introduction from the sea, the management authority is satisfied that any live specimen will be so prepared and shipped as to minimise the risk of injury, damage to health or cruel treatment.

2. The introduction into the [Union] of specimens of the species listed in Annex B shall be subject to completion of the necessary checks and the prior presentation, at the border customs office at the point of introduction, of an import permit issued by a management authority of the Member State of destination.

The import permit may be issued only in accordance with the restrictions established pursuant to paragraph 6 and when:

(a) the competent scientific authority, after examining available data and considering any opinion from the Scientific Review Group, is of the opinion that the introduction into the [Union] would not have a harmful effect on the conservation status of the species or on the extent of the territory occupied by the relevant population of the species, taking account of the current or anticipated level of trade. This opinion shall be valid for subsequent imports as long as the abovementioned aspects have not changed significantly;

(b) the applicant provides documentary evidence that the intended accommodation for a live specimen at the place of destination is adequately equipped to conserve and care for it properly;

(c) the conditions referred to in paragraph 1(b)(i), (e) and (f) have been met.

...

6. In consultation with the countries of origin concerned, in accordance with the regulatory procedure referred to in Article 18(2) and taking account of any opinion from the Scientific Review Group, the [European] Commission may establish general restrictions, or restrictions relating to certain countries of origin, on the introduction into the [Union]:

(a) on the basis of the conditions referred to in paragraph 1(a)(i) or (e), of specimens of species listed in Annex A;

(b) on the basis of the conditions referred to in paragraph 1(e) or paragraph 2(a), of specimens of species listed in Annex B;

and

(c) of live specimens of species listed in Annex B which have a high mortality rate during shipment or for which it has been established that they are unlikely to survive in captivity for a considerable proportion of their potential life span;

or

(d) of live specimens of species for which it has been established that their introduction into the natural environment of the [Union] presents an ecological threat to wild species of fauna and flora indigenous to the [Union].

The Commission shall on a quarterly basis publish a list of such restrictions, if any, in the *Official Journal of the European [Union*].

...'

8 Article 9(4) and (5) of that regulation provides:

'4. Where a live specimen of a species listed in Annex B is moved within the [Union], the holder of the specimen may relinquish it only after ensuring that the intended recipient is adequately informed of the accommodation, equipment and practices required to ensure the specimen will be properly cared for.

5. When any live specimens are transported into, from or within the [Union] or are held during any period of transit or transhipment, they shall be prepared, moved and cared for in a manner such as to minimise the risk of injury, damage to health or cruel treatment and, in the case of animals, in conformity with [Union] legislation on the protection of animals during transport.'

9 Article 11(1) and (2) of that same regulation, entitled 'Validity of and special conditions for permits and certificates', provides:

'1. Without prejudice to stricter measures which the Member States may adopt or maintain, permits and certificates issued by the competent authorities of the Member States in accordance with this Regulation shall be valid throughout the [Union].

2.

(a) However, any such permit or certificate, as well as any permit or certificate issued on the basis of it, shall be deemed void if a competent authority or the Commission, in consultation with the competent authority which issued the permit or certificate, establishes that it was issued on the false premiss that the conditions for its issuance were met.

(b) Specimens situated in the territory of a Member State and covered by such documents shall be seized by the competent authorities of that Member State and may be confiscated.'

10 Under Article 16(4) of Regulation No 338/97:

'Where a live specimen of a species listed in Annex B or C arrives at a point of introduction into the [Union] without the appropriate valid permit or certificate, the specimen must be seized and may be confiscated or, if the consignee refuses to acknowledge the specimen, the competent authorities of the Member State responsible for the point of introduction may, if appropriate, refuse to accept the shipment and require the carrier to return the specimen to its place of departure.'

Hungarian law

11 Article 20(1), (2) and (4)(a) and (b) of Government Decree 292/2008 (XII.10) containing certain implementing provisions of international and European Community legal instruments regulating international trade in endangered species of wild fauna and flora ('the Government Decree') provides:

'1. If the possession, transport or trading of specimens of the species listed in Annexes A to D of [Regulation No 338/97] is not accompanied by the requisite permit or certificate, or if the transport of those specimens infringes legislative or administrative rules, the authority referred to in Article 3(3) — with the exception of the authority referred to in Article 4(1) –, in the context of measures adopted on the spot, shall seize the specimens, draw up a record and take measures in accordance with the relevant legislation, which it shall notify, within a period of 48 hours, to the authority referred to in Article 4(1) and to the administrative authority. The authority referred to in Article 4(1) shall take measures to place the live specimens seized, taking into consideration the opinion sought from the administrative authority.

2. The authority referred to in Article 4(1) — as a result of a check carried out or of a seizure made in accordance with Article 20(1) by another authority — shall seize the specimens whose possessor fails to prove the lawful nature of their importation, exportation, re-exportation or possession in the course of the check and shall require the party concerned to submit the documents proving the origin of the specimens within a prescribed period.

...

4. The authority referred to in Article 4(1) shall:

(a) confiscate the specimens in respect of which the possessor does not submit the documents proving their origin within the prescribed period,

(b) confiscate the specimens whose possession is unlawful.

...'

The dispute in the main proceedings and the questions referred for a preliminary ruling

12 On 17 January 2011, a border check was carried out on a Serbian national entering Hungary, who was transporting, in the vehicle he was driving, a cargo of 17 specimens of wild animals originating from Tanzania, which included two African hawk-eagles (*Hieraaetus spilogaster*), four Verreaux's eagles (*Aquila verreauxii*), two martial eagles (*Polemaetus bellicosus*), one bateleur (*Terathopius ecaudatus*), three crowned eagles (*Stephanoaetus coronatus*), two lappet-faced vultures (*Torgos tracheliotus*) and three white-backed vultures (*Gyps africanus*). In addition, he was transporting 10 pied crows (*Corvus*

albus) and 10 white-necked ravens (*Corvus albicollis*). In order to prove the origin of the animals, a copy of the CITES import permit issued by the Bulgarian authorities was produced. The order for reference indicates that it was clear from the accompanying documents that the animals were being transported from the Netherlands to Sofia Zoo in order to undergo quarantine and that they would subsequently be transported back to the Netherlands through Hungary.

13 The environmental protection authority retained the cargo and sent the accompanying documentation to the Vidékfejlesztési Minisztérium (Ministry for Rural Development), as the designated administrative authority in accordance with both CITES and Regulation No 338/97, which examined the lawfulness of the import of those wild animals. During that procedure, the Ministry consulted the European Commission and the Bulgarian administrative authority.

14 The Commission took the view that the specimens had to be confiscated because the Scientific Review Group ('the SRG') had decided, on 30 June 2009, to suspend the import of Martial Eagles and Bateleurs and, on 11 September 2009, had established the obligation of prior consultation with the SRG in the case of Lappet-faced Vultures and Crowned Eagles, which the competent Bulgarian authority had not taken into account, with the result that the permits it had issued to Sofia Zoo had to be deemed void.

15 By decision of 9 February 2011, the Ministry for Rural Development decided, on the basis of the foregoing, to seize the cargo — with the exception of the 10 Pied Crows and 10 White-Necked Ravens, not included within the ambit of CITES or of Regulation No 338/97 — pursuant to Article 20(2) of the Government Decree, and requested the Sofia Zoo to submit the documents proving the lawfulness of the import, possession and trading of the specimens of animals covered by its decision.

16 As the Sofia Zoo did not submit the requested documents within the prescribed period, the Ministry for Rural Development, by decision of 28 April 2011, confiscated the 17 specimens of animals originating from Tanzania pursuant to Article 20(4) of the Government Decree and housed them in Hungarian zoos.

17 The Sofia Zoo brought an action before the Fővárosi közigazgatási és munkaügyi bíróság (Administrative and Labour Court, Budapest) seeking to have that confiscation decision annulled. The action was brought against the Inspectorate General, the legal successor to the Ministry for Rural Development.

18 More specifically, the action brought by the Sofia Zoo seeks annulment of that confiscation decision and to have the Inspectorate General ordered to carry out a new procedure, requesting, primarily, the annulment in full or, in the alternative, the annulment in part of that decision. The Sofia Zoo's action also seeks to have the seizure decision reviewed. In its submission, the invalidity of the import permits may concern only those specimens of animals actually affected by the ground of invalidity (that is to say, in the present case, the two Martial Eagles, the Bateleur, the two Lappet-faced Vultures and the three Crowned Eagles), with the result that only those specimens may be seized and confiscated, and not the other specimens which come within the scope of Regulation No 338/97 (the two African Hawk-Eagles, the four Verreaux's Eagles and the three White-backed Vultures).

19 The Inspectorate General, for its part, contends that the action for annulment should be dismissed. In its view, all the specimens to which Regulation No 338/97 applies — that is to say, not only those affected by a ground of invalidity of the import permit — must be seized and may be confiscated, because Regulation No 338/97 does not provide for partial or relative invalidity of a permit. Moreover, according to the Inspectorate General, the risk of injury to health is another reason for the permits to be considered as a whole and, in the event of invalidity, irrespective of the ground thereof, for all the specimens covered by them to be seized and confiscated.

20 In those circumstances, the Fővárosi közigazgatási és munkaügyi bíróság decided to stay the proceedings and refer the following questions to the Court for a preliminary ruling:

‘(1) Under Article 11(2)(a) of [Regulation No 338/97], must permits and certificates be deemed void only in respect of the specimens actually affected by a ground of invalidity, or in respect also of the other specimens covered by the permit or certificate?

(2) Does Article 11(2)(b) of [Regulation No 338/97] provide that all the specimens covered by the permits or certificates deemed void in accordance with Article 11(2)(a) must be seized, and may be confiscated, or only those which are actually affected by the ground of invalidity?’

Consideration of the questions referred

21 By the questions it has referred, which it is appropriate to consider together, the referring court asks, in essence, whether Article 11(2)(a) and (b) of Regulation No 338/97 must be interpreted as meaning that an import permit which does not comply with the conditions laid down in that regulation must be considered void only in respect of the specimens actually affected by the ground of invalidity of that import permit, those specimens then being the only ones which may be seized and possibly confiscated by the competent authority of the Member State where they are situated.

22 According to the wording of Article 11(2)(a) of Regulation No 338/97, ‘any … permit or certificate, as well as any permit or certificate issued on the basis of it, shall be deemed void if a competent authority or the Commission, in consultation with the competent authority which issued the permit or certificate, establishes that it was issued on the false premiss that the conditions for its issuance were met’. Article 11(2)(b) states that ‘[s]pecimens situated in the territory of a Member State and covered by such documents shall be seized by the competent authorities of that Member State and may be confiscated’.

23 Accordingly, Article 11(2)(a) of Regulation No 338/97 must be interpreted in the light of the objectives pursued by that regulation and in the context of which that provision forms a part.

24 First of all, as regards the overall scheme of Regulation No 338/97, it is noteworthy that the 17 specimens of wild animals at issue in the main proceedings are listed in Annex B to that regulation. Under the first subparagraph of Article 4(2) of that regulation, ‘[t]he introduction into the [Union] of specimens of the species listed in Annex B shall be subject to completion of the necessary checks and the prior presentation, at the border customs office at the point of introduction, of an import permit issued by a management authority of the Member State of destination’.

25 It is thus clear from the wording of that provision that Regulation No 338/97 allows for the issuance of a single import permit for a number of specimens of different species listed in Annex B to that regulation and forming part of the same cargo. This reading of the first subparagraph of Article 4(2) of that regulation is, moreover, in keeping with Article VI(5) of CITES, which provides that ‘[a] separate permit or certificate shall be required for each consignment of specimens’.

26 The second subparagraph of Article 4(2) of Regulation No 338/97 provides that such an import permit may be issued only in accordance with the restrictions established pursuant to Article 4(6) and when the conditions referred to in Article 4(2)(a) to (c) have been met.

27 Under Article 4(6) of Regulation No 338/97, where, taking account of the current or anticipated level of trade in a species, the introduction of that species into the Union would have a harmful effect on its conservation status or on the extent of the territory occupied by the relevant population of the species, or where there are other factors relating to the conservation of the species which militate against issuance of the import permit, the Commission may establish general restrictions, or

restrictions relating to certain countries of origin, on the introduction into the Union of live specimens of species listed in Annex B to that regulation which have a high mortality rate during shipment or for which it has been established that they are unlikely to survive in captivity for a considerable proportion of their potential life span.

28 Under the conditions referred to in Article 4(2)(a) to (c) of Regulation No 338/97, the issuance of an import permit is subject, firstly, to the condition that the competent scientific authority, after examining available data and considering any opinion from the Scientific Review Group, is of the opinion that the introduction into the Union would not have a harmful effect on the conservation status of the species or on the extent of the territory occupied by the relevant population of the species, taking account of the current or anticipated level of trade. Secondly, the applicant must provide documentary evidence to show that the intended accommodation for a live specimen at the place of destination is adequately equipped to conserve and care for it properly. Thirdly, the conditions referred to in Article 4(1)(b)(i), (e) and (f) of that regulation must be met.

29 It follows from the foregoing that the issuance of a permit to import into the Union specimens of different species listed in Annex B to Regulation No 338/97 is not the outcome of an overall assessment of all of the specimens forming part of the cargo in question, but of an individual, in-depth examination of the situation of each of the specimens concerned.

30 In other words, the competent authority of the Member State where the specimens concerned are situated must ascertain whether the import permit in question is valid for each of those specimens, without that authority's assessment of a given animal specimen necessarily having to influence its assessment of another specimen.

31 Therefore, the fact that an import permit is void in respect of the specimens of animals not meeting the conditions for issuance laid down in Article 4(2) and (6) of Regulation No 338/97 does not cast doubt on the validity of the permit in respect of those specimens which do fulfil those conditions.

32 Accordingly, that part of the import permit relating to the specimens affected by the ground of invalidity must be regarded as severable from the other parts of the permit, which remain valid.

33 Moreover, as pointed out by the Commission in its written observations, if it were not possible to have partial or relative invalidity of permits for importing into the Union specimens of different species listed in Annex B to Regulation No 338/97, the result would be an arbitrary system in which a situation such as that at issue in the main proceedings was not treated in the same way as a situation in which the transport of 17 different specimens was carried out using 17 different documents.

34 The second point is that it must be borne in mind, in relation to the objectives pursued by Regulation No 338/97, that the purpose of the arrangements introduced in order to protect specimens of species listed in Annexes A and B to that regulation is to ensure the fullest possible protection for species of wild fauna and flora through controls on trade in such species, in compliance with the objectives, principles and provisions of CITES (see *Rubach*, C-344/08, EU:C:2009:482, paragraph 24).

35 The achievement of the objectives pursued by Regulation No 338/97 is not undermined by an interpretation of Article 11(2)(a) thereof to the effect that, where an import permit does not comply with the conditions laid down in that regulation, that permit must be considered void only in respect of the specimens of animals actually affected by that ground of invalidity of that import permit.

36 As regards, on the one hand, those specimens of animals in respect of which there actually is a ground of invalidity of the import permit pursuant to Article 11(2)(a) of Regulation No 338/97, the competent authority of the Member State where those specimens are situated has an obligation under Article 11(2)(b) to protect those animals by ordering that they be seized and potentially confiscated.

37 As regards, on the other hand, specimens of animals which are not affected by the ground of invalidity of the import permit, Regulation No 338/97 provides for measures aimed at protecting them when they are in circulation in the Union. In that regard, Article 9(4) of that regulation provides that '[w]here a live specimen of a species listed in Annex B is moved within the [Union], the holder of the specimen may relinquish it only after ensuring that the intended recipient is adequately informed of the accommodation, equipment and practices required to ensure the specimen will be properly cared for'. Moreover, Article 9(5) of that regulation provides that such specimens of animals must 'be prepared, moved and cared for in a manner such as to minimise the risk of injury, damage to health or cruel treatment and, in the case of animals, in conformity with [Union] legislation on the protection of animals during transport'.

38 Consequently, it is clear both from the overall scheme of Regulation No 338/97 and from the objectives pursued thereby that Article 11(2)(a) of that regulation must be interpreted as meaning that an import permit which does not comply with the conditions laid down in that regulation must be considered void only in respect of the specimens actually affected by the ground of invalidity of that import permit.

39 The same holds true as regards Article 11(2)(b) of Regulation No 338/97, since it applies only to specimens of animals covered by the documents referred to in Article 11(2)(a).

40 Accordingly, the competent authority of the Member State where the specimens concerned are situated may seize and confiscate only the specimens actually affected by the ground of invalidity of the import permit.

41 In the light of the foregoing considerations, the answer to the questions referred is that Article 11(2)(a) and (b) of Regulation No 338/97 must be interpreted as meaning that an import permit which does not comply with the conditions laid down in that regulation must be considered void only in respect of the specimens actually affected by the ground of invalidity of that import permit, those specimens then being the only ones which may be seized and possibly confiscated by the competent authority of the Member State where they are situated.

Costs

42 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national court, the decision on costs is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (Second Chamber) hereby rules:

Article 11(2)(a) and (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 must be interpreted as meaning that an import permit which does not comply with the conditions laid down in that regulation must be considered void only in respect of the specimens actually affected by the ground of invalidity of that import permit, those specimens then being the only ones which may be seized and possibly confiscated by the competent authority of the Member State where they are situated.

[Signatures]