Operative part

The Court:

1. Dismisses the appeal;

2. Orders Transportes Evaristo Molina, SA to pay the costs.

Judgment of the Court (Fourth Chamber) of 11 November 2010 — Commission v Italy

(Case C-164/09)

(Failure of a Member State to fulfil obligations — Conservation of wild birds — Directive 79/409/EEC — Derogations from the system of protection for wild birds — Hunting)

1. *Actions for failure to fulfil obligations — Examination of the merits by the Court — Situation to be taken into consideration — Situation on expiry of the period laid down in the reasoned opinion (Art. 226 EC) (see para. 19)*

2. *Environment — Conservation of wild birds — Directive 79/409 — Implementation by Member States — Derogations from the prohibition of killing or capturing protected species — Conditions — No other satisfactory solution — Conditions not satisfied — Unlawful (Council Directive 79/409, Arts 7 and 9) (see paras 22-27)*

3. *Environment — Conservation of wild birds — Directive 79/409 — Implementation by Member States — Derogations from the prohibition of killing or capturing protected species — Conditions — Fixing for a period of five years the number of specimens that may be taken (Council Directive 79/409, Arts 7 and 9) (see paras 29-30)*

4. Environment — Conservation of wild birds — Directive 79/409 — Implementation by Member States — Derogations from the prohibition of killing or capturing protected species — Conditions — Capture in small numbers — Fixing the number of birds that may be hunted at a level clearly higher than the limit fixed by the directive — Unlawful (Council Directive 79/409, Arts 7 and 9(1)(c)) (see paras 35-40)

Re

Failure of a Member State to fulfil obligations — Infringement of Article 9 of Council Directive 79/409/EEC of 2 April 1979 on the conservation of wild birds (OJ 1979 L 103, p. 1) — Derogations from the system of protection for wild birds — Veneto Region.

Operative part

The Court:

1. Declares that, by adopting and applying, for the region of Liguria, legislation authorising derogations from the system of protection for wild birds that fails to satisfy the conditions laid down in Article 9 of Council Directive 79/409/EEC of 2 April 1979 concerning the conservation of wild birds, the Italian Republic has failed to fulfil its obligations under that directive;

2. Orders the Italian Republic to pay the costs.