OPINION OF ADVOCATE GENERAL SHARPSTON

delivered on 3 May 2007 [1]

1. In these proceedings, the Commission seeks a declaration under Article 226 EC that, in omitting to take the appropriate steps to avoid, in the special protection area ('SPA') 'Valloni e steppe pedegarganiche', the deterioration of natural habitats and the habitats of species, Italy has failed to comply with its obligations under Article 4(4) of Directive 79/409 [2] (the 'Birds Directive') and Article 6(2), (3) and (4) and Article 7 of Directive 92/43 [3] (the 'Habitats Directive'). This raises the question of the relationship between those provisions of the two directives.

Relevant Community law

The Birds Directive

2. Article 1 of the Birds Directive states that the directive 'relates to the conservation of all species of naturally occurring birds in the wild state ... It covers the protection, management and control of these species ...'. 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'.

3. Article 3(1) stipulates that, '[i]n the light of the requirements referred to in Article 2, Member States shall take the requisite measures to preserve, maintain or re-establish a sufficient diversity and area of habitats

1 — Original language: English.

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

3 — 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).

for all the species of birds referred to in Article 1'. Article 3(2)(a) envisages the 'creation of protected areas' as one of the four primary measures identified for the 'preservation, maintenance and re-establishment' of biotopes and habitats.

4. Article 4 of the Birds Directive then provides:

'1. The species mentioned in Annex I shall be the subject of special conservation measures concerning their habitat in order to ensure their survival and reproduction in their area of distribution.

...

Member States shall classify in particular the most suitable territories in number and size as special protection areas for the conservation of these species, taking into account their protection requirements in the geographical sea and land area where this Directive applies.

2. Member States shall take similar measures for regularly occurring migratory species not listed in Annex I ...

...

4. In respect of the protection areas referred to in paragraphs 1 and 2 above, Member States shall take appropriate steps to avoid pollution or deterioration of habitats or any disturbances affecting the birds, in so far as these would be significant having regard to the objectives of this Article. ...'

5. Article 9 allows Member States to derogate from certain provisions of the Directive, [4] but does not provide for any derogation from Article 4.

6. Article 13 states that '[a]pplication of the measures taken pursuant to this Directive may not lead to deterioration in the present situation as regards the conservation of species of birds referred to in Article 1'.

7. Article 18 required Member States to bring into force the laws, regulations and administrative provisions necessary to comply with the Birds Directive within two years of its notification, i.e. by 7 April 1981.

4 — Namely Articles 5, 6, 7 and 8.

The Habitats Directive

8. The following recitals to the Habitats Directive are relevant:

'[1] ... the preservation, protection and improvement of the quality of the environment, including the conservation of natural habitats and of wild fauna and flora, are an essential objective of general interest pursued by the Community, as stated in Article 130r of the Treaty;[5]

...

[6] ... in order to ensure the restoration or maintenance of natural habitats and species of Community interest at a favourable conservation status, it is necessary to designate special areas of conservation in order to create a coherent European ecological network according to a specified timetable;

[7] ... all the areas designated, including those classified now or in the future as [SPAs] pursuant to [the Birds Directive], will have to be incorporated into the coherent European ecological network;

[10] ... an appropriate assessment must be made of any plan or programme likely to have a significant effect on the conservation objectives of a site which has been designated or is designated in future'.

9. Article 1(j) of the Habitats Directive defines a 'site' as 'a geographically defined area whose extent is clearly delineated'.

10. Article 1(k) defines a 'site of Community importance' as:

'... a site which, in the biogeographical region or regions to which i[t] belongs, contributes significantly to the maintenance or restoration at a favourable conservation status of a natural habitat type in Annex I or of a species in Annex II and may also contribute significantly to the coherence of Natura 2000 referred to in Article 3, and/or contributes significantly to the maintenance of biological diversity within the biogeographical region or regions concerned'.

11. Article 1(l) defines a 'special area of conservation' ('SAC') as:

'... a site of Community importance designated by the Member States through a statutory, administrative and/or contractual act where the necessary conservation meas-

5 — Now, after amendment, Article 174 EC.

ures are applied for the maintenance or restoration, at a favourable conservation status, of the natural habitats and/or the populations of the species for which the site is designated'.

12. Article 2 states:

'1. The aim of this Directive shall be to contribute towards ensuring bio-diversity through the conservation of natural habitats and of wild fauna and flora ...

2. Measures taken pursuant to this Directive shall be designed to maintain or restore, at favourable conservation status, natural habitats and species of wild fauna and flora of Community interest.

3. Measures taken pursuant to this Directive shall take account of economic, social and cultural requirements and regional and local characteristics.'

13. Articles 3, 4 and 5 deal with the establishment of the 'coherent European ecological network of special areas of conservation' known as 'Natura 2000'. Article 3(1), second paragraph, provides that '[t]he Natura 2000 network shall include the [SPAs] classified by the Member States pursuant to [the Birds Directive]'.

14. Article 6(2), (3) and (4) of the Habitats Directive provide:

'2. Member States shall take appropriate steps to avoid, in the special areas of conservation, the deterioration of natural habitats and the habitats of species as well as disturbance of the species for which the areas have been designated, in so far as such disturbance could be significant in relation to the objectives of this Directive.

3. Any plan or project not directly connected with or necessary to the management of the site but likely to have a significant effect thereon, either individually or in combination with other plans or projects, shall be subject to appropriate assessment of its implications for the site in view of the site's conservation objectives. In the light of the conclusions of the assessment of the implications for the site and subject to the provisions of paragraph 4, the competent national authorities shall agree to the plan or project only after having ascertained that it will not adversely affect the integrity of the site concerned and, if appropriate, after having obtained the opinion of the general public.

4. If, in spite of a negative assessment of the implications for the site and in the absence of alternative solutions, a plan or project must nevertheless be carried out for imperative reasons of overriding public interest, including those of a social or economic nature, the Member State shall take all compensatory measures necessary to ensure that the overall coherence of Natura 2000 is protected. It shall inform the Commission of the compensatory measures adopted.

Where the site concerned hosts a priority natural habitat type and/or a priority species, the only considerations which may be raised are those relating to human health or public safety, to beneficial consequences of primary importance for the environment or, further to an opinion from the Commission, to other imperative reasons of overriding public interest.'

15. Article 7 of the Habitats Directive provides:

'Obligations arising under Article 6(2), (3) and (4) of this Directive shall replace any obligations arising under the first sentence of Article 4(4) of [the Birds Directive] in respect of areas classified pursuant to Article 4(1)[6] or similarly recognised under Article 4(2) thereof, as from the date of implementation of this Directive or the date of classification or recognition by a Member State under [the Birds Directive], where the latter date is later.'

16. Article 23 required Member States to bring into force the laws, regulations and administrative provisions necessary to comply with the Habitats Directive within two years of its notification, i.e. by June 1994.[7]

Relevant facts and procedure

17. The 'Valloni e steppe pedegarganiche', situated in the Apulia region, is one of the principal steppe areas in Italy, harbouring rare and protected species of wild birds. It

6 — That is, as SPAs.

7 — Determining the exact date is not as straightforward as one might assume: Case C-166/97 *Commission* v *France* (*Seine Estuary*) [1999] ECR I-1719, paragraph 5, refers only to June 1994. In Case C-329/96 *Commission* v *Greece* [1997] ECR I-3749, paragraph 2, and Case C-83/97 *Commission* v *Germany* [1997] ECR I-7191, paragraph 2, the Court concluded that the expiry date was 5 June 1994. SCADPlus, however, refers to 10 June 1992 both as the date of entry into force and as the deadline for transposition in the Member States. See also the Opinion of Advocate General Kokott in Case C-418/04 *Commission* v *Ireland*, pending, footnote 55. Eur-Lex refers to 10 June 1992 as the date of notification and to 10 June 1994 as the date of transposition.

has a geological substratum consisting of chalk dating from the Cretaceous and Jurassic Periods. The site shows significant biodiversity and contains a series of erosional canyons that harbour a rupestral environment with rare endemic plant species. [8] It is the only station on the Italian peninsula of *Tetrax tetrax* (Little bustard), and is also the habitat for the *Falco biarmicus* (Lanner falcon), *Neophron percnopterus* (Egyptian vulture), *Burhinus oedicnemus* (Stone curlew), *Melanocorypha calandra* (Calandra Lark), *Calandrella brachydactyla* ((Greater) [9] Short-toed lark), and the *Falco peregrinus* (Peregrine). All these birds are listed in Annex I to the Birds Directive.

18. The 'Valloni e steppe pedegarganiche' featured as an Important Bird Area (under the name 'Promontorio del Gargano' (Gargano Promontory)) in the 1989 European ornithological inventory 'Important Bird Areas in Europe' ('IBA Catalogue 89').

19. Nine years later, on 28 December 1998, Italy classified the site as an SPA under Article 4(1), final paragraph, of the Birds Directive.

20. In February 2001, the Lega Italiana Protezione Uccelli (Italian League for the Protection of Birds) informed the Commission that a number of industrial and property development projects were being carried out in the SPA damaging its ecological equilibrium; and that the commune of Manfredonia had concluded a regional agreement for the industrial development of the region of Manfredonia, comprising among others the realisation of a tourist complex called 'Magic Land'. It appears to be undisputed that work on at least some of these projects had already started before 28 December 1998 and is continuing.

21. The area subject to reindustrialisation, in total 400 hectares, lies along National Road 89 between the villages of Posta Spiriticchio and Posta Predella, to the southwest of the Siponto agglomeration, on the territory of the municipality of Manfredonia.

22. On 19 December 2003, the Commission sent Italy a letter of formal notice, asking it to submit observations. There was no response. By letter of 9 July 2004, the Commission therefore sent Italy a reasoned opinion pursuant to Article 226 EC, giving it a period of two months to comply.

8 — See http://www.ecologia.puglia.it/natura2000/ppggfg/tabfogg/9110008.htm.

9 — Annex I to the Birds Directive calls this species 'Short-toed lark', but the term 'greater' is added here in order to distinguish this species from the *Calandrella rufescens* (Lesser short-toed lark).

23. In a letter dated 9 November 2004, Italy informed the Commission that it intended shortly to reply substantively to its complaints. No further response was, however, forthcoming.

24. Accordingly, the Commission brought the present action on 24 October 2005. It asks the Court to:

(a) declare that

— prior to 28 December 1998, the date on which the 'Valloni e steppe pedegarganiche' was designated as an SPA, Italy breached Article 4(4) of the Birds Directive by failing to take appropriate steps to avoid pollution or deterioration of habitats or any disturbances affecting birds likely to have significant consequences, inasmuch as the plan designated 'the regional agreement' and the projects outlined therein were liable to have an impact on the habitats and species within IBA (Important Bird Area) No 94 (from IBA Catalogue 89) 'Gargano Promontory' or No 129 (from IBA Catalogue 98) 'Gargano Promontory' and have in fact brought about a deterioration of habitats and resulted in serious disturbances affecting birds within these IBAs;

— after 28 December 1998, Italy failed to meet its obligations under Article 6(2), (3) and (4) and Article 7 of the Habitats Directive in so far as

— contrary to Article 6(2), Italy has not taken appropriate steps to avoid, in the SPA [10] 'Valloni e steppe pedegarganiche', the deterioration of natural habitats and the habitats of species as well as disturbance of the species for which the area has been designated arising from the projects contained in the regional agreement that have already been completed and that are responsible for the deterioration of the natural habitat, and the habitats of species and the disturbance of the species in the area concerned;

10 — The Commission's pleading is framed throughout in terms of the SPA 'Valloni e steppe pedegarganiche', whereas Articles 6(2), (3) and (4) of the Habitats Directive refer equally consistently to SACs. As I have indicated, however, Article 3(1), second paragraph, of the Habitats Directive expressly provides that the Natura 2000 network 'shall' include all SPAs classified by Member States pursuant to the Birds Directive; and it is implicit from the successive paragraphs of Article 4 of the Habitats Directive read in conjunction with Article 7 thereof that SPAs designated under the Birds Directive are to be designated as, alternatively automatically treated as, SACs for the purposes of the Habitats Directive.

— contrary to Article 6(3), Italy has not conducted an *ex ante* assessment of the projects contained in the regional agreement that have already been completed and that were likely to have a significant effect on the SPA;

— contrary to Article 6(4), Italy has not applied the procedure that allows a project to be carried out (in spite of a negative assessment of the implications for the site and in the absence of alternative solutions) for imperative reasons of overriding public interest, including those of a social or economic nature or considerations relating to human health or public safety or to beneficial consequences of primary importance for the environment or, further to an opinion from the Commission, to other imperative reasons of overriding public interest; nor has it communicated to the Commission all compensatory measures necessary to ensure that the overall coherence of Natura 2000 is protected, with respect to the projects included in the regional agreement that have been approved (in spite of their implications for the SPA) to combat the socio-economic crisis and unemployment that affect the region of Manfredonia;

(b) order Italy to pay the costs.

25. No hearing has been requested, and none has been held.

Assessment

Preliminary remark

26. Italy has requested that the Commission withdraw the infringement proceedings in the light of certain actions already taken or being contemplated by the Region of Apulia and other competent authorities, in particular with regard to possible compensatory measures.

27. The Commission took the view that the points advanced by Italy were hypothetical. They did not rectify the breaches identified by the Commission, but seemed likely, at best, to mitigate their prejudicial effects for the future. Accordingly, the Commission has maintained its action.

28. The Court has held that the Commission is nevertheless entitled to maintain its action in the context of situations in which the

defendant Member State has already rectified the breach complained of (fully or at least in part) by the time the infringement proceedings are before the Court. [11]

29. In my view, it was amply justified in so doing in the present case. It seems clear from the material before the Court that the SPA 'Valloni e steppe pedegarganiche' was in a good state of conservation before the industrial and property development projects started. The projects already completed in the SPA have destroyed (at least partially) steppe habitats in that area. The Commission's 'Mission Report' concluded that no mitigation measures for the existing buildings were possible and that those mentioned during the visit by the Commission to the site, such as painting the buildings green, were purely cosmetic.

30. The measures identified for the first time by Italy in its defence and those placed before the Court by way of annex to Italy's formal rejoinder [12] are not such as to engender real confidence that the situation has now been rectified or that it will necessarily be rectified in the future. [13]

31. In that regard, it is moreover well established that in proceedings instituted under Article 226 EC, the question whether there has been a failure to fulfil obligations must be determined by reference to the situation prevailing in the Member State at the end of the period laid down in the reasoned opinion and that the Court cannot take account of any subsequent changes. [14] The draft Agreement relied upon by Italy in its Rejoinder cannot therefore be taken into consideration.

11 — See, inter alia, Case 154/85 *Commission* v *Italy* [1987] ECR 2717, paragraph 6; Case C-299/01 *Commission* v *Luxembourg* [2002] ECR I-5899, paragraph 11; and Case C-168/03 *Commission* v *Spain* [2004] ECR I-8227, paragraph 24.

12 — The Rejoinder, lodged after an extension of time, is dated 30 May 2006. It serves purely as a vehicle for providing the Commission and the Court with a copy of the (draft) 'Agreement governing relations between the Region of Apulia — Ecology Sector — and the Commune of Manfredonia'. The Rejoinder indicates that the Agreement was to be approved by the Council of the Commune on 31 May 2006. There is, therefore, no indication whether the draft Agreement has in fact been approved and entered into force.

13 — The draft Agreement makes it plain that the projects already completed have had an adverse impact on the SPA 'Valloni e steppe Pedegarganiche' and, to a lesser extent, on two neighbouring protected areas (the proposed SAC 'Zone umide della Capitanata' and the SPA 'Palude di Frattarolo'. Italy advances no further explanation in its Rejoinder as to how precisely the Agreement (which is framed in very general terms) is likely to palliate the harm already done or to prevent future damage.

14 — See, inter alia, Case C-183/05 *Commission* v *Ireland* [2007] ECR I-137, paragraph 17; and Case C-104/06 *Commission* v *Sweden* [2007] ECR I-671, paragraph 28.

32. I turn to examine the specific complaints made by the Commission and the specific declarations that it seeks.

Prior to 28 December 1998: Alleged violation of Article 4(4) of the Birds Directive

33. Article 4(1) of the Birds Directive requires Member States to create SPAs to conserve the species of Birds listed in Annex I to the Directive. Article 4(4) of the same directive obliges Member States to take appropriate steps to avoid pollution or deterioration of habitats or any disturbances affecting the birds.

34. It is settled case-law that, although Member States do have a certain margin of discretion with regard to the choice of SPAs, the classification of those areas is nevertheless subject to certain ornithological criteria determined by the Birds Directive, such as the presence of birds listed in Annex I to that Directive. [15] Moreover, the Court has held that IBA Catalogue 89, 'although not legally binding on the Member States concerned, can, by reason of its acknowledged scientific value in the present case, be used by the Court as a basis of reference for assessing the extent to which [the Member State] has complied with its obligation to classify SPAs'. [16]

35. Given the facts set out above, it is clear that, before 28 December 1998, Italy was under an obligation to classify the area in question as an SPA, and hence to take appropriate steps to avoid pollution or deterioration of habitats or any disturbances affecting birds likely to have significant consequences in respect of the area in question.

36. No provision in the Birds Directive explicitly provides for an *ex ante* assessment of plans for development projects. There is likewise no express provision permitting Member States, if there is sufficient 'social benefit' from a project that is likely to have a negative impact on an SPA, to override the negative assessment of such a plan in the general interest. In those respects, the Birds Directive may be seen as a less sophisticated mechanism for environmental protection than its successor, the Habitats Directive.

15 — Case C-355/90 *Commission* v *Spain (Santoña Marches)* [1993] ECR I-4221, paragraph 26, and Case C-44/95 *Royal Society for the Protection of Birds (Lappel Bank)* [1996] ECR I-3805, paragraph 26.

16 — Case C-3/96 *Commission* v *Netherlands* [1998] ECR I-3031, paragraph 70.

37. Nevertheless, a Member State must necessarily be prepared to carry out *some* evaluation of what is proposed to be done in an area that has been, or ought to have been, designated as an SPA. Article 4(4) of the Birds Directive requires Member States to 'take appropriate steps to avoid pollution or deterioration of habitats or any disturbances affecting the birds, in so far as these would be significant having regard to the objectives of this Article'. Faced with a planned development, the Member State must assess whether it could pollute or cause deterioration of the habitat, or disturb protected species of birds. If the answer to any of those questions is 'yes', the Member State is required to take the necessary steps to avoid that happening.

38. That said, in the present case it is uncontested that the existing industrial and property development projects have caused pollution and/or deterioration of habitats and disturbances to listed species of birds within what became (belatedly) the SPA 'Valloni e steppe pedegarganiche'.

39. Until 28 December 1998 (the date of designation), Italy therefore failed to meet its obligations under Article 4(4) of the Birds Directive.

On and after 28 December 1998: Alleged violation of Article 6(2), (3) and (4) of the Habitats Directive

40. Article 7 of the Habitats Directive is the linking provision between the Habitats Directive and the Birds Directive. It provides that obligations under Article 6(2), (3) and (4) of the Habitats Directive replace those under Article 4(4) of the Birds Directive in respect of areas classified as SPAs pursuant to Article 4(1) or similarly recognised under Article 4(2) of the Birds Directive. This substitution of obligations takes place from the date of implementation of the Habitats Directive or the date of classification or recognition of a particular area as an SPA by a Member State under the Birds Directive, whichever is the later.

41. On 28 December 1998, Italy classified the 'Valloni e steppe pedegarganiche' as an SPA under Article 4 of the Birds Directive. This was, on any view, *after* the deadline for implementation of the Habitats Directive. [17]

17 — The difficulties of determining the precise starting date for the application of the Habitats Directive are explained in footnote 9 above.

42. The Court held in its judgment in *Basses Corbières* [18] that 'on a literal interpretation of [the relevant] passage of Article 7 of the habitats directive, only areas classified as SPAs fall under the influence of Article 6(2) to (4) of that directive'. The Court also held that 'areas which have not been classified as SPAs but should have been so classified continue to fall under the regime governed by the first sentence of Article 4(4) of the birds directive'.

43. It follows that, until 28 December 1998, the relevant obligations were those of Article 4(4) of the Birds Directive. On and after that date, Article 6(2), (3) and (4) of the Habitats Directive applied.

44. Article 6 of the Habitats Directive obliges the Member States to establish the necessary conservation measures for SACs (Article 6(1)), to avoid, in SACs, the deterioration of natural habitats and the habitats of species and disturbance of listed species (Article 6(2)) and to subject any plan or project other than an SAC management plan to an *ex ante* assessment of its likely impact on the SAC (Article 6(3)).

18 — Case C-374/98 *Commission* v *France (Basses Corbières)* [2000] ECR I-10799, paragraphs 44 to 47.

45. Article 6(4) provides a (limited) opportunity for a Member State to override a negative *ex ante* assessment and authorise the plan or project in question for imperative reasons of overriding public interest, including those of a social and economic nature. The Member State is, however, then required to take the necessary compensatory measures to ensure that the overall coherence of Natura 2000 is protected and must inform the Commission of those measures.

Article 6(2) of the Habitats Directive

46. The projects contained in the regional agreement that have already been completed are responsible for the deterioration of the natural habitats and the habitats of species and the disturbances of the species that have already occurred. They continue to have a negative effect on the SAC.

47. The Italian Republic has therefore failed to meet its obligations under Article 6(2) of the Habitats Directive.

Relationship between Article 4(4) of the Birds Directive and Article 6(3) and 6(4) of the Habitats Directive [19]

48. The effect of Article 7 of the Habitats Directive is to impose, from the moment at which the obligations under Article 6(2), (3) and (4) of the Habitats Directive replace those under Article 4(4) of the Birds Directive, the obligation to conduct an *ex ante* assessment under Article 6(3) and the possibility of overriding that assessment in the public interest under Article 6(4).

49. It follows from the Court's judgment in *Basses Corbières* [20] that the duty to conduct an *ex ante* assessment only came into existence on 28 December 1998, the date on which Italy designated the 'Valloni e steppe pedegarganiche' as an SPA under Article 4 of the Birds Directive.

50. At that point, Italy had already started work on various projects — work which is, however, continuing.

51. It follows that Article 6(3) and (4) of the Habitats Directive did not apply at the moment at which an *ex ante* assessment would have been pertinent. In my view, they cannot logically be applied retrospectively. [21] In respect of what has already been both *planned and implemented*, Italy thus cannot be held to be in breach of those articles.

52. If and to the extent that there are *further* projects, or further stages of the same global project that may be distinguished from earlier stages without artificiality, those would however be subject to the obligation in Article 6(3). They would also be able (potentially, at least) to benefit from the override provisions of Article 6(4). The Commission's pleading does not, however, seek to make such a distinction. Nor does it identify the projects in a way that would enable the Court to carry out such an analysis with any confidence.

19 — On 6 February 2007 the Court wrote to the parties inviting them to set out their respective positions in relation to the applicability of Article 6(3) and (4) of the Habitats Directive by 2 March 2007. By letter dated 14 February 2007, the Commission declined to answer the Court's question, indicating that it was evaluating whether to withdraw its claims in respect of Article 6(3) and (4) and that it would soon inform the Court of its final decision on the matter. Italy responded by letter dated 20 February 2007. As of 30 April 2007, when this Opinion was finalised, no further communication from the Commission had reached the Court.

20 — Cited in footnote 18, paragraphs 44 to 47; see point 41 above.

21 — See, by analogy, Case C-209/04 *Commission* v *Austria* [2006] ECR I-2755, paragraphs 53 to 62.

53. It follows that the Commission is not entitled to the declarations which it seeks in respect of Article 6(3) and (4) of the Habitats Directive.

Costs

54. 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. In its pleadings, the Commission has asked for costs. Whilst I consider that the Commission is not entitled to declarations under Article 6(3) and (4) of the Habitats Directive, the substance of the infringement has been established. I therefore see no reason to depart from the Court's normal practice. The Italian Republic should be ordered to bear the costs.

Conclusion

55. I therefore consider that the Court should:

— declare that, prior to 28 December 1998, the Italian Republic failed to meet its obligations under Article 4(4) of Directive 79/409/EEC (the Birds Directive) in so far as it failed to take appropriate steps to avoid pollution or deterioration of habitats or any disturbances affecting birds likely to have significant consequences in respect of the areas designated, on that date, as the Special Protection Area 'Valloni e steppe pedegarganiche';

— declare that, on and after 28 December 1998, the Italian Republic failed to meet its obligations under Article 6(2) of Directive 92/43/EEC (the Habitats Directive) in so far as it has not taken appropriate steps to avoid, in the Special Area of Conservation 'Valloni e steppe pedegarganiche', the deterioration of natural habitats and the habitats of species as well as disturbance of the species for which the area has been designated;

— order the Italian Republic to bear the costs.