Reports of Cases

JUDGMENT OF THE COURT (Fifth Chamber)

1 August 2025 *

(Reference for a preliminary ruling – Environment – Directive 2009/147/EC – Conservation of wild birds – Article 5 – Prohibitions to ensure the protection of birds – Article 9 – Derogations – Articles 16 and 17 of the Charter of Fundamental Rights of the European Union – Prohibition on felling trees during the period of bird breeding and rearing)

In Case C-784/23,

REQUEST for a preliminary ruling under Article 267 TFEU from the Riigikohus (Supreme Court, Estonia), made by decision of 19 December 2023, received at the Court on 19 December 2023, in the proceedings

OÜ Voore Mets,

AS Lemeks Põlva

v

Keskkonnaamet,

THE COURT (Fifth Chamber),

composed of M.L. Arastey Sahún, President of the Chamber, D. Gratsias, E. Regan, J. Passer (Rapporteur) and B. Smulders, Judges,

Advocate General: J. Kokott,

Registrar: C. Strömholm, Administrator,

having regard to the written procedure and further to the hearing on 11 December 2024,

after considering the observations submitted on behalf of:

– OÜ Voore Mets, by I. Veso, vandeadvokaat,

– AS Lemeks Põlva, by A. Hainsoo and M. Paloots,

– the Estonian Government, by M. Kriisa, acting as Agent,

* Language of the case: Estonian.

– the Finnish Government, by H. Leppo and M. Pere, acting as Agents,

– the Swedish Government, by F.-L. Göransson and C. Meyer-Seitz, acting as Agents,

– the European Parliament, by M. Allik and W.D. Kuzmienko, acting as Agents,

– the Council of the European Union, by M. Alver and A. Maceroni, acting as Agents,

– the European Commission, by E. Randvere and N. Ruiz García, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 6 February 2025,

gives the following

Judgment

1 This request for a preliminary ruling concerns the interpretation of Article 5(a), (b) and (d) and the third indent of Article 9(1)(a) of Directive 2009/147/EC of the European Parliament and of the Council of 30 November 2009 on the conservation of wild birds (OJ 2010 L 20, p. 7; 'the Birds Directive'), and of Articles 16 and 17 of the Charter of Fundamental Rights of the European Union ('the Charter').

2 The request has been made in two sets of proceedings between, on the one hand, OÜ Voore Mets and AS Lemeks Põlva respectively, and, on the other hand, the Keskkonnaamet (Environmental Board, Estonia) concerning injunctions issued by the latter to suspend forest felling in order to protect bird breeding.

Legal context

European Union law

The Birds Directive

3 Recitals 3, 5, 7, 8 and 10 of the Birds Directive state:

'(3) A large number of species of wild birds naturally occurring in the European territory of the Member States are declining in number, very rapidly in some cases. This decline represents a serious threat to the conservation of the natural environment, particularly because of the biological balances threatened thereby.

…

(5) The conservation of the species of wild birds naturally occurring in the European territory of the Member States is necessary in order to attain the [European] Community's objectives regarding the improvement of living conditions and sustainable development.

…

(7) Conservation is aimed at the long-term protection and management of natural resources as an integral part of the heritage of the peoples of Europe. It makes it possible to control natural resources and governs their use on the basis of the measures necessary for the maintenance and adjustment of the natural balances between species as far as is reasonably possible.

(8) The preservation, maintenance or restoration of a sufficient diversity and area of habitats is essential to the conservation of all species of birds. Certain species of birds should be the subject of special conservation measures concerning their habitats in order to ensure their survival and reproduction in their area of distribution. Such measures must also take account of migratory species and be coordinated with a view to setting up a coherent whole.

…

(10) 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 where certain limits are established and respected, as such hunting must be compatible with maintenance of the population of these species at a satisfactory level.'

4 Article 1(1) of that directive provides:

'This Directive relates to the conservation of all species of naturally occurring birds in the wild state in the European territory of the Member States to which the Treaty applies. It covers the protection, management and control of these species and lays down rules for their exploitation.'

5 Article 2 of that directive provides:

'Member States shall 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.'

6 Article 5 of the same directive provides:

'Without prejudice to Articles 7 and 9, Member States shall take the requisite measures to establish a general system of protection for all species of birds referred to in Article 1, prohibiting in particular:

(a) deliberate killing or capture by any method;

(b) deliberate destruction of, or damage to, their nests and eggs or removal of their nests;

(c) taking their eggs in the wild and keeping these eggs even if empty;

(d) deliberate disturbance of these birds particularly during the period of breeding and rearing, in so far as disturbance would be significant having regard to the objectives of this Directive;

(e) keeping birds of species the hunting and capture of which is prohibited.'

7 Under Article 9(1) of the Birds Directive:

‘Member States may derogate from the provisions of Articles 5 to 8, where there is no other satisfactory solution, for the following reasons:

(a) – in the interests of public health and safety,

– in the interests of air safety,

– to prevent serious damage to crops, livestock, forests, fisheries and water,

– for the protection of flora and fauna;

(b) for the purposes of research and teaching, of re-population, of re-introduction and for the breeding necessary for these purposes;

(c) to permit, under strictly supervised conditions and on a selective basis, the capture, keeping or other judicious use of certain birds in small numbers.’

The Habitats Directive

8 Article 12 of Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora (OJ 1992 L 206, p. 7; ‘the Habitats Directive’) provides:

‘1. Member States shall take the requisite measures to establish a system of strict protection for the animal species listed in Annex IV (a) in their natural range, prohibiting:

(a) all forms of deliberate capture or killing of specimens of these species in the wild;

(b) deliberate disturbance of these species, particularly during the period of breeding, rearing, hibernation and migration;

(c) deliberate destruction or taking of eggs from the wild;

(d) deterioration or destruction of breeding sites or resting places.

2. For these species, Member States shall prohibit the keeping, transport and sale or exchange, and offering for sale or exchange, of specimens taken from the wild, except for those taken legally before this Directive is implemented.

3. The prohibition referred to in paragraph 1 (a) and (b) and paragraph 2 shall apply to all stages of life of the animals to which this Article applies.

…’

Estonian law

The MS

9 Paragraph 28 of the metsaseadus (MS) (Law on forests) of 7 June 2006 (RT I 2006, 30, 232), in the version applicable to the disputes in the main proceedings (RT I, 04.01.2021, 10) ('the MS'), provides, in subparagraph 7 thereof:

'Maintenance cutting is carried out in order to:

…

2) increase the value of a forest, manage the density and composition of a forest, and enable the use of timber from trees likely to fall in the short term (shelterwood cutting);

…'

10 Paragraph 29(1) of the MS provides:

'In the case of clear-cutting, all trees on a plot of land shall be felled within one year, except for:

1) seed-bearing trees: 20–70 pine, birch, ash, oak, black alder, white elm and mountain elm trees per hectare, scattered or in clusters, as well as young trees which are viable for reforestation.

…

3) retention trees: trees that are necessary to ensure biodiversity, or the preserved stumps of such trees, with a total trunk wood volume of at least 5 cubic metres per hectare or at least 10 cubic metres per hectare in the case of clear-cutting of more than five hectares.'

11 Paragraph 40 of the MS provides:

'…

(2) The Environmental Board may issue injunctions to prevent and contain forest damage on the basis of an expert forest protection report. In addition to the information set out in points 1 to 5 and 7 to 9 of Paragraph 25(9) of this Law, the operative part of the injunction shall include an order to cease any harmful activity, refrain from any activity that could cause damage, and eliminate the source of the threat and any resulting damage caused. The injunction shall be served on the addressee of the obligations specified therein in accordance with the conditions laid down in Paragraph 25(8) of this Law.

…

(10) In order to protect animals during their breeding season, the minister responsible for the area may issue a regulation to restrict felling in multi-stemmed and mixed stands during the period from 15 April to 15 June.

…'

12 Paragraph 41 of the MS is worded as follows:

‘(1) The forest owner or his or her representative… shall submit a forestry notice to the Environmental Board:

1) regarding planned felling, with the exception of improvement felling;

…

(8) If the planned felling does not comply with the requirements of the legislation, the Environmental Board shall have the right to refuse registration, giving reasons for its refusal in writing and making recommendations to bring the activity into compliance with the legislation.

(8^1) If the planned felling complies with the requirements of the legislation, the Environmental Board shall record it in the forest register. …’

The LoKS

13 In accordance with Paragraph 2 of the loomakaitseseadus (LoKS) (Law on the protection of animals) of 13 December 2000 (RT I 2001, 3, 4), in the version applicable to the disputes in the main proceedings (RT I, 30.12.2020, 12) (‘the LoKS’):

‘(1) For the purposes of this Law, … a bird … is an animal.

…’

14 According to Paragraph 7 of the LoKS:

‘(1) In order to prevent the death of wild animals, the enforcement authorities shall be entitled:

…

3) to suspend forestry … work during the breeding period of wild animals.

…’

The LKS

15 Paragraph 55 of the looduskaitseseadus (LKS) (Law on nature protection) of 21 April 2004 (RT I 2004, 38, 258), in the version applicable to the disputes in the main proceedings (RT I, 30.12.2020, 7) (‘the LKS’), provides:

‘(1) The deliberate killing of a specimen of a protected species shall be prohibited except for the purposes of euthanasia.

…

(3) The killing of specimens belonging to a protected category II or III species shall be authorised:

…

4) where necessary to prevent damage to … other important property.

…

(5) In the cases referred to in subparagraph 1 … and points 2 to 5 of subparagraph 3 of this paragraph, the killing of the animal in question shall require the approval of the Environmental Board.

(5^1) The approval referred to in subparagraph 5 and points 1 and 2 of subparagraph 6^1 of this paragraph may be granted where the situation cannot be resolved through measures that cause less harm to animals and birds. The permit must state:

1) the species and specimens for which approval is granted;

2) the means, devices or methods authorised for the activities;

3) under what circumstances of danger or risk, and at what time and where the activities may be carried out;

4) the addressee of the approval;

5) the means of monitoring or other means of tracking and reviewing the results.

…

(6^1) In the case of wild birds, the following shall be prohibited:

1) deliberate destruction of, or damage to, nests and eggs or removal of nests, except in the cases provided for in points 2 to 5 of subparagraph 3 of this paragraph with the approval of the Environmental Board;

2) deliberate disturbance, particularly during nesting and rearing, except … in the cases provided for in points 2 to 5 of subparagraph 3 of this paragraph with the approval of the Environmental Board …

…’

The Forest Management Code

16 Paragraph 22 of the metsa majandamise eeskiri (Forest Management Code) (RTL 2007, 2, 16), in the version applicable to the disputes in the main proceedings (RT I, 06.04.2021, 8), provides:

‘…

(5) The initiative to conduct an expert forest protection report shall be taken by the Environmental Board on the basis of information obtained through a forestry notice or by other means:

1) with the aim of issuing an injunction to prevent and contain forest damage;

…

(6) In order to commission an expert forest protection report, the forest owner shall submit a forestry notice to the Environmental Board with a view to restoring a forest that has been destroyed as a result of a storm, flood, large-scale forest fire or other major damage caused by a natural phenomenon …, or which is in poor health due to natural factors. The same applies to restoring a forest stand with a deficient phenotype or low basal area and density due to reasons beyond the control of the forest owner. …'

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

17 In the spring of 2021, Voore Mets carried out forest felling on land in Pällo-Reino, located in the municipality of Jõgeva (Estonia), on the basis of registered forestry notices. The method was clear-cutting within the meaning of Paragraph 29(1) of the MS.

18 Lemeks Põlva, for its part, purchased the right to harvest timber from the owner of the land in Järveääre, situated in the municipality of Põlva (Estonia). Its forestry notices of 4 May 2021 stipulated that felling was to be carried out on one plot of land using shelterwood cutting, within the meaning of Paragraph 28(7) of the MS, and clear-cutting was to be carried out on four other plots of that land.

19 By injunctions of 17 and 21 May 2021, the Environmental Board suspended the forest felling carried out by Voore Mets on the land in Pällo-Reino, initially until 21 May 2021 and then until 31 July 2021. By injunctions of 21 and 26 May 2021, the Environmental Board also suspended the forest felling carried out by Lemeks Põlva on the land in Järveääre, initially until 26 May 2021 and then until 15 July 2021.

20 Those injunctions were issued on the basis of point 3 of paragraph 7(1) of the LoKS and paragraph 55(6^1) of the LKS. The first injunctions, namely the one addressed to Voore Mets on 17 May 2021 and the one addressed to Lemeks Põlva on 21 May 2021, are based on the finding that it has been scientifically proven that there is at least one pair of breeding birds per hectare in each forest, and that continued felling would pose a real risk of disturbing the birds during the breeding and rearing season and of destroying or damaging nests. The second injunctions, namely the one addressed to Voore Mets on 21 May 2021 and the one addressed to Lemeks Põlva on 26 May 2021, also show that visits to the land in question revealed that in both situations there were confirmed, probable or possible nesting sites for 10 different bird species on the land in question.

21 More specifically, first, according to the injunction of 21 May 2021, addressed to Voore Mets, birdsong had been heard on the land in Pällo-Reino during a visit to the premises on the same day and the following birds, which can reasonably be assumed to nest in the same sector, had been identified by their singing or appearance: wood warbler (*Phylloscopus sibilatrix*), wren (*Troglodytes troglodytes*), blackbird (*Turdus merula*), song thrush (*Turdus philomelos*) and

chaffinch (*Fringilla coelebs*). Probable nesting of the nuthatch (*Sitta europaea*) and the bullfinch (*Pyrrhula pyrrhula*) was also reported. In addition, it was noted in that injunction that it was highly probable that the chiffchaff (*Phylloscopus collybita*), the willow warbler (*Phylloscopus trochilus*) and the red-breasted flycatcher (*Ficedula parva*) were also nesting on the land concerned. In that context, the injunction stipulates that the suspension of felling until 31 July would ensure the protection of late breeding sites, such as those of the wood warbler.

22 On the other hand, according to the injunction of 26 May 2021 addressed to Lemeks Põlva, the Järveääre site visit made it possible to identify a confirmed nesting of the great spotted woodpecker (*Dendrocopos major*) and the chaffinch, a probable nesting of the great tit (*Parus major*) and the jay (*Garrulus glandarius*), as well as a possible nesting of the chiffchaff, wood warbler, garden warbler (*Sylvia borin*), wren, dunnock (*Prunella modularis*) and robin (*Erithacus rubecula*).

23 The action, by which Voore Mets seeks compensation for the damage resulting from the immobilisation and subsequent removal of its forest material, which was allegedly caused to it by the Environmental Board as a result of two injunctions issued against it, was dismissed by the Tallinna Halduskohus (Administrative Court, Tallinn, Estonia). That decision was upheld by the Tallinna Ringkonnakohus (Court of Appeal, Tallinn, Estonia).

24 The Tartu Halduskohus (Administrative Court, Tartu, Estonia) partially upheld the actions brought by Lemeks Põlva for a declaration that the injunctions issued against it were unlawful and held that the injunction of 26 May 2021 was unlawful, on the ground, inter alia, that it did not address the question of the proportionality of a total ban on forest felling for approximately one and a half months in the light of the number of birds nesting on the land, the nesting periods of those birds and the interests of that applicant in the main proceedings, and on the ground that the applicant had not been heard. However, the Tartu Ringkonnakohus (Court of Appeal, Tartu, Estonia) annulled that decision in so far as it had upheld those actions.

25 In the appeals brought by Voore Mets and Lemeks Põlva before the Riigikohus (Supreme Court, Estonia), which is the referring court, the question arises, in the first place, as to whether the concept of 'deliberateness', within the meaning of Article 5 of the Birds Directive, is to be understood in the same way as in the case of Article 12 of the Habitats Directive, that is to say, in particular, that the condition as to 'deliberate' action in Article 12 of the Habitats Directive must be deemed to be met not only where it is established that the author of the act intended the killing or disturbance of a bird specimen, or the destruction of, or damage to, their nests and eggs, but also where it is established that the author of the act at the very least accepted the possibility of such killing, disturbance, destroying or damaging.

26 If that is the case, the referring court wishes to know, in the second place, which circumstances are sufficient to establish the existence of such acceptance. In that regard, it submits that the presence of one pair of birds per hectare, identified in the first injunctions on the basis of scientific data, does not necessarily exceed the threshold above which the timber harvester must be deemed to have accepted the possibility that birds may be killed or disturbed, or that their nests or eggs will be destroyed or damaged. On the other hand, the referring court is a priori of the opinion that, once the additional circumstances identified in the second injunctions materialise, it is necessarily accepted that the clear-cut felling carried out during the nesting period may cause the death of the birds and the destruction of their nests and eggs. However, the question could arise as to whether the activity of felling can be regarded as deliberate killing, disturbance, destruction or damage, within the meaning of Article 5 of the Birds Directive, if there is nothing to suggest that

endangered birds are nesting in the felling area and if the purpose of the activity concerned is not to kill or disturb the birds or to destroy or damage nests. The fact that all bird species must fall within a protection regime does not necessarily mean that all birds must be protected in the same way. According to the referring court, Article 5 of the Birds Directive should be given a teleological interpretation; that is to say, account should be taken of the objective referred to in Article 2 of that directive.

27 In the third place, if the felling at issue in the main proceedings were to constitute deliberate killing or disturbance of birds, or destruction or damage to their nests or eggs, it is necessary, according to the referring court, to determine whether Article 9 of the Birds Directive allows derogation from the prohibitions laid down in Article 5(a), (b) and (d) thereof.

28 Lastly, in the fourth place, the referring court considers that the fact that a derogation cannot be granted or is subject to excessively strict conditions may, on account of its disproportionate nature, be contrary to the freedom to conduct a business and the fundamental right to property enshrined in Articles 16 and 17 of the Charter, with the result that the question arises as to whether the Birds Directive complies with the Treaties and whether it is valid.

29 In those circumstances, the Riigikohus (Supreme Court) decided to stay the proceedings and to refer the following questions to the Court of Justice for a preliminary ruling:

‘(1) Can Article 5(a), (b) and (d) of [the Birds Directive] be interpreted as meaning that the prohibitions laid down in it apply only in so far as is necessary to maintain the population of the species concerned at a level which corresponds in particular to ecological, scientific and cultural requirements, while taking account of economic and recreational requirements, within the meaning of Article 2, provided that the killing or disturbance of birds or the destruction of, or damage to, their nests or eggs is not the aim of the action?

(2) Must Article 5(a), (b) and (d) of [the Birds Directive], read in conjunction with Article 2 of that directive, be interpreted as meaning that the actions prohibited under those provisions during the breeding season of birds are deliberate, inter alia, where it can be assumed, on the basis of scientific data and observation of individual birds, that approximately [10] pairs of birds per hectare are nesting in a forest which is to be completely cleared (clear-cutting) without it having been established that individuals of bird species which [have an unfavourable conservation status] are nesting in the felling area?

(3) Must Article 5(a), (b) and (d) of [the Birds Directive], read in conjunction with Article 2 of that directive, be interpreted as meaning that the actions prohibited under those provisions during the breeding season of birds are deliberate, inter alia, where it can be assumed, on the basis of scientific data and observation of individual birds, that approximately [10] pairs of birds per hectare are nesting in a forest where only some of the trees are to be felled (shelterwood cutting), without there being any reason to believe that individuals of bird species which [have an unfavourable conservation status] are nesting in the felling area?

(4) Can the third indent of Article 9(1)(a) of [the Birds Directive], read in conjunction with Article 2 of that directive, be interpreted as meaning that a Member State’s legislation is compatible with it which permits derogations from the prohibitions governed by Article 5(a), (b) and (d) of that directive so that clear-cutting can be carried out during the breeding and rearing season of birds in order to prevent serious damage to forest as property?

(5) Can the third indent of Article 9(1)(a) of [the Birds Directive], read in conjunction with Article 2 of that directive, be interpreted as meaning that a Member State's legislation is compatible with it which permits derogations from the prohibitions governed by Article 5(a), (b) and (d) of that directive so that shelterwood cutting can be carried out during the breeding and rearing season of birds in order to prevent serious damage to forest as property?

(6) If [the Birds Directive] does not permit clear-cutting during the breeding and rearing season of birds which is intended to prevent serious damage to forests as property, is such a regime compatible with Articles 16 and 17 of the [Charter] and does it apply even if the felling does not cause harm to bird species which [have an unfavourable conservation status]?

(7) If [the Birds Directive] does not permit shelterwood cutting during the breeding and rearing season of birds which is intended to prevent serious damage to forests as property, is such a regime compatible with Articles 16 and 17 of the [Charter] and does it apply even if the felling does not cause harm to bird species which [have an unfavourable conservation status]?'

Admissibility of the request for a preliminary ruling

30 Voore Mets and Lemeks Põlva submit that the request for a preliminary ruling is inadmissible. In their view, all the questions referred have, in essence, already been answered in the Opinion of Advocate General Kokott in Joined Cases *Föreningen Skydda Skogen* (C-473/19 and C-474/19, EU:C:2020:699) and it is in no way apparent from the judgment of 4 March 2021, *Föreningen Skydda Skogen* (C-473/19 and C-474/19, EU:C:2021:166), that the concept of 'deliberateness' referred to in Article 5 of the Birds Directive must be interpreted in the same way as that in Article 12 of the Habitats Directive. Furthermore, it is evident that there are no legal issues requiring interpretation by the Court in that no Member State other than the Republic of Estonia has suspended spring and summer felling operations in unprotected forests designated for forestry in order to protect birds on the basis of provisions implementing the Birds Directive. Voore Mets adds that if the Court were to examine the case, it would lead to excessive delays in resolving the disputes in the main proceedings.

31 In that regard, it must be recalled that, according to consistent case-law, national courts have the widest discretion in referring questions to the Court involving interpretation of relevant provisions of EU law. It is for the national court hearing the proceedings only, which alone is familiar with its national law and which must assume responsibility for the subsequent judicial decision, to determine in the light of the particular circumstances of the case both the need for a preliminary ruling in order to enable it to deliver judgment and the relevance of the questions which it submits to the Court. Consequently, where the questions put by national courts concern the interpretation or the validity of a provision of EU law, the Court is, in principle, bound to give a ruling. It follows that questions referred by national courts enjoy a presumption of relevance. The Court may refuse to rule on a question referred by a national court only where it is quite obvious that the interpretation sought bears no relation to the actual facts of the main action or its object, where the problem is hypothetical, or where the Court does not have before it the factual or legal material necessary to give a useful answer to the question submitted to it (judgment of 9 September 2021, *GE Auto Service Leasing*, C-294/20, EU:C:2021:723, paragraph 40 and the case-law cited).

32 It follows that the fact that the answer to the questions referred for a preliminary ruling may be inferred from the Opinion of Advocate General Kokott in Joined Cases *Föreningen Skydda Skogen* (C-473/19 and C-474/19, EU:C:2020:699) and from the judgment of 4 March 2021, *Föreningen Skydda Skogen* (C-473/19 and C-474/19, EU:C:2021:166) and does not pose any legal difficulty, even if it were established, is not such as to render the request for a preliminary ruling inadmissible.

33 First, even when there is case-law of the Court resolving the point of law at issue, national courts and tribunals retain the broadest power to bring a matter before the Court if they consider it appropriate to do so, and the fact that the provisions concerned have already been interpreted by the Court does not deprive the Court of jurisdiction to give a further ruling (see, to that effect, judgment of 6 October 2021, *Consorzio Italian Management and Catania Multiservizi*, C-561/19, EU:C:2021:799, paragraph 37 and the case-law cited) and, second, a national court is in no way prevented from referring questions to the Court of Justice for a preliminary ruling, the answer to which, in the submission of one of the parties to the main proceedings, leaves no scope for reasonable doubt (see, to that effect, judgment of 24 February 2022, *Viva Telecom Bulgaria*, C-257/20, EU:C:2022:125, paragraph 42 and the case-law cited).

34 It also follows from the case-law referred to in paragraph 31 above that the duration of the dispute before the national courts is not relevant to the assessment of the admissibility of a request for a preliminary ruling made by one of those courts or tribunals under Article 267 TFEU.

35 That assessment is not called into question by the fact that both the referring court and the Court of Justice are required to comply with the general principle of law that everyone is entitled to a fair and public hearing within a reasonable time, which is set out in Article 6(1) of the European Convention for the Protection of Human Rights and Fundamental Freedoms, signed in Rome on 4 November 1950 ('the ECHR') and in Article 47 of the Charter.

36 The interpretation given by the European Court of Human Rights to the rights guaranteed by Article 6(1) ECHR constitutes a minimum threshold of protection which the Court must take into account in its interpretation of the corresponding rights set out in Article 47 of the Charter, having regard to Article 52(3) thereof (see, to that effect, judgment of 26 September 2024, *Ordre des avocats du Barreau de Luxembourg*, C-432/23, EU:C:2024:791, paragraph 48 and the case-law cited).

37 It is apparent from the case-law of the European Court of Human Rights that, in order to determine whether the duration of proceedings before a national court has infringed the right enshrined in Article 6(1) ECHR, the procedure under Article 267 TFEU must not be taken into account. According to the European Court of Human Rights, to take that into account would undermine the system established in Article 267 and the objective pursued, in essence, by Article 267 (ECtHR, 26 February 1998, *Pafitis and Others v. Greece*, CE:ECHR:1998:0226JUD002032392, § 95, and ECtHR, 30 September 2003, *Koua Poirrez v. France*, CE:ECHR:2003:0930JUD004089298, § 61).

38 Consequently, the request for a preliminary ruling is admissible.

Consideration of the questions referred

39 As a preliminary point, it should be noted that, in its written observations, Voore Mets requests the Court to answer questions other than those referred to it by the referring court.

40 In that regard, it must be recalled that, under Article 267 TFEU, it is for the national court or tribunal, not the parties to the main proceedings, to bring a matter before the Court of Justice. The right to determine the questions to be put to the Court thus devolves on the national court alone and the parties may not change their tenor (judgment of 6 October 2015, *T-Mobile Czech Republic and Vodafone Czech Republic*, C-508/14, EU:C:2015:657, paragraph 28 and the case-law cited).

41 It follows that an answer to the questions put by the parties to the main proceedings would be incompatible with the role conferred on the Court by Article 267 TFEU. Moreover, an answer to that question would be contrary to the Court's duty to ensure that the governments of the Member States and the parties concerned are given the opportunity to submit observations in accordance with Article 23 of the Statute of the Court of Justice of the European Union, bearing in mind that, under that provision, only the order of the referring court is notified to the interested parties (judgment of 6 October 2015, *T-Mobile Czech Republic and Vodafone Czech Republic*, C-508/14, EU:C:2015:657, paragraph 29 and the case-law cited).

42 Consequently, there is no need to respond to the questions addressed to the Court by Voore Mets.

The first question

43 By its first question, the referring court asks, in essence, whether Article 5(a), (b) and (d) of the Birds Directive must be interpreted as meaning that, where the purpose of the human activity in question is different from the capture or killing, disturbance of birds or the destruction of, or damage to, their nests and eggs, the prohibitions laid down in that provision apply only in so far as is necessary to maintain the population of the species concerned 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 those species to that level, within the meaning of Article 2 of that directive.

44 Article 5 of the Birds Directive requires the Member States to adopt the requisite measures to establish a general system of protection for all species of birds referred to in Article 1 of that directive, without prejudice to Articles 7 and 9 of that directive. That regime includes, inter alia, under Article 5(a), (b) and (d) of that directive, the prohibition, first, of 'deliberate killing or capture by any method', second, 'deliberate destruction of, or damage to, their nests and eggs or removal of their nests' and, third, 'deliberate disturbance of these birds particularly during the period of breeding and rearing, in so far as disturbance would be significant having regard to the objectives of [that directive]'.

45 In the first place, it is apparent both from the wording of Article 5 of the Birds Directive, read in the light of Article 1(1) thereof, and from the context of which Article 5 forms part as well as from the object and purpose of that directive that the prohibitions laid down in the latter article apply to all species of naturally occurring birds in the wild state in the European territory of the Member States to which the Treaties apply, without the application of those prohibitions being, therefore,

limited to certain specific bird species or species which are at some level at risk, or are suffering a long-term decline in population (see, to that effect, judgment of 4 March 2021, *Föreningen Skydda Skogen*, C-473/19 and C-474/19, EU:C:2021:166, paragraphs 36, 37 and 45).

46 In the second place, as regards the condition as to 'deliberate' action in Article 5(a), (b) and (d) of the Birds Directive, it should be noted that, when interpreting Article 12(1)(a) to (c) of the Habitats Directive, which lays down prohibitions similar to those set out in Article 5(a), (b) and (d) of the Birds Directive, the Court held that, in order for that condition to be met, it must be proven that the author of the act intended the capture or killing or disturbance of specimens of those species or the destruction of their eggs, or, at the very least, accepted the possibility of such capture or killing, disturbance or destruction (see, to that effect, judgment of 4 March 2021, *Föreningen Skydda Skogen*, C-473/19 and C-474/19, EU:C:2021:166, paragraph 51 and the case-law cited).

47 It should be recalled that, given the requirements of unity and consistency in the EU legal order, the terms used by the measures adopted in the same sector must be given the same meaning (judgment of 21 March 2024, *Marvesa Rotterdam*, C-7/23, EU:C:2024:257, paragraph 35 and the case-law cited). Accordingly, having regard to the similarity, first, of Article 12 of the Habitats Directive and Article 5 of the Birds Directive and, second, of the position which those articles occupy in their respective regulatory contexts, the concept of 'deliberateness' in Article 5 must be interpreted in the same way as the Court has interpreted that concept in the context of Article 12 of the Habitats Directive.

48 Furthermore, account must be taken of the fact that the interpretation of the concept of 'deliberateness' within the meaning set out in paragraph 46 above follows from the judgments of 30 January 2002, *Commission* v *Greece* (C-103/00, EU:C:2002:60, paragraphs 34 to 36), and of 18 May 2006, *Commission* v *Spain* (C-221/04, EU:C:2006:329, paragraph 71). Accordingly, it may be inferred that, when it adopted the Birds Directive in 2009, the EU legislature, by refraining from introducing clarifications concerning the condition relating to deliberateness set out in Article 5 of that directive, in order, inter alia, to exclude from its scope acts the purpose of which is the capture or killing, disturbance of birds or the destruction of, or damage to, their nests and eggs, intended to give that condition the same meaning as that which it has in the context of Article 12 of the Habitats Directive.

49 It follows that the prohibitions laid down in Article 5(a), (b) and (d) of the Birds Directive apply not only to human activities the purpose of which is the capture or killing, disturbance of birds or the destruction of, or damage to, their nests and eggs, but also to human activities which do not manifestly have such a purpose and involve the acceptance of the possibility of such capture, killing, disturbance, destruction or damage.

50 As regards, in the third place, the question whether, where the purpose of a human activity is manifestly different from the capture or killing, disturbance of birds or the destruction of, or damage to, their nests and eggs , the prohibitions laid down in Article 5(a), (b) and (d) of the Birds Directive apply only in so far as is necessary to maintain the population of the species concerned, within the meaning of Article 2 of that directive, or to adapt the population to a level which corresponds in particular to ecological, scientific and cultural requirements, while taking account of economic and recreational requirements, it must be held that only Article 5(d) of that directive provides that the prohibition referred to therein, namely the prohibition of deliberate disturbance of birds, particularly during the period of breeding and rearing, applies 'in so far as disturbance would be significant having regard to the objectives of [the Birds Directive]'.

51 As regards the scope of that condition, it must be borne in mind that the purpose of the Birds Directive is, as is apparent from Article 1 thereof, read in the light of recitals 3, 5, 7 and 8 thereof, to protect, manage and control all species of naturally occurring birds in the wild state in the European territory of the Member States to which the Treaties apply in order to ensure their conservation as the heritage of the peoples of Europe, which entails long-term protection by maintaining or restoring a sufficient diversity and area of habitats. In the light of that objective, that directive requires the Member States, pursuant to Article 2, read in conjunction with recital 10 thereof, to take the requisite measures to maintain the population of those species of birds at a 'satisfactory' 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 those species to that level. Accordingly, the phrase 'in so far as disturbance would be significant having regard to the objectives of [the Birds Directive]' in Article 5(d) of that directive must, in the light of those provisions, be interpreted as meaning that disturbances, particularly during the period of breeding and rearing, must be prohibited in so far as they would have a significant effect on the objective of maintaining populations of bird species at a satisfactory level or adapting them to that level.

52 By contrast, Article 5(a) and (b) of the Birds Directive does not lay down any condition equivalent to that set out in the wording of Article 5(d) of that directive.

53 Accordingly, in the absence, in Article 5(a) and (b) of the Birds Directive, of a condition equivalent to that set out in Article 5(d) of that directive, and in the light of the assessments set out in paragraphs 46 to 49 above, it must be held that the application of the prohibitions set out in Article 5(a) and (b) is not subject to such a condition, irrespective of whether or not the purpose of the human activities concerned is the capture or killing of birds or the destruction of, or damage to, their nests and eggs.

54 Consequently, unlike Article 5(d) of the Birds Directive, Article 5(a) and (b) of that directive does not exclude from its scope human activities which do not bring about the risk of having a significant effect on the objective of maintaining populations of bird species at a satisfactory level or adapting them to that level, with the result that the examination of the effect of a human activity on the population level of the bird species concerned is not relevant for the purposes of applying the prohibitions laid down in that provision.

55 Such an examination is, however, relevant in connection with derogations from those prohibitions, adopted under Article 9 of the Birds Directive (see, by analogy, judgment of 4 March 2021, *Föreningen Skydda Skogen*, C-473/19 and C-474/19, EU:C:2021:166, paragraph 58).

56 It is in the context of examining those derogations that, in order to verify the proportionality of the derogation sought, in particular, an assessment must be made of both the impact of the activity at issue on the level of the population of the bird species concerned and the need for that activity, as well of the alternative solutions for achieving the objective relied on in support of that derogation (see, by analogy, judgment of 4 March 2021, *Föreningen Skydda Skogen*, C-473/19 and C-474/19, EU:C:2021:166, paragraph 59).

57 In the light of all the foregoing considerations, the answer to the first question is that Article 5(a), (b) and (d) of the Birds Directive must be interpreted as meaning that only the prohibition laid down in Article 5(d) applies in so far as it is necessary to prevent disturbances which would have a significant effect on the objective, referred to in Article 2 of that directive, of maintaining populations of all species of naturally occurring birds in the wild state in the European territory

of the Member States to which the Treaties apply at a level which corresponds in particular to ecological, scientific and cultural requirements, while taking account of economic and recreational requirements, or of adapting the population of these species to that level. By contrast, the application of the prohibitions laid down in Article 5(a) and (b) of that directive is not subject to such a condition, even where the purpose of the human activity concerned is different from the capture or killing of birds or the destruction of, or damage to, their nests and eggs.

The second and third questions

58 By its second and third questions, which it is appropriate to examine together, the referring court asks, in essence, whether Article 5(a), (b) and (d) of the Birds Directive must be interpreted as meaning that, where it can be assumed, on the basis of scientific data and observation of individual birds, that approximately 10 pairs of birds per hectare are nesting in a forest which is to be completely cleared (clear-cutting) or where only some of the trees are to be felled (shelterwood cutting), without it having been established that individuals of bird species which have an unfavourable conservation status are nesting in the felling area, the carrying out of such felling during the period of bird breeding and rearing is covered by the prohibitions set out in that provision.

59 In the first place, as regards the fact that the scientific data and the observations of the various birds at issue do not make it possible to establish the presence, on the land concerned, of bird species which have an unfavourable conservation status, it must be borne in mind that, as follows from paragraph 45 above, the scope of Article 5 of the Birds Directive is not limited solely to bird species in such a condition.

60 In the second place, where there is a nesting of approximately 10 pairs of breeding birds per hectare in a forest which is to be felled, the fact that clear-cutting and shelterwood cutting are carried out there during the period of bird breeding and rearing implies acceptance of the possibility that birds may be killed or disturbed during that period, or that their nests or eggs may be destroyed or damaged. Thus, in accordance with the findings in paragraphs 46 to 56 above, measures aimed at carrying out such felling fall, in any event, within the scope of the prohibitions laid down in Article 5(a) and (b) of the Birds Directive and, in so far as the disturbance which they entail would have a significant effect on the objective of maintaining populations of the bird species concerned at a satisfactory level or adapting them to that level, of the prohibition laid down in Article 5(d) of that directive.

61 In the third place, in accordance with the precautionary principle enshrined in Article 191(2) TFEU, it does not appear unjustified to base the finding of a nesting of a certain number of pairs of birds per hectare on scientific data and on the observations of the various birds and, in particular, as in the present case, on the type and age of the forest and on the identification, during an inspection of the land concerned, of a number of specimens.

62 In the light of all the foregoing considerations, the answer to the second and third questions is that Article 5(a), (b) and (d) of the Birds Directive must be interpreted as meaning that, where it can be assumed, on the basis of scientific data and observation of the various birds, that approximately 10 pairs of birds per hectare are nesting in a forest which is to be completely cleared (clear-cutting) or where only some of the trees are to be felled (shelterwood cutting), without it having been established that individuals of bird species which have an unfavourable conservation status are nesting in the felling area, the carrying out of such felling during the period of bird

breeding and rearing is covered by the prohibitions set out in Article 5(a) and (b) of that directive and, in so far as the disturbance which they entail would have a significant effect on the objective of maintaining populations of the bird species concerned at a satisfactory level or adapting them to that level, by the prohibition laid down in Article 5(d) of that directive.

The fourth to seventh questions

63 By its fourth to seventh questions, which it is appropriate to examine together, the referring court asks, in essence, whether the third indent of Article 9(1)(a) of the Birds Directive, read in conjunction with Article 2 of that directive, must be interpreted as not precluding legislation of a Member State which permits derogations from the prohibitions governed by Article 5(a), (b) and (d) of that directive so that clear-cutting or shelterwood cutting can be carried out during the period of bird breeding and rearing in order to prevent serious damage to forest as property, and, if not, whether the same directive is compatible with Articles 16 and 17 of the Charter.

64 It is settled case-law that it is not the Court's task to deliver advisory opinions on general or hypothetical questions (judgment of 20 October 2022, *Staatssecretaris van Justitie en Veiligheid (Removal of a victim of trafficking in human beings)*, C-66/21, EU:C:2022:809, paragraph 82 and the case-law cited).

65 In that regard, the third indent of Article 9(1)(a) of the Birds Directive allows Member States to derogate from the prohibitions laid down in Article 5 of that directive, in particular in order to prevent serious damage to forests.

66 Moreover, under Estonian law, it would appear that such an exemption could be granted in the form of an approval from the Environmental Board, in accordance with Paragraph 55(3) to (5^1) of the LKS.

67 In the present case, it does not follow from the request for a preliminary ruling that the applicants in the main proceedings asked the Estonian authorities to allow them to derogate from the prohibitions laid down in Article 5(a), (b) and (d) of the Birds Directive by granting them approval, within the meaning of Paragraph 55(3) to (5^1) of the LKS. As regards, moreover, Lemeks Põlva in particular, it is apparent from the order for reference that, on appeal, it was found that it did not rely on the existence of any of the grounds for derogation set out in that provision.

68 Since the fourth to seventh questions are thus hypothetical, they are inadmissible.

Costs

69 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the referring 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 (Fifth Chamber) hereby rules:

1. Article 5(a), (b) and (d) of Directive 2009/147/EC of the European Parliament and of the Council of 30 November 2009 on the conservation of wild birds

must be interpreted as meaning that only the prohibition laid down in Article 5(d) applies in so far as it is necessary to prevent disturbances which would have a significant effect on the objective, referred to in Article 2 of that directive, of maintaining populations of all species of naturally occurring birds in the wild state in the European territory of the Member States to which the Treaties apply at a level which corresponds in particular to ecological, scientific and cultural requirements, while taking account of economic and recreational requirements, or of adapting the population of these species to that level. By contrast, the application of the prohibitions laid down in Article 5(a) and (b) of that directive is not subject to such a condition, even where the purpose of the human activity concerned is different from the capture or killing of birds or the destruction of, or damage to, their nests and eggs.

2. **Article 5(a), (b) and (d) of Directive 2009/147**

must be interpreted as meaning that, where it can be assumed, on the basis of scientific data and observation of the various birds, that approximately 10 pairs of birds per hectare are nesting in a forest which is to be completely cleared (clear-cutting) or where only some of the trees are to be felled (shelterwood cutting), without it having been established that individuals of bird species which have an unfavourable conservation status are nesting in the felling area, the carrying out of such felling during the period of bird breeding and rearing is covered by the prohibitions set out in Article 5(a) and (b) of that directive and, in so far as the disturbance which they entail would have a significant effect on the objective of maintaining populations of the bird species concerned at a satisfactory level or adapting them to that level, by the prohibition laid down in Article 5(d) of that directive.

[Signatures]