JUDGMENT OF THE COURT (Fifth Chamber)
7 March 1996 *

In Case C-118/94,

REFERENCE to the Court under Article 177 of the EEC Treaty by the Tribunale Amministrativo Regionale per il Veneto (Italy) for a preliminary ruling in the proceedings pending before that court between

Associazione Italiana per il World Wildlife Fund,

Ente Nazionale per la Protezione Animali,

Lega per l'Ambiente — Comitato Regionale,

Lega Anti Vivisezione — Delegazione Regionale,

Lega per l'Abolizione della Caccia,

Federnatura Veneto,

Italia Nostra — Sezione di Venezia

and

Regione Veneto

* Language of the case: Italian.

on the interpretation 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),

THE COURT (Fifth Chamber),

composed of: D. A. O. Edward, President of the Chamber, J.-P. Puissochet, J. C. Moitinho de Almeida, C. Gulmann (Rapporteur) and P. Jann, Judges,

Advocate General: N. Fennelly,
Registrar: L. Hewlett, Administrator,

after considering the written observations submitted on behalf of:

— Associazione Italiana per il World Wildlife Fund, by A. Pavanini, of the Venice Bar,

— Federazione Italiana della Caccia, intervener in the main proceedings, by I. Gorlani, of the Brescia Bar, and M. Thewes, of the Luxembourg Bar,

— the Commission of the European Communities, by L. Gussetti and M. van der Woude, of its Legal Service, acting as Agents,

having regard to the Report for the Hearing,

after hearing the oral observations of Associazione Italiana per il World Wildlife Fund, represented by A. Pavanini, Federazione Italiana della Caccia, represented by I. Gorlani, M. Thewes and C. Lagier, of the Lyons Bar, and the Commission, represented by L. Gussetti and M. van der Woude, at the hearing on 14 September 1995,

after hearing the Opinion of the Advocate General at the sitting on 26 October 1995,

gives the following

Judgment

1 By order of 27 May 1993, received at the Court on 21 April 1994, the Tribunale Amministrativo Regionale per il Veneto (Regional Administrative Court for the Veneto Region) referred to the Court for a preliminary ruling under Article 177 of the EEC Treaty a question on the interpretation of Article 9 of Council Directive 79/409/EEC on the conservation of wild birds (OJ 1979 L 103, p. 1, hereinafter 'the directive').

2 That question was raised in proceedings brought by Associazione Italiana per il World Wildlife Fund ('WWF Italiana') and other associations for the protection of nature ('the applicants') against the Regione Veneto, supported by Federazione Italiana della Caccia (Italian Hunting Federation, hereinafter 'the Federation'), for annulment of the measure adopted by the Regional Council of the Veneto on 21 July 1992 fixing the hunting calendar for the 1992/1993 season for infringement *inter alia* of the principles referred to in the directive.

3 Article 5(a) of the directive imposes a general prohibition on the killing or capture of all species of birds naturally occurring in the wild state in the European territory of the Member States to which the Treaty applies (hereinafter 'protected species').

4 However, Article 7(1) of the directive provides that the species listed in Annex II may be hunted under national legislation.

5 Furthermore, Member States may derogate from the hunting restrictions, and from the other restrictions and prohibitions contained in Articles 5, 6 and 8 of the directive, for the reasons listed in Article 9(1)(a), (b) and (c) thereof, namely: first, in the interests of public health and safety and air safety, to prevent serious damage to agriculture, or for the protection of flora and fauna; secondly, for the purposes of research and teaching, of repopulation, of reintroduction and for the breeding necessary for those purposes; thirdly, to permit under strictly supervised conditions and on a selective basis the capture, keeping or other judicious use of certain birds in small numbers, but, in each of the three cases, only where there is no other satisfactory solution.

6 In accordance with Article 9(2), derogations must specify the species subject to the derogations, the means, arrangements or methods authorized for capture or killing, the conditions of risk and the circumstances of time and place under which such derogations may be granted, the authority empowered to declare that the required conditions obtain and to decide what means, arrangements or methods may be used, within what limits and by whom, and finally the controls which will be carried out.

7 Under Article 1(3) of Italian Law No 157 of 11 February 1992 on the protection of warm-blooded wild fauna and on hunting (GURI No 46 of 25 February 1992, supplement, p. 3, 'Law No 157'), ordinary regions (*regioni a statuto ordinario*) are to adopt regulations governing the management and protection of all species of wild fauna in accordance with Law No 157, international conventions and Community directives. Article 1(4) of Law No 157 wholly transposes and implements Directive 79/409/EEC in the manner and within the time-limits prescribed by that Law.

8 Article 18(1) lists among the species of animals which may be hunted certain species of birds which are not included in Annex II to the directive. In order to adapt domestic law on hunting to Community and international law, Article 18(3)

provides that on a proposal made by the competent minister and after consulting the National Institute for Wild Fauna (INFS), the President of the Council of Ministers may amend the list of species which may be hunted, in conformity with the Community directives in force and with the conventions signed, taking into account the numbers of the different species on the territory. Finally, it is apparent from Article 18(4) that it is for the regions to fix regional calendars and rules concerning the entire hunting season, having regard *inter alia* to Article 18(1) and (3).

9 Before the Tribunale Amministrativo Regionale per il Veneto, the applicants claimed that the hunting calendar drawn up by the Regione Veneto authorized the hunting of certain species of birds which were not among the species listed in Annex II to the directive, whereas in the circumstances it was not possible for the defendant to rely on the right to derogate laid down in Article 9 of the directive, since the special and overriding conditions which might justify such derogation had not been met and had been neither investigated nor appropriately demonstrated.

10 According to the national court, the validity of the act at issue does not depend directly on the directive, in view of the intervening Law No 157, which operates not only as an implementing measure but also as a filter and which henceforth alone sets the criteria for assessing the validity of the administrative acts adopted to give effect to the Law. It follows, according to the national court, that the lawfulness of the contested hunting calendar depends exclusively on Article 18 of Law No 157, and it is not possible to refer directly to the lists contained in the annexes now transposed into the national legal system.

11 The Italian court observes in addition that the national legislature clearly did not consider its discretion to be constrained by Article 9 of the directive since, by exercising the power to derogate conferred on it by that article, without however expressly saying so, it included in the list referred to in Article 18 of Law No 157 certain species of birds the hunting of which is prohibited by the directive.

12 Taking the view that the resolution of the dispute pending before it depended on the interpretation of Article 9 of the directive, the Tribunale Amministrativo Regionale per il Veneto decided to stay the proceedings and to ask the Court to give a preliminary ruling on the question 'whether Article 9 of Directive 79/409/EEC requires the Italian Republic to demonstrate the existence of the individual grounds justifying the derogation, as specified in the directive, by means of an express legal provision or an administrative measure (depending on whether legislative or administrative means are employed)'.

Admissibility of the question

13 The Federation claims that the request for a preliminary ruling is inadmissible, on the ground that the question raised by the national court concerns the conformity of the Italian implementing provisions with Article 9 of the directive, rather than the interpretation of that article.

14 That objection must be dismissed. It is clear from the actual wording of the order for reference that the national court is seeking an interpretation by the Court of Article 9 of the directive. Provided that the questions submitted concern the interpretation of a provision of Community law, the Court gives its preliminary ruling without, in principle, having to look into the circumstances in which the national courts were prompted to submit the questions and envisage applying the provision of Community law which they have asked the Court to interpret (see the judgment in Joined Cases C-297/88 and C-197/89 *Dzodzi* v *Belgium* [1990] ECR I-3763, paragraphs 35 and 39).

15 The matter would be different only if it were apparent either that the procedure provided for in Article 177 had been diverted from its true purpose and was being used in fact to lead the Court to give a ruling by means of a contrived dispute, or that the provision of Community law referred to the Court for interpretation was manifestly incapable of applying (*Dzodzi*, cited above, paragraph 40). That is not so in this case.

16 An answer must therefore be given to the question referred.

The question

17 The question referred asks the Court essentially to clarify the conditions under which Article 9 authorizes Member States to derogate from the general prohibition on hunting protected species laid down in Articles 5 and 7 of the directive.

18 As a preliminary point, in applying the national law and in particular the provisions of a national law specifically introduced in order to implement a Community directive, the national court called upon to interpret and apply that law must do so, as far as possible, in the light of the wording and the purpose of the directive so as to achieve the result intended by the directive and thereby comply with the third paragraph of Article 189 of the Treaty (judgments in Case 14/83 *Von Colson and Kamann* v *Land Nordrhein-Westfalen* [1984] ECR 1891, paragraph 26, and Case C-91/92 *Faccini Dori* v *Recreb* [1994] ECR I-3325, paragraph 26).

19 Next, where by means of a directive the Community authorities have placed Member States under a duty to adopt a certain course of action, the effectiveness of such a measure would be diminished if persons were prevented from relying upon it in proceedings before the courts and national courts were prevented from taking it into consideration as an element of Community law (judgment in Case 8/81 *Becker* v *Finanzamt Münster-Innenstadt* [1982] ECR 53, paragraph 23). Consequently, wherever the provisions of a directive appear, as far as their subject-matter is concerned, to be unconditional and sufficiently precise, those provisions may be relied upon by an individual against any authority of a Member State where that State has either failed to implement the directive in national law by the end of the period prescribed or has failed to implement it correctly (judgment in Case 103/88 *Fratelli Costanzo* v *Comune di Milano* [1989] ECR 1839, paragraphs 29 and 30). Moreover, a national court which is called upon, within the limits of its jurisdiction, to apply provisions of Community law is under a duty to give full effect to those provisions, if necessary refusing of its own motion to apply any conflicting provision of national legislation, even if adopted subsequently, and it is

not necessary for the court to request or await the prior setting aside of such provisions by legislative or other constitutional means (judgments in Case 106/77 *Amministrazione delle Finanze dello Stato* v *Simmenthal* [1978] ECR 629 and Joined Cases C-13/91 and C-113/91 *Debus* [1992] ECR I-3617, paragraph 32.)

20 In order to answer the question, it must be noted that the Court has already held with regard to the directive, in its judgment in Case 252/85 *Commission* v *France* [1988] ECR 2243, paragraph 5, that while transposition into national law does not necessarily require the relevant provisions to be enacted in precisely the same words in a specific express legal provision, and a general legal context may be sufficient if it actually ensures the full application of the directive in a sufficiently clear and precise manner, faithful transposition becomes particularly important in a case such as this in which the management of the common heritage is entrusted to the Member States in their respective territories.

21 It is important also to bear in mind that the Court has stated that the possibility provided for in Article 9 of derogating from the restrictions on hunting, as well as from the other restrictions and prohibitions contained in Articles 5, 6 and 8 of the directive, is subject to three conditions. First, the Member State must restrict the derogation to cases in which there is no other satisfactory solution. Secondly, the derogation must be based on at least one of the reasons listed exhaustively in Article 9(1)(a), (b) and (c). Thirdly, the derogation must comply with the precise formal conditions set out in Article 9(2), which are intended to limit derogations to what is strictly necessary and to enable the Commission to supervise them. Although Article 9 therefore authorizes wide derogations from the general system of protection, it must be applied appropriately in order to deal with precise requirements and specific situations (judgments in Case 247/85 *Commission* v *Belgium* [1987] ECR 3029, paragraph 7, and Case 262/85 *Commission* v *Italy* [1987] ECR 3073, paragraph 7).

22 It has been stated that with regard to the conservation of wild birds, the criteria which the Member States must meet in order to derogate from the prohibitions

laid down in the directive must be reproduced in specific national provisions (judgment in Case C-339/87 *Commission* v *Netherlands* [1990] ECR I-851, paragraph 28).

23 Furthermore, it should be noted that in the *Commission* v *Italy* judgment cited above the Court had to give a ruling on the interpretation of Article 9 of the directive with respect to a national provision concerning hunting, according to which the regions could operate or authorize the operation, by means of specific regulations, of arrangements for capturing and selling, even outside the period when hunting was allowed, migratory birds of species to be specified from among those which might be hunted under that law, with a view to their being kept for use as live decoys in cover-shooting, or for recreational purposes in traditional fairs and markets. In that judgment, the Court observed first that the provision concerned made no reference to Article 9(1), which provides that a derogation from Articles 7 and 8 of the directive may be granted only if there is no other satisfactory solution, and secondly that the provision of national law did not, contrary to the requirements of Article 9(2) of the directive, specify the means, arrangements or methods of capture authorized, the circumstances of time and place under which the derogations might be granted or the species covered by the derogations. The Court stated that since the provision in question did not establish the criteria and conditions provided for in Article 9(2) of the directive or require the regions to take account of those criteria and conditions, it introduced an element of uncertainty as regards the obligations which the regions must observe when adopting their regulations. Therefore, there was no guarantee that the capture of certain species of birds would be limited to the strict minimum, as required by Article 9(1)(c), that the period of capture would not coincide unnecessarily with periods in which the directive aims to provide special protection or that the means, arrangements or methods for capture were not large-scale, non-selective or capable of causing the local disappearance of a species. It followed that the essential elements of Article 9 of the directive had not been transposed completely, clearly and unequivocally into the Italian rules (*Commission* v *Italy*, cited above, paragraph 39).

24 The Court has also held that national legislation which declares the hunting of certain species open in principle, without prejudice to provisions to the contrary laid down by the regional authorities, does not satisfy the requirements of protection laid down by the directive and is contrary to the principle of legal certainty (judgment in Case C-157/89 *Commission* v *Italy* [1991] ECR I-57, paragraphs 16 and 17).

25 Consequently, national legislation which authorizes the hunting of certain species of birds not included in the list in Annex II to the directive without, however, listing the criteria for derogation or clearly and specifically obliging the regions to take account of those criteria and to apply them, does not satisfy the conditions to which the derogations provided for by Article 9 of the directive are subject.

26 In the light of the foregoing, the answer to the question must be that Article 9 of the directive is to be interpreted as meaning that it authorizes the Member States to derogate from the general prohibition on hunting protected species laid down by Articles 5 and 7 of the directive only by measures which refer in sufficient detail to the factors mentioned in Article 9(1) and (2).

Costs

27 The costs incurred by the Commission of the European Communities, which has submitted observations to the Court, are not recoverable. Since these proceedings are, for the parties to the main proceedings, a step in the proceedings pending before the national court, the decision on costs is a matter for that court.

On those grounds,

THE COURT (Fifth Chamber),

in answer to the question referred to it by the Tribunale Amministrativo Regionale per il Veneto, by order of 27 May 1993, hereby rules:

Article 9 of Council Directive 79/409/EEC of 2 April 1979 on the conservation of wild birds is to be interpreted as meaning that it authorizes the Member States to derogate from the general prohibition on hunting protected species laid down by Articles 5 and 7 of the directive only by measures which refer in sufficient detail to the factors mentioned in Article 9(1) and (2).

Edward Puissochet Moitinho de Almeida

Gulmann Jann

Delivered in open court in Luxembourg on 7 March 1996.

R. Grass

Registrar

D. A. O. Edward

President of the Fifth Chamber