JUDGMENT OF THE COURT (Second Chamber)

25 October 2007 *

In Case C-334/04,

ACTION under Article 226 EC for failure to fulfil obligations, brought on 30 July 2004,

Commission of the European Communities, represented by M. Patakia and M. van Beek, acting as Agents, with an address for service in Luxembourg,

applicant,

v

Hellenic Republic, represented by E. Skandalou, acting as Agent, with an address for service in Luxembourg,

defendant,

* Language of the case: Greek.

supported by:

Kingdom of Spain, represented by N. Díaz Abad, acting as Agent, with an address for service in Luxembourg,

French Republic, represented by G. de Bergues and C. Jurgensen-Mercier, acting as Agents, with an address for service in Luxembourg,

Portuguese Republic, represented by L. Fernandes and M. Lois, acting as Agents, with an address for service in Luxembourg,

Republic of Finland, represented by T. Pynnä, acting as Agent, with an address for service in Luxembourg,

interveners,

THE COURT (Second Chamber),

composed of C.W.A. Timmermans, President of the Chamber, L. Bay Larsen, R. Silva de Lapuerta, P. Kūris (Rapporteur) and J. Klučka, Judges,

Advocate General: J. Kokott,
Registrar: M. Ferreira, Principal Administrator,

having regard to the written procedure and further to the hearing on 22 June 2006,

after hearing the Opinion of the Advocate General at the sitting on 14 September 2006,

gives the following

Judgment

1 By its application the Commission of the European Communities seeks a declaration from the Court that,

— by classifying as special protection areas (SPAs) territories the number and overall size of which fall clearly short of the number and overall size of the territories fulfilling the preconditions for classification as SPAs within the meaning of Article 4(1) of Council Directive 79/409/EEC of 2 April 1979 on the conservation of wild birds (OJ 1979 L 103, p. 1), as amended, inter alia, by Commission Directive 97/49/EC of 29 July 1997 (OJ 1997 L 223, p. 9) ('Directive 79/409'),

— by designating SPAs of a size clearly smaller than the corresponding territories in the Inventory of Important Bird Areas in the European Community published in 2000 ('the IBA 2000') which fulfil the preconditions for classification as SPAs,

— by failing to designate SPAs for many species of birds included in Annex I to Directive 79/409 or by classifying as SPAs areas where those species are insufficiently represented,

— by failing to designate SPAs for many migratory species or by classifying as SPAs areas where those species are insufficiently represented,

the Hellenic Republic has failed to fulfil its obligations under Article 4(1) and (2) of Directive 79/409.

Legal context

2 The ninth recital in the preamble to Directive 79/409 states:

'Whereas the preservation, maintenance or restoration of a sufficient diversity and area of habitats is essential to the conservation of all species of birds; whereas 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; whereas such measures must also take account of migratory species and be coordinated with a view to setting up a coherent whole.'

3 Article 1(1) of Directive 79/409 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.'

4 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.'

5 Article 4(1), (2) and (3) is worded as follows:

'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.

In this connection, account shall be taken of:

(a) species in danger of extinction;

(b) species vulnerable to specific changes in their habitat;

(c) species considered rare because of small populations or restricted local distribution;

(d) other species requiring particular attention for reasons of the specific nature of their habitat.

Trends and variations in population levels shall be taken into account as a background for evaluations.

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, bearing in mind their need for protection in the geographical sea and land area where this Directive applies, as regards their breeding, moulting and wintering areas and staging posts along their migration routes. To this end, Member States shall pay particular attention to the protection of wetlands and particularly to wetlands of international importance.

3. Member States shall send the Commission all relevant information so that it may take appropriate initiatives with a view to the coordination necessary to ensure that the areas provided for in paragraphs 1 and 2 above form a coherent whole which meets the protection requirements of these species in the geographical sea and land area where this Directive applies.'

The pre-litigation procedure

6 According to the Commission, in 2001, the Hellenic Republic had not classified as SPAs all the areas of importance for the conservation of birds designated in the IBA 2000. The IBA 2000 designates, on the basis of ornithological criteria which it sets out and explains, 186 areas of importance for the conservation of birds, of an overall size of 3 320 027 hectares, representing 25.2% of the national territory, which have to be classified as SPAs for the purposes of Directive 79/409.

7 On 11 October 2001, the Greek authorities sent to the Commission a list of proposals relating to the creation of new SPAs, the extension of existing SPAs and the withdrawal of SPAs which were henceforth to be included in the new SPAs. As those proposals were not accompanied by either geographical data, in particular in terms of size, or by the technical information necessary to finalise the classification of areas as SPAs as required by Article 4(3) of Directive 79/409, the Commission took the view that the Hellenic Republic had failed to fulfil its obligations under Article 4(1) and (2) of that directive and sent a letter of formal notice to that Member State on 21 December 2001.

8 In its reply to the letter of formal notice, on 25 March 2002, the Greek Government challenged in part the methodology and the criteria used in drawing up the IBA 2000 and informed the Commission of the difficulties it was encountering in classifying certain areas in that inventory as SPAs. The Greek authorities subsequently undertook to send the Commission a list of some 40 new areas which it intended to classify as SPAs.

9 By letter of 30 September 2002, the Greek authorities sent cartographical and technical information supplementing the classification as SPAs of the areas on the list which had been sent on 11 October 2001. On the basis of that information, the Commission found that the Hellenic Republic had designated 110 SPAs with a size of 811 236 hectares. As it did not receive supplementary information relating to the designation of other SPAs, the Commission sent a reasoned opinion on 19 December 2002 requesting that Member State to take the measures necessary to comply with it within a period of two months.

10 In their initial reply to the reasoned opinion, the Greek authorities, by letter of 20 February 2003, provided technical and cartographical information concerning 51 areas and proposed a change in respect of the boundaries of 10 of them.

11 After acquainting itself with that reply and the supplementary replies sent on 5 May and 2 December 2003 by the Greek authorities, the Commission, taking the view that the situation remained unsatisfactory, brought the present action.

12 By order of the President of the Court of 10 December 2004, the Kingdom of Spain, the French Republic, the Portuguese Republic and the Republic of Finland were granted leave to intervene in support of the form of order sought by the Hellenic Republic.

The action

The first and second complaints concerning the classification as SPAs of territories the number and overall size of which fall clearly short of the number and overall size of territories fulfilling the preconditions for classification as SPAs within the meaning of Directive 79/409 and the designation of SPAs of a size clearly smaller than that of the corresponding territories identified in the IBA 2000

13 The first two complaints of the Commission must be examined as one single complaint alleging that there was failure to classify the territories identified in the IBA 2000 as SPAs and that that classification was inadequate.

Arguments of the parties

14 The Commission submits that the Hellenic Republic did not carry out the classification of 45 areas of importance for the conservation of birds and classified only partially 141 of those areas which fulfil the preconditions for classification as SPAs within the meaning of Article 4(1) of Directive 79/409. Those areas form 151 SPAs which have not been covered by any binding legal measure, as no joint order by the Ministers of the Environment, of Planning and Public Works and of Agriculture has been notified to the Commission. Furthermore, it adds that that designation covers an area of 1 360 069 hectares, which represents only 40% of the total area of the 186 areas of importance for the conservation of birds listed in the IBA 2000.

15 Lastly, the Commission states that the finding that the Hellenic Republic partially classified the areas of importance for the conservation of birds identified in the IBA 2000 relates particularly to the wetlands referred to in Article 4(2) of Directive 79/409 and, in particular, those of international importance such as those set out in the Convention on Wetlands of International Importance especially as Waterfowl Habitat, concluded on 2 February 1971 at Ramsar ('the Ramsar Convention').

16 The Greek Government admits that 45 areas of importance for the conservation of birds listed in the IBA 2000 have not been classified as SPAs and will be examined in the context of the 'Programme of re-examination of 69 important bird areas with a view to their classification as SPAs for avian fauna. Development of action plans for the protection of priority species' of 11 February 2004 ('the programme of re-examination').

17 In addition, the Greek Government states that the classification of the 151 SPAs was carried out on the basis of the latest ornithological data as established by the competent Greek authorities and by a special inter-ministerial committee, with participation by the Elliniki Ornithologiki Etaireia (Greek Ornithological Society, 'the EOE').

18 Furthermore, as regards the wetlands, the Greek Government takes the view that all of those which are important for the conservation of birds have been classified as SPAs. As regards more particularly the wetlands of international importance, it states that, with the exception of those of the Nestou delta and Vistonida, those areas have been classified as SPAs in respect of more than 85% of their area. The marine areas which are covered by the definition of wetlands in the Ramsar Convention have also been included in those SPAs. The sizes of the SPAs are different from those of the areas set out in that Convention as some of those areas do not exhibit any ornithological importance which enables them to be classified as SPAs.

19 Lastly, the Greek Government takes the view that, although the number and size of the territories which have been classified as SPAs fall short of the number and size of the areas of importance for the conservation of birds listed in the IBA 2000, such a classification does not fall clearly short of that inventory inasmuch as, by designating 151 SPAs, it classified 141 of the 186 areas of importance for the conservation of birds listed in that inventory, which represents more than half of those areas.

20 According to the Spanish Government, the IBA 2000 has shortcomings, in particular in that no public authority having responsibility for environmental matters supervised the drawing up of that inventory to ensure the precision and accuracy of its data, and consequently it is not possible to attribute to it the same value as the *Inventory of Important Bird Areas in the European Community* published in 1989 ('the IBA 89').

21 The French Government submits that the IBA 2000 constitutes a useful point of reference, but it is not sufficient to classify as SPAs, within the meaning of Directive 79/409, the areas appearing in that inventory and the directive does not establish criteria for the identification of SPAs in terms of overall size or percentage.

22 The Portuguese Government submits that Member States must be allowed a reasonable period of time to carry out the necessary studies. Inventories such as the IBA 2000 are recognised and indisputable bases of reference which cannot constitute quantitative matrices for the purpose of monitoring the implementation of the obligations imposed by Directive 79/409.

23 According to the Finnish Government, recourse to the IBA 2000 makes the burden of proof disproportionate, as Member States then have the obligation of submitting scientific data to establish that an area does not meet the criteria to be classified as an SPA despite being designated as such in that inventory.

Findings of the Court

24 It must be borne in mind that Article 4 of Directive 79/409 lays down a system which is specifically targeted and reinforced both for the species listed in Annex I to that directive and for migratory species not included in that annex, an approach justified by the fact that they are, respectively, the most endangered species and the species constituting a common heritage of the Community (Case C-191/05 *Commission* v *Portugal* [2006] ECR I-6853, paragraph 9 and the case-law cited). Furthermore, it is clear from the ninth recital in the preamble to that directive that the preservation, maintenance or restoration of a sufficient diversity and area of habitats is essential to the conservation of all species of birds. The Member States are therefore required to adopt the measures necessary for the conservation of those species (Case C-235/04 *Commission* v *Spain* [2007] I-5415, paragraph 23).

25 For that purpose, the updating of scientific data is necessary to determine the situation of the most endangered species and the species constituting the common heritage of the Community in order to classify the most suitable areas as SPAs. It is therefore necessary to use the most up-to-date scientific data available at the end of the period laid down in the reasoned opinion (*Commission* v *Spain*, paragraph 24).

26 In that regard, it must be borne in mind that the national inventories, among them the IBA 2000 drawn up by the EOE, revised the first pan-European study carried out in the IBA 89, by presenting more precise and up-to-date scientific data.

27 As regards the IBA 89, the Court has held that, in view of its scientific nature and of the absence of any scientific evidence adduced by a Member State tending particularly to show that the obligations flowing from Article 4(1) and (2) of Directive 79/409 could be satisfied by classifying as SPAs sites other than those appearing in that inventory and covering a smaller total area, that inventory, although not legally binding, could be used by the Court as a basis of reference for assessing whether a Member State had classified a sufficient number and size of areas as SPAs for the purposes of the abovementioned provisions of Directive 79/409 (see, to that effect, Case C-3/96 *Commission* v *Netherlands* [1998] ECR I-3031, paragraphs 68 to 70; Case C-378/01 *Commission* v *Italy* [2003] ECR I-2857, paragraph 18; and *Commission* v *Spain*, paragraph 26).

28 The IBA 2000 provides an up-to-date inventory of the areas of importance for the conservation of birds in Greece which, in the absence of scientific evidence to the contrary, constitutes a basis of reference for assessing whether that Member State has classified as SPAs areas sufficient in number and size to offer protection to all the species of birds listed in Annex I to Directive 79/409 and also to the migratory species not included in that annex.

29 In that regard, it must be pointed out that, as the Greek Government itself states, the information contained in the IBA 2000 was determined, in respect of Greece, inter alia by the EOE. Furthermore, the choice of the 151 SPAs was made in cooperation with that body, which provided scientific and technical assistance.

30 In the present case, it is common ground that, by continuing the programme of re-examination the results of which were still not available at the end of the period prescribed in the reasoned opinion and by not communicating to the Commission, at the end of that period, the information on the methodology followed in that programme as well as other scientific data, the Hellenic Republic has not submitted any evidence capable of disproving the results of the IBA 2000.

31 The above finding cannot be called in question by the argument that it is necessary to allow Member States a reasonable period of time to carry out long-term observation and cartographical studies for the purpose of establishing the areas of importance for the conservation of birds.

32 As Advocate General Kokott observed in points 48 and 49 of her Opinion, although the Member States bear sole responsibility for the classification of SPAs and must base that classification on the best scientific knowledge available, that does not mean that such an obligation does not apply as long as the competent authorities have not evaluated and verified the new scientific knowledge. Such an obligation to classify has existed since the expiry of the period for transposition of Directive 79/409, that is to say, since 6 April 1981, so far as concerns the Hellenic Republic.

33 Having regard to all of the foregoing, it must be stated that, in the absence of the submission of scientific studies capable of disproving the results of the IBA 2000,

that inventory constitutes the most precise and up-to-date source of reference for the identification of the most suitable sites in number and size for the conservation of birds.

34 Next, on the question of the clearly insufficient nature of the classification as SPAs of territories which satisfy the preconditions to be classified as SPAs within the meaning of Article 4(1) of Directive 79/409, it must be borne in mind that Member States are obliged to classify as SPAs all the sites which, applying ornithological criteria, appear to be the most suitable for conservation of the species in question (see *Commission* v *Netherlands*, paragraph 62).

35 In the present case, it is common ground that out of 151 SPAs designated by the Hellenic Republic, 141 of them make it possible to protect only 40% of the overall area of the 186 areas of importance for the conservation of birds listed in the IBA 2000. It follows that 45 areas of importance for the conservation of birds, representing 60% of the aforementioned overall area, have not been classified as SPAs.

36 It must be stated that, in the absence of scientific data making it possible to disprove the results of the IBA 2000, the Hellenic Republic classified as SPAs areas the number and overall size of which fall clearly short of the number and overall size of the sites considered to be the most suitable for conservation of the species in question. The Commission's claim in this regard must therefore be accepted.

37 Lastly, as regards the partial classification of areas of importance for the conservation of birds and, in particular, that of wetlands, it should be recalled

that Article 4(2) of Directive 79/409 provides that Member States are to pay particular attention to the protection of wetlands and particularly to wetlands of international importance (see *Commission* v *Spain*, paragraph 81).

38 In that regard, it is apparent from the IBA 2000 that 32 wetlands provide a habitat for more than 1% of the biogeographical populations of aquatic birds and 49 other areas provide a habitat for more than 1% of the migratory populations of one or more species of aquatic bird.

39 It must thus be examined whether, as submitted by the Commission, the Hellenic Republic classified as SPAs a number of wetlands of international importance, in particular those which are designated in the Ramsar Convention, which correspond only partially to the size of the corresponding areas of importance for the conservation of birds listed in the IBA 2000 and whether, again as submitted by the Commission, certain sites which satisfy the criteria set out in that Convention and constitute areas of importance for the conservation of the birds listed in the IBA 2000 must, under Article 4(2) of Directive 79/409, be classified as SPAs and have still not been so classified.

40 As examples of wetlands of international importance which have not been classified as SPAs or which have been classified as SPAs but less than 50% of whose area is covered by SPAs, the Commission specifies areas Nos 45 (Lake Vegoritis and Lake Petron), 91 (Lakes Trichonida and Lysimachia), 99 (Kotychi Lagoon), 166 (Mount Dikios, Cape Louros, Lake Psalidi, and Alyki) and 180 (Lake Kourna, Almyrou Delta and Georgioupolis Beach), in respect of which the Greek Government states the reasons for the differences between the areas of importance for the conservation of birds listed in the IBA 2000 and the areas which it classified as SPAs.

41 It must be pointed out that, as regards area No 45, the Greek Government submits that only Lake Petron should be classified as an SPA because it alone provides a habitat for the pygmy cormorant (*Phalacrocorax pygmaeus*). The same is true of area No 91, where only Lake Lysimachia is of interest to the ferruginous duck (*Aythya nyroca*).

42 It should be noted that Member States' margin of discretion in choosing the most suitable territories for classification as SPAs concerns the application of ornithological criteria for identifying the most suitable territories for conservation of the species in question (see, to that effect, *Commission* v *Netherlands*, paragraph 61).

43 As Advocate General Kokott points out in point 54 of her Opinion, it is apparent that both of the abovementioned sites were selected by virtue of the criteria defined by the Ramsar Convention on account of their importance for the pygmy cormorant and the ferruginous duck. As the Commission does not dispute the lack of importance for those two species of the areas not covered, the Greek Government's argument in that regard must be accepted.

44 As for area No 166, it is apparent from its description in the IBA 2000 that it consists of a large mountain mass dominated by scrub and forests and also containing wetlands. The area is described in the IBA 2000 as an important breeding area and staging post for birds of prey.

45 In addition, in the absence of scientific data to the contrary, area No 166 referred to in the IBA 2000 appears to be the most suitable for conservation of the species in question (see *Commission* v *Netherlands*, paragraph 62). The classification as SPAs of only Lake Psalidi and Alyki, as wetlands, is thus not sufficient to meet the

obligations arising out of Article 4(1) and (2) of Directive 79/409. The Commission's claim in this regard must therefore be accepted.

46 As regards in particular areas Nos 99 and 180, the Greek Government takes the view that they are not of ornithological interest. The Commission challenges that argument as no scientific assessment has been sent to it. As the Greek Government did not submit any scientific evidence to the contrary by the end of the period in the reasoned opinion, the Commission's claim in this regard must be accepted.

47 As regards the other areas mentioned by the Commission, namely IBA areas Nos 59 (Pinios Delta), 61 (Reservoirs of former Lake Karla), 89 (Lake Amvrakia), 98 (Kalogria lagoon, Strofilia forest, and Lamia marshes), large parts of which are not covered by the SPA, 132 (Lakes Khortaro and Alyki, Moudros gulf, Diapori fen, and Fakos peninsula), in which the Moudros gulf is not covered by the SPA, and 138 (Gera Gulf-Dipi and Haramida marshes, Lesvos), which is partially covered, it must be stated that the Hellenic Republic announced that it would carry out a reassessment of those areas.

48 In the light of the foregoing, it must be held that, in the absence of the submission of scientific studies capable of disproving the results of the IBA 2000, the Hellenic Republic, by classifying as SPAs territories the number and overall size of which fall clearly short of the number and overall size of the territories fulfilling the preconditions for classification as SPAs, has failed to fulfil its obligations under Article 4(1) and (2) of Directive 79/409.

The third and fourth complaints concerning the non-designation of SPAs for many species of birds included in Annex I to Directive 79/409 and many migratory species not included in that annex or the classification as SPAs of areas where those species are insufficiently represented

Arguments of the parties

49 According to the Commission, the following species of birds, namely the shag (Mediterranean subspecies) (*Phalacrocorax aristotelis desmarestii*), bearded vulture (*Gypaetus barbatus*), black vulture (*Aegypius monachus*), lesser spotted eagle (*Aquila pomarina*), imperial eagle (*Aquila heliaca*), long-legged buzzard (*Buteo rufinus*), Bonelli's eagle (*Hieraaetus fasciatus*), lesser kestrel (*Falco naumanni*), Eleonora's falcon (*Falco eleonorae*), Lanner falcon (*Falco biarmicus*), Krüper's nuthatch (*Sitta krueperi*) and cinereous bunting (*Emberiza cineracea*), included in Annex I to Directive 79/409, are insufficiently protected by SPAs.

50 As regards migratory species, the Commission submits that many areas identified in the IBA 2000 are also very important for those species, which are protected under Article 4(2) of Directive 79/409. This concerns inter alia some anseriformes, the charadriiformes and some more common species included in Annex I to that directive on account of migration or wintering.

51 The Greek Government takes the view that the species included in Annex I to Directive 79/409 are sufficiently protected, with the exception of the long-legged

buzzard, lesser kestrel, Krüper's nuthatch and the cinereous bunting. As regards the imperial eagle, it states that, on completion of the study of the 10 pilot areas, more recent evidence will be available.

52 The Greek Government adds that the comparison, in respect of a given species, of the population protected by SPAs with that listed in the IBA 2000 cannot constitute the sole and indisputable criterion of whether the protection of that species is sufficient. According to the Greek Government, it is possible that, on the basis of the distribution of the species concerned within an area, the requirements laid down by the C group of criteria (the group relating to the countries of the European Union) in the IBA 2000, so far as concerns the population of that species, are not met.

53 As regards the methodology and the criteria used, the Commission submits, first, that the Greek authorities dispute the criteria in the IBA 2000 in some cases while using those criteria in other cases, thus lapsing into inconsistency, and, second, that they base their arguments on the importance of certain areas whereas the outcome sought is the protection of species.

Findings of the Court

54 By its third and fourth complaints, the Commission complains that the Hellenic Republic failed to designate SPAs for many species of birds included in Annex I to Directive 79/409 and many migratory species not included in that annex, or classified as SPAs areas where those species are insufficiently represented.

55 It is appropriate at the outset to reject the Commission's claim for a declaration that the Hellenic Republic, by failing to designate SPAs for many species of birds included in Annex I to Directive 79/409 and for the migratory species not included in that annex, has failed to fulfil its obligations under Article 4(1) and (2) of Directive 79/409.

56 It is apparent from the procedure that, first, as regards the species included in Annex I to Directive 79/409, the only species in respect of which the main breeding area was not classified as an SPA is Krüper's nuthatch and, second, as regards the migratory species not included in that annex, there is no species in respect of which no territory has been classified. As the Greek Government has accepted the Commission's complaint as regards Krüper's nuthatch, the Commission's claim concerning failure to designate SPAs must be accepted only as regards that species.

57 By its complaint concerning the classification as SPAs of territories in which many species of birds included in Annex I to Directive 79/409 and many migratory species not included in that annex are insufficiently represented, the Commission alleges that, as regards specifically the population of 12 species of birds, the SPAs demarcated by Greece cover insufficiently the area of the IBA 2000 areas in which those species are present.

58 As the Greek Government has expressly accepted the Commission's complaint as regards the long-legged buzzard, lesser kestrel and cinereous bunting, the Commission's claims must be accepted in respect of those species.

59 As regards the other species, namely the shag (Mediterranean subspecies), bearded vulture, black vulture, lesser spotted eagle, imperial eagle, Bonelli's eagle, Eleonora's falcon and Lanner falcon, it is clear that, by referring to the programme of re-examination and the study of 10 pilot areas in respect of all of which the assessment has not been completed and by failing to notify the EOE's study on the black vulture, the Greek Government has not submitted scientific studies capable of disproving the results of the IBA 2000 and of establishing that areas in which those species are sufficiently represented have been classified as SPAs. The Commission's claim in this regard must therefore be accepted.

60 In the light of the foregoing, it must be held that, by failing to designate SPAs to offer protection to Krüper's nuthatch and by classifying as SPAs areas in which the shag (Mediterranean subspecies), bearded vulture, black vulture, lesser spotted eagle, imperial eagle, long-legged buzzard, Bonelli's eagle, lesser kestrel, Eleonora's falcon, Lanner falcon and cinereous bunting are insufficiently represented, the Hellenic Republic has failed to fulfil its obligations under Article 4(1) and (2) of Directive 79/409.

61 Accordingly, the action brought by the Commission must be regarded as well founded.

62 In view of the foregoing, it must be held that:

— by classifying as SPAs territories the number and overall size of which fall clearly short of the number and overall size of the territories fulfilling the preconditions for classification as SPAs for the purposes of Article 4(1) and (2) of Directive 79/409,

— by failing to designate SPAs to offer protection to Krüper's nuthatch, and

— by classifying as SPAs areas in which the shag (Mediterranean subspecies), bearded vulture, black vulture, lesser spotted eagle, imperial eagle, long-legged buzzard, Bonelli's eagle, lesser kestrel, Eleonora's falcon, Lanner falcon and cinereous bunting are insufficiently represented,

the Hellenic Republic has failed to fulfil its obligations under Article 4(1) and (2) of Directive 79/409.

Costs

63 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. As the Commission has applied for costs to be awarded against the Hellenic Republic, and as the latter has been unsuccessful in the essential aspects of its submissions, the Hellenic Republic must be ordered to pay the costs. Under the first subparagraph of Article 69(4) of those rules, the Kingdom of Spain, the French Republic, the Portuguese Republic and the Republic of Finland, which have intervened, are to bear their own costs.

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

1. Declares that:

— **by classifying as special protection areas territories the number and overall size of which fall clearly short of the number and overall size of the territories fulfilling the preconditions for classification as special protection areas for the purposes of Article 4(1) and (2) of Council Directive 79/409/EEC of 2 April 1979 on the conservation of wild birds, as amended, inter alia, by Commission Directive 97/49/EC of 29 July 1997,**

— **by failing to designate special protection areas to offer protection to Krüper's nuthatch (*Sitta krueperi*), and**

— **by classifying as special protection areas areas in which the shag (Mediterranean subspecies) (*Phalacrocorax aristotelis desmarestii*), bearded vulture (*Gypaetus barbatus*), black vulture (*Aegypius monachus*), lesser spotted eagle (*Aquila pomarina*), imperial eagle (*Aquila heliaca*), long-legged buzzard (*Buteo rufinus*), Bonelli's eagle (*Hieraaetus fasciatus*), lesser kestrel (*Falco naumanni*), Eleonora's falcon (*Falco eleonorae*), Lanner falcon (*Falco biarmicus*) and cinereous bunting (*Emberiza cineracea*) are insufficiently represented,**

the Hellenic Republic has failed to fulfil its obligations under Article 4(1) and (2) of Directive 79/409, as amended by Directive 97/49;

2. Dismisses the remainder of the action;

3. Orders the Hellenic Republic to pay the costs;

4. Orders the Kingdom of Spain, the French Republic, the Portuguese Republic and the Republic of Finland to bear their own costs.

[Signatures]