

JUDGMENT OF THE COURT (Sixth Chamber)
7 December 2000 *

In Case C-374/98,

Commission of the European Communities, represented by P. Stancanelli, of its Legal Service, and O. Couvert-Castéra, a national civil servant on secondment to that Legal Service, acting as Agents, with an address for service in Luxembourg at the office of C. Gómez de la Cruz, also of the Legal Service, Wagner Centre, Kirchberg,

applicant,

v

French Republic, represented by K. Rispal-Bellanger, Head of Subdirectorate in the Legal Affairs Directorate of the Ministry of Foreign Affairs, and R. Nadal, Assistant Foreign Affairs Secretary in that Directorate, acting as Agents, with an address for service in Luxembourg at the French Embassy, 8B Boulevard Joseph II,

defendant,

* Language of the case: French.

APPLICATION for a declaration, first, that, by failing to classify the Basses Corbières site, France, as a special protection area for the conservation of certain species of birds listed in Annex I to Council Directive 79/409/EEC of 2 April 1979 on the conservation of wild birds (OJ 1979 L 103, p. 1) and of certain migratory species not listed in that Annex, and by also failing to adopt special conservation measures concerning their habitat, contrary to Article 4(1) and (2) of that directive, and, second, that, by failing to take appropriate steps in relation to the Basses Corbières to avoid disturbance of the species protected on that site and deterioration of their habitat likely to have a significant effect, as a result of the opening and working of limestone quarries in the municipalities of Tautavel and Vingrau, France, contrary to Article 6(2) to (4) 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 French Republic has failed to fulfil its obligations under the EC Treaty,

THE COURT (Sixth Chamber),

composed of: C. Gulmann (Rapporteur), President of the Sixth Chamber,
V. Skouris and R. Schintgen, Judges,

Advocate General: S. Alber,

Registrar: D. Louterman-Hubeau, Principal Administrator,

having regard to the Report for the Hearing,

after hearing oral argument from the parties at the hearing on 16 December 1999, during which the Commission was represented by O. Couvert-Castéra and

the French Republic by A. Maitrepierre, Chargé de Mission in the Legal Affairs Directorate of the Ministry of Foreign Affairs, acting as Agent,

after hearing the Opinion of the Advocate General at the sitting on 15 February 2000,

gives the following

Judgment

- 1 By application lodged at the Court Registry on 16 October 1998, the Commission of the European Communities brought an action under Article 169 of the EC Treaty (now Article 226 EC) for a declaration, first, that, by failing to classify the Basses Corbières site, France, as a special protection area ('SPA') for the conservation of certain species of birds listed in Annex I to Council Directive 79/409/EEC of 2 April 1979 on the conservation of wild birds (OJ 1979 L 103, p. 1; 'the birds directive') and of certain migratory species not listed in that Annex, and by also failing to adopt special conservation measures concerning their habitat, contrary to Article 4(1) and (2) of that directive, and, second, that, by failing to take appropriate steps in relation to the Basses Corbières to avoid disturbance of the species protected on that site and deterioration of their habitat likely to have a significant effect, as a result of the opening and working of limestone quarries within the municipalities of Tautavel and Vingrau, France, contrary to Article 6(2) to (4) 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'), the French Republic has failed to fulfil its obligations under the EC Treaty.

Legislative background

2 Article 4 of the birds directive provides:

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

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. [...]

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

³ Article 7 of the habitats directive provides that obligations arising under Article 6(2), (3) and (4) of that directive are to 'replace any obligations arising under the first sentence of Article 4(4) of Directive 79/409/EEC in respect of areas classified pursuant to Article 4(1) or similarly recognised under Article 4(2) thereof, as from the date of implementation of this Directive or the date of

classification or recognition by a Member State under Directive 79/409/EEC, where the latter date is later’.

4 Article 6(2) to (4) of the habitats directive provide:

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

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

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

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

- 5 Article 23(1) of the habitats directive provides that Member States are to bring into force the laws, regulations and administrative provisions necessary to comply with that directive within two years of its notification. The directive having been notified in June 1992, that period expired in June 1994.

The pre-litigation procedure

- 6 On 2 July 1996, the Commission sent the French Government a letter of formal notice in respect of failure to comply with Article 4 of the birds directive, as amended by the habitats directive, in relation to the Basses Corbières site which straddles the Aude and Pyrénées-Orientales départements. In that letter, the Commission maintained, first, that, having regard to its importance for the conservation of wild birds, particularly the Bonelli's eagle, the Basses Corbières site should have been classified as an SPA, and, second, that the opening and working of limestone quarries on that site had caused its deterioration without the required conditions being met.
- 7 In its reply of 28 November 1996, the French Government argued that the French authorities had recognised the interest of the site in question by passing a special conservation measure designed to protect the Bonelli eagle, namely a prefectoral decree on the conservation of the biotope of that species within the Vingrau and Tautavel municipalities. The Government, moreover, referred to the fact that a classification of those territories as an SPA was envisaged. It also stated that the

OMYA company had been working a limestone deposit in the Tautavel municipality for many years. The exhaustion of the deposit in that municipality had led the company to submit a request for authorisation to extend the working of the deposit into the neighbouring municipality of Vingrau. In that respect, the French Government argued that a judgment of the Administrative Court of Appeal of Bordeaux, which had annulled the prefectoral decree granting OMYA permission to build the quarrying installation in the Vingrau municipality, was capable of meeting the requirements of the birds directive.

- 8 By letter of 19 December 1997, the Commission delivered a reasoned opinion in which it held, first, that, by failing to classify the Basses Corbières site as an SPA for the conservation of certain species of birds listed in Annex I to the birds directive and of certain migratory species not listed in that Annex, and by also failing to adopt special conservation measures concerning their habitat, contrary to Article 4(1) and (2) of that directive, and, secondly, that, by failing to take appropriate steps in relation to the Basses Corbières to avoid disturbance of the species protected on that site and deterioration of their habitat, likely to have a significant effect, as a result of the opening and working of limestone quarries in the municipalities of Tautavel and Vingrau, contrary to Article 6(2) to (4) of the habitats directive, the French Republic had failed to fulfil its obligations under the EC Treaty. The Commission called upon the French Republic to take the necessary measures to comply with that reasoned opinion within two months from its notification.
- 9 By letter of 22 July 1998, the French authorities sent their reply to the reasoned opinion. They indicated in particular that a very full impact study had enabled the effects of the quarries in question on the attainment of the Community objectives to be assessed. In the light of that study, compensatory measures for reducing the effects of the project on habitats, species and landscape had been put into operation. In their letter, the French authorities also referred to the fact that a decision of the Conseil d'État, France, of 18 December 1996 and a decision of the Tribunal Administratif (Administrative Court) of Montpellier, France, of January 1998 confirmed the authorisations granted to the OMYA company to operate

and to set up a classified installation. The authorities also stated that a mediation mission was in progress between opponents and supporters of the operation of the Vingrau quarry and that, at the end of that mission, they would open a procedure for classifying the site as an SPA.

Substance

10 The Commission charges the French Republic with:

- first, not having classified the Basses Corbières site as an SPA;
- second, not having taken sufficient special conservation measures concerning the habitat of the species referred to in Annex I to the birds directive and of migratory species which frequent that site;
- third, not having taken appropriate steps to avoid disturbances in that site affecting those species and a deterioration of their habitat.

The classification as an SPA

11 The Commission states that the ornithological richness of the Basses Corbières site, which is situated in a migration corridor of European importance, caused the

French authorities to enter it as an important area for the conservation of wild birds (zone importante pour la conservation des oiseaux sauvages; 'ZICO'), and that the area thus designated as a ZICO amounts to 47 400 hectares. The Basses Corbières site both shelters several species listed in Annex I to the birds directive, particularly a pair of Bonelli's eagles, of which there are about 20 pairs in France, and constitutes an important area for the migration of birds of prey.

- 12 The French Government acknowledges that the classification of the Basses Corbières as an SPA has been delayed on account of fierce local controversy. Nevertheless, thanks to the work of a mediator sent by the French Government, it had been possible to classify a major part of the Basses Corbières site as an SPA. The French Government further argues that, under Article 4 of the birds directive, as interpreted by the Court of Justice, it is for the Government to classify as SPAs the territories which appear to it to be the most suitable in number and size for the conservation of birds. The French authorities were therefore not required to classify the whole of the area listed in the national inventory of ZICOs as SPAs. The Government also maintains that Bonelli's eagle is the most remarkable species of the area in terms of ornithological interest. As for migratory species, it claims that the area is more one of passage than of stopping or feeding. Certain species might, it is true, be observed on a migratory halt in that area for a resting or feeding period. However, the Basses Corbières region does not contain large gathering areas as is the case on coastal lakes.
- 13 In this connection, it should first be noted that, according to the settled case-law of the Court, a Member State may not plead provisions, practices or circumstances existing in its internal legal system in order to justify a failure to comply with the obligations and time-limits laid down in a directive (see, *inter alia*, Case C-166/97 *Commission v France* [1999] ECR I-1719, paragraph 13).
- 14 Second, it is well settled case-law that the question whether a Member State has failed to fulfil its obligations must be determined by reference to the situation

prevailing in that State at the end of the period laid down in the reasoned opinion (*Commission v France*, cited above, paragraph 18). On that point, it is undisputed that no part of the Basses Corbières site had been classified as an SPA before the expiry of the period laid down by the reasoned opinion.

- 15 Third, it is undisputed that the Basses Corbières site contains natural areas of particular ornithological interest, at least because of the presence of Bonelli's eagle, which is a species listed in Annex I to the birds directive. In that respect it should be noted that, in January 1999, the French authorities classified two nesting areas of Bonelli's eagle, representing a total area of around 360 hectares and already referred to by two prefectural decrees for conserving the biotope of that species, as SPAs. One of those areas extends over the municipalities of Tautavel and Vingrau, the other over the municipalities of Maury, Planèzes and Raziguières.
- 16 However, it has not been shown that there are migratory species justifying the classification of the Basses Corbières site as an SPA by virtue of Article 4(2) of the birds directive. All the species mentioned for that purpose by the Commission as migratory species, such as the honey buzzard, the black kite, the kite, the Egyptian vulture, the short-toed eagle, the marsh harrier, the hen harrier and Montagu's harrier are listed in Annex I to the birds directive, whereas Article 4(2) of that directive applies only to migratory species not listed in Annex I.
- 17 Therefore, without there being any need in this case to consider what area the SPA in the Basses Corbières should cover for the obligations arising under the birds directive to be met, it must be concluded that the French Republic has not, within the prescribed period, classified any territory in the Basses Corbières site as an SPA within the meaning of Article 4(1) of the birds directive. The Commission's application must therefore be upheld on that point, within the limits stated above.

The special conservation measures

- 18 As regards the special conservation measures required by Article 4(1) of the birds directive, the Commission maintains that the measures adopted by the French authorities for the Basses Corbières site are insufficient. In particular, the three prefectoral decrees for conserving the biotope of Bonelli's eagle on that site, although they mention wild bird species other than Bonelli's eagle in their annexes, refer only to that latter species in their provisions and provide for specific measures only in respect of the latter. Those decrees do not, the Commission submits, ensure sufficient and complete protection of all the bird species required to be protected in that site by the birds directive, either in relation to the protection regime established or in relation to its geographical extent.
- 19 According to the French Government, those three decrees for the protection of the biotope ensure complete protection of the bird species present in the areas concerned. In that respect, it states in particular that the protection measures laid down by those decrees for the whole of those areas consist essentially of a prohibition on all forms of rock climbing from 15 January to 30 June and more generally a prohibition on all works which might adversely affect the integrity of the biotope. It maintains that such measures meet the objectives of conserving not only the most remarkable species of the Basses Corbières, namely Bonelli's eagle, but also the other species characteristic of that biotope. It also maintains that the areas defined by the decrees protecting the biotope correspond to biotopes generally favourable to rock species sharing their territory with Bonelli's eagle.
- 20 As regards the alleged insufficiency of the protection regime arising from the special conservation measures adopted by the French authorities, it should be noted in any event that, even though the three decrees for protecting the biotope are all aimed primarily at ensuring the conservation of the biotope of Bonelli's

eagle, and thus the protection of that species, their provisions nevertheless benefit all wild birds frequenting the areas covered by that legislation, by laying down in some detail the prohibition of activities capable of adversely affecting the integrity of the biotopes in question.

- 21 Moreover, there is nothing in the documents before the Court to show that the regime established by the three decrees for protecting the biotope is insufficient in relation to the conservation requirements of any of the bird species present in the areas covered by those decrees.
- 22 The complaint that the protection regime arising from the special conservation measures adopted by the French authorities is insufficient must therefore be rejected.
- 23 As regards the complaint that the geographical extent of those special conservation measures is insufficient, it should be noted that the Groupe Ornithologique du Roussillon ('GOR') filed a proposal in March 1999 that sectors situated in the Basses Corbières ZICO should be classified as an SPA. That file shows that the area extending over 950 hectares from the Serre de Vingrau-Tautavel to the Trou de Cavall was regarded as being suitable for classification as an SPA. That area falls entirely within the ZICO LR 07 which corresponds to the Basse Corbières site as referred to by the Commission in this case and was delimited in 1991, at the request of the Ministry of the Environment, by the GOR and the Groupe de Recherche et d'Information sur les Vertébrés et leur Environnement.
- 24 According to the GOR, which the French Government recognises as a naturalist association independent of the administration that has shown scientific seriousness and objectivity for many years, that area, which has already suffered deterioration around 1990, must be regarded as classifiable as an SPA

particularly on account of the presence of large birds of prey such as Bonelli's eagle, the golden eagle, the peregrine and the eagle owl, and of a corvid such as the red-billed chough. The presence of those species in the area in question is of fairly long standing, as the various documents submitted to the Court in this case show. The golden eagle, which has been living in this area since January 1998, appears to be the most recently-arrived species.

- 25 It should also be noted that the inventory of areas which are of great importance for the conservation of wild birds, more commonly known under the acronym IBA (Inventory of Important Bird Areas in the European Community) includes the area in question. The Court of Justice has held that that inventory, although not legally binding on the Member States concerned, contains scientific evidence making it possible to assess whether a Member State has complied with its obligation to classify as SPAs the most suitable territories in number and size for conservation of the protected species (Case C-3/96 *Commission v Netherlands* [1998] ECR I-3031, paragraphs 69 and 70).
- 26 It follows from the general scheme of Article 4 of the birds directive that, where a given area fulfils the criteria for classification as an SPA, it must be made the subject of special conservation measures capable of ensuring, in particular, the survival and reproduction of the bird species mentioned in Annex I to that directive.
- 27 In this case, the maps with the Court's file show that, of the three decrees for protecting the biotope issued in relation to the Basses Corbières area, only one refers to the area indicated by the GOR as requiring classification as an SPA, and that the decree in question covers only part of that area. Moreover, the 231 hectares protected by that decree are not entirely included in that area.

- 28 Furthermore, it does not appear that the part of the area indicated by the GOR which lies outside the scope of the decree in question is subject to any special conservation measures whatsoever.
- 29 In those circumstances, in the absence of any evidence capable of reopening the question whether the GOR's proposal that the 950-hectare area extending from the Serre de Vingrau-Tautavel to the Trou de Cavall should be classified as an SPA is well founded, it must be held that, since a considerable part of that area does not benefit from a special conservation regime, the special conservation measures taken by the French authorities are insufficient in their geographical extent.
- 30 Therefore, without there being any need in this case to consider whether other parts of the Basses Corbières area are suitable for classification as SPAs, it appears that the French Republic has failed to fulfil its obligations under Article 4(1) of the birds directive by not taking sufficient special conservation measures as to their geographical extent. It follows that the Commission's application must also be upheld on this point, within the limits specified above.

The disturbance and deterioration caused by the limestone quarries of Vingrau and Tautavel

- 31 According to the Commission — given that, as from the implementation date of the habitats directive, namely 10 June 1994, the obligations under Article 6(2) to (4) of that directive were substituted, pursuant to Article 7 thereof, for the obligations under the first sentence of Article 4(4) of the birds directive — those

obligations under the habitats directive have had to be complied with since that date in the case of the Basses Corbières site, even if the latter has not yet been classified as an SPA under Article 4(1) and (2) of the birds directive.

- 32 In reply to the Court's question on that point, the Commission maintains that, since Article 7 of the habitats directive does not in any way amend Article 4(1) and (2) of the birds directive, the grounds which led the Court to extend the protection regime under the first sentence of Article 4(4) of the birds directive to areas not classified as SPAs are equally relevant in relation to the protection regime under Article 6(2) to (4) of the habitats directive, which replaced it. The Commission further argues that, if the provisions of Article 7 of the habitats directive had to be interpreted as being intended to make the obligations under Article 6(2) to (4) applicable only to SPAs actually classified as such by the national authorities pursuant to Article 4(1) and (2) of the birds directive, the result would be a duality in the protection schemes that would be hard to justify. The protection regime laid down in the birds directive is, the Commission submits, stricter than that under the habitats directive, and it would be paradoxical to place areas of ornithological interest that have not been the subject of a national classification measure such as an SPA under a stricter protection scheme than that applicable to areas which have actually been classified as SPAs by Member States.
- 33 The Commission states that the realisation of the project to open and work limestone quarries in the territory of the Vingrau and Tautavel municipalities within the Basses Corbières site is likely to cause disturbance to the species present in that site and a deterioration of their habitat. It argues that, for Bonelli's eagle in particular, the opening of the quarries involves the disappearance of part of its hunting territory and risks disturbing its reproduction on account of the visual and noise pollution connected with the quarries' activity.
- 34 The Commission also argues that in this case, even if, for determining the areas due to benefit from the special protection regime, one were to take only those

classified as SPAs by the French authorities and which correspond to the territories covered by the two decrees for protecting the biotope referred to in paragraph 15 of this judgment, it appears that the quarrying project of the OMYA company is likely significantly to affect those areas, which are of undisputed ornithological interest.

- 35 The Commission maintains that, in those circumstances, an appropriate assessment of the impact of the project on the conservation of the site concerned should have been carried out. The impact study prior to the authorisation to operate quarries, dated 1994, did not meet that requirement.
- 36 The French Republic also infringed the obligation to adopt appropriate compensatory measures. The Commission submits that the cultivation of prey for Bonelli's eagle, the scientific monitoring of that species, the construction of a merlon and a plan for managing the natural environment, besides the fact that they do not concern the other bird species requiring protection, cannot compensate for the disturbance and deterioration caused, since the latter have not been assessed.
- 37 Since there had been no appropriate assessment of the impact of the quarries project on the site to be classified as an SPA in the municipality of Vingrau and, moreover, a negative impact was far from being excluded, the Commission claims that the French authorities should have refused to give their agreement to that project without demonstrating that there was no alternative solution and that a major public interest was capable of justifying the project. In that respect, the Commission states that several reports emanating from qualified universities conclude that solutions do exist which are equivalent to that of the Vingrau deposit. In any event, neither the OMYA company nor the French authorities had seriously studied those other solutions.
- 38 The French Government maintains that the Commission does not present any scientific or other evidence to demonstrate that the quarries create significant

disturbance for the pair of Bonelli's eagles or for the other species. In any event, the Government denies that the opening and operation of the quarries are capable of entailing serious consequences for the species present in the site. In that respect, it argues, first, that none of the scientific studies carried out concluded that operation of the quarries might involve such consequences for the wild birds and in particular Bonelli's eagle; second, that such operation was preceded by a detailed impact study which concluded that the project had no significant effect on the environment; and, finally, that important precautionary measures designed to avoid potential negative effects of the project on the environment have been put into operation.

39 The French Government states that Bonelli's eagle was present before the Tautavel quarry began operating in 1968, and that it has since maintained itself on the site without the working of the limestone noticeably causing a disturbance of the species. Nothing in the monitoring of that species, carried out by local bird protection associations independent of the administration, supports the conclusion that moving the Tautavel workings to Vingrau might have negative effects, the nesting area of Bonelli's eagle being in any event unaffected by either of the working sites.

40 Concerning the hunting area of Bonelli's eagle, the French Government points out that, in the impact study referred to above, it is stated, first, that the area needed for working the quarries should not unduly disturb the habits of that species, which has a hunting territory of several square kilometres, and, secondly, that precautionary measures to encourage proliferation of the small prey upon which that eagle feeds have been taken.

41 As regards possible alternative solutions to the deposit currently being worked by the OMYA company in the Vingrau and Tautavel municipalities, the French

Government claims that they have been seriously studied by that company but are not equivalent to that deposit.

- 42 In reply to the question put by the Court as to the applicability of Article 6(2) to (4) of the habitats directive to areas not yet classified as SPAs, the French Government, which acknowledges that it has not pleaded the inapplicability of those provisions to the Basses Corbières area, maintains that the substitution of the obligations contained therein for those in the first sentence of Article 4(4) of the birds directive, as provided for in Article 7 of the habitats directive, concerns only areas already classified as SPAs under the birds directive.
- 43 It first needs to be considered whether Article 6(2) to (4) of the habitats directive apply to areas which have not been classified as SPAs but should have been so classified.
- 44 In that respect, it is important to note that the text of Article 7 of the habitats directive expressly states that Article 6(2) to (4) of the directive apply, in substitution for the first sentence of Article 4(4) of the birds directive, to the areas classified under Article 4(1) or (2) of the latter directive.
- 45 It follows that, on a literal interpretation of that passage of Article 7 of the habitats directive, only areas classified as SPAs fall under the influence of Article 6(2) to (4) of that directive.
- 46 Moreover, the text of Article 7 of the habitats directive states that Article 6(2) to (4) of that directive replace the first sentence of Article 4(4) of the birds directive

as from the date of implementation of the habitats directive or the date of classification by a Member State under the birds directive, where the latter date is later. That passage of Article 7 appears to support the interpretation to the effect that the application of Article 6(2) to (4) presupposes the classification of the area concerned as an SPA.

- 47 It is clear, therefore, that areas which have not been classified as SPAs but should have been so classified continue to fall under the regime governed by the first sentence of Article 4(4) of the birds directive.
- 48 The Commission's arguments to the contrary cannot be accepted.
- 49 Thus, the fact that, as the case law of the Court of Justice shows (see, in particular, Case C-355/90 *Commission v Spain* [1993] ECR I-4221, paragraph 22), the protection regime under the first sentence of Article 4(4) of the birds directive applies to areas that have not been classified as SPAs but should have been so classified does not in itself imply that the protection regime referred to in Article 6(2) to (4) of the habitats directive replaces the first regime referred to in relation to those areas.
- 50 Moreover, as regards the Commission's argument concerning a duality of applicable regimes, it should be noted that the fact that the areas referred to in the previous paragraph of this judgment are, under the first sentence of Article 4(4) of the birds directive, made subject to a regime that is stricter than that laid down by Article 6(2) to (4) of the habitats directive in relation to areas classified as SPAs does not appear to be without justification.

- 51 As the Advocate General points out in paragraph 99 of his Opinion, a Member State cannot derive an advantage from its failure to comply with its Community obligations.
- 52 In that respect, if it were lawful for a Member State, which, in breach of the birds directive, has failed to classify as an SPA a site which should have been so classified, to rely on Article 6(3) and (4) of the habitats directive, that State might enjoy such an advantage.
- 53 Since no formal measure for classifying such a site as an SPA exists, it is particularly difficult for the Commission, in accordance with Article 155 of the EC Treaty (now Article 211 EC), to carry out effective monitoring of the application by Member States of the procedure laid down by Article 6(3) and (4) of the habitats directive and to establish, in appropriate cases, the existence of possible failures to fulfil the obligations arising thereunder. In particular, the risk is significantly increased that plans or projects not directly connected with or necessary to the management of the site, and affecting its integrity, may be accepted by the national authorities in breach of that procedure, escape the Commission's monitoring and cause serious, or irreparable ecological damage, contrary to the conservation requirements of that site.
- 54 Natural or legal persons entitled to assert before the national courts interests connected with the protection of nature, and especially wild bird life, which in this case means primarily environmental protection organisations, would face comparable difficulties.
- 55 A situation of this kind would be likely to endanger the attainment of the objective of special protection for wild bird life set forth in Article 4 of the birds

directive, as interpreted by the case-law of the Court (see, in particular, Case C-44/95 *Royal Society for the Protection of Birds* [1996] ECR I-3805, paragraphs 23 and 25).

- 56 As the Advocate General has, essentially argued in paragraph 102 of his Opinion, the duality of the regimes applicable, respectively, to areas classified as SPAs and those which should have been so classified gives Member States an incentive to carry out classifications, in so far as they thereby acquire the possibility of using a procedure which allows them, for imperative reasons of overriding public interest, including those of a social or economic nature, and subject to certain conditions, to adopt a plan or project adversely affecting an SPA.
- 57 It follows from the above that Article 6(2) to (4) of the habitats directive do not apply to areas which have not been classified as SPAs but should have been so classified.
- 58 The complaint alleging infringement of Article 6(2) to (4) of the habitats directive must therefore be rejected.
- 59 It must therefore be held that, by not classifying any part of the Basses Corbières site as an SPA and by not adopting special conservation measures for that site sufficient in their geographical extent, the French Republic has failed to fulfil its obligations under Article 4(1) of the birds directive.
- 60 The remainder of the application must be dismissed.

Costs

- ⁶¹ 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. However, under the first paragraph of Article 69(3), the Court may order that the costs be shared or that the parties bear their own costs where each party succeeds on some and fails on other heads. Since the Commission has been only partially unsuccessful, the parties must be ordered to bear their own costs.

On those grounds,

THE COURT (Sixth Chamber)

hereby:

1. Declares that, by not classifying any part of the Basses Corbières site as a special protection area and by not adopting special conservation measures for that site sufficient in their geographical extent, the French Republic has failed to fulfil its obligations under Article 4(1) of Council Directive 79/409/EEC of 2 April 1979 on the conservation of wild birds;

2. Dismisses the remainder of the application;
3. Orders the parties to bear their own costs.

Gulmann

Skouris

Schintgen

Delivered in open court in Luxembourg on 7 December 2000.

R. Grass

C. Gulmann

Registrar

President of the Sixth Chamber