Fourth, the regulation of 28 September 2004 concerning protected species of animals living in the wild permits the killing, capture and so forth of otters (*Lutra Lutra*) living in the environs of fish ponds designated as breeding areas, notwithstanding the fact that the otter is a species in need of strict protection under the terms of Annex IV to Directive 92/43/EEC.

([1]) OJ 1992 L 206, p. 7.

Reference for a preliminary ruling from the Korkein hallinto-oikeus (Finland) lodged on 2 February 2011 — Veronsaajien oikeudenvalvontayksikkö

(Case C-48/11)

(2011/C 103/30)

Language of the case: Finnish

Referring court

Korkein hallinto-oikeus

Parties to the main proceedings

Applicant: Veronsaajien oikeudenvalvontayksikkö

Defendant: A Oy

Question referred

Is an exchange of shares in which a Finnish limited company transfers to a Norwegian company (in the corporate form of an aksjeselskap [public limited company]) shares of a company which it owns and receives as consideration shares issued by the Norwegian company to be treated in taxation (taking account of Articles 31 and 40 of the EEA Agreement) neutrally in the same way as if the exchange of shares were between domestic companies or companies with their seat in Member States of the European Union?

Appeal brought on 4 February 2011 by Fernando Marcelino Victoria Sánchez against the order delivered by the General Court (Fourth Chamber) on 17 November 2010 in Case T-61/10

(Case C-52/11 P)

(2011/C 103/31)

Language of the case: Spanish

Parties

Appellant: Fernando Marcelino Victoria Sánchez (represented by: P. Suarez Plácido, lawyer)

Other parties to the proceedings: European Parliament and European Commission

Form of order sought

The appellant claims that the Court of Justice should:

— Annul the order of 17 November 2010 of the Fourth Chamber of the General Court and the decision relating to costs, and declare that the action for failure to act brought by Mr Victoria Sánchez is admissible and not manifestly unfounded;

— Consequently, take a decision on the substance of the case, or in the alternative, after declaring the case admissible and founded, refer the case back to the General Court for judgment and order the respondent institutions to pay the costs.

Grounds of appeal and main arguments

The appellant raises the following grounds of appeal:

1. Infringement of Article 44 of the Rules of Procedure of the General Court since the application initiating the proceedings contains the subject-matter of the proceedings, a summary of the grounds of appeal raised and, finally, the form of order sought by the action, which is set out very clearly in the application as follows: *'A declaration that the failure of the European Parliament and of the Commission to respond to the application made by way of letters on 6 October 2009 is contrary to European Union law and an order for those institutions to remedy the situation'.*

2. Infringement of Articles 20(2)(d) of the Treaty on the Functioning of the European Union (TFEU) (formerly Article 17 EC), Article 24 TFEU (formerly Article 21 EC), Article 227 TFEU (formerly Article 194 EC), in conjunction with Article 58 of the Statue of the Court of Justice. That infringement relates to the petition which Mr Victoria Sánchez sent to the European Parliament in 2008 in which it drew that institution's attention to the risks incurred by Spanish citizens who dare to denounce the political corruption and tax fraud taking place in Spain. Together with the petition sent to the Parliament he submitted a contract signed by important Spanish personalities — including a named lawyer who works for the largest law firm in Spain and Portugal — which recounted how all of those persons were defrauding the State Treasury and Spanish citizens by means of fictitious undertakings opaque to the Spanish State. The petition was shelved without being granted any attention and no Spanish MEP responded to the subsequent requests for support made by the appellant — in the form of 10 emails — in which he requested the cooperation of his representatives to ensure his physical integrity in the light of the threats which he had received.

3. Infringement, by the respondent institutions, of the fundamental rights laid down in Article 6 EU, Articles 20 and 21 of the Charter of Fundamental Rights of the European Union. The European Commission's failure to act in response to the letter sent on 6 October 2009 constitutes a serious infringement of Article 6 EU since that institution is required to ensure a democratic area of co-existence for all Europeans, equal access of European citizens to the European Union institutions and effective legal protection, unless tax fraud falls within the jurisdiction of the European

Court of Human Rights and that court regards tax payers as indirectly harmed by it. In addition, the appellant draws attention to the legal uncertainty for Community law brought about by successive Spanish court decisions which ignore the observations made by the appellant's legal representatives regarding compliance with European law, in particular compliance with the judgment of the Court of Justice in Joined Cases C-570/07 and C-571/07 ([1]) on the freedom of establishment of pharmacies in Spain.

4. An infringement of Articles 265 and 266 TFEU since what was sought in the proceedings before the General Court was a declaration that the failure on the part of the Parliament and the Commission to respond to the application made on 6 October 2009 is contrary to Community law and an order for those institutions to remedy that error, *ex lege*, pursuant to Article 266 TFEU. In order to remedy that error the body from which the annulled act emanated or which failed to take action contrary to the Treaties should be required to adopt the measures necessary to comply with the judgment of the Court of Justice of the European Union and, in this instance, remedy its failure to act by responding to the application made by way of a letter on 6 October 2009.

([1]) Judgment of 1 June 2010, not yet published in the ECR.