

Reference for a preliminary ruling by the Conseil d'Etat (Belgium), XIIIth Chamber, by judgment of that court of 29 April 2004 in the case Inter-Environnement Wallonie against Région wallonne

(Case C-208/04)

(2004/C 179/14)

A reference has been made to the Court of Justice of the European Communities by judgment of the Conseil d'Etat (Belgium), XIIIth Chamber, of 29 April 2004, received at the Court Registry on 11 May 2004, for a preliminary ruling in the case Inter-Environnement Wallonie against Région wallonne on the following question:

'Is Article 1(a) of Directive 75/442/EEC of 15 July 1975 ⁽¹⁾, as amended by Directive 91/156/EEC of 18 March 1991 ⁽²⁾, to be construed as allowing Member States to create, by means of a legal rule, a category of materials which do not come either under the category of waste or that of products but may none the less either meet the definition of waste set out in Article 1(a) or contain substances or objects which meet that definition of waste?'

⁽¹⁾ Council Directive 75/442/EEC of 15 July 1975 on waste (OJ L 194 of 25.07.1975, p. 39).

⁽²⁾ Council Directive 91/156/EEC of 18 March 1991, amending Directive 75/442/EEC on waste (OJ L 78 of 26.03.1991, p. 32).

Action brought on 12 May 2004 by the Commission of the European Communities against the Republic of Austria

(Case C-209/04)

(2004/C 179/15)

An action against the Republic of Austria was brought before the Court of Justice of the European Communities on 12 May 2004 by the Commission of the European Communities, represented by M. Van Beek and B. Schima, with an address for service in Luxembourg.

The applicant claims that the Court should:

1. declare that, by failing to include in the designated special area of conservation 'Lauteracher Ried' the sites 'Soren' and 'Gleggen-Köblern', which, together with that special protection area, are, according to scientific criteria, among the most suitable territories in number and size within the meaning of Article 4(1) and (2) of Council Directive 79/409/EEC of 2 April 1979 on the conservation of wild birds ⁽¹⁾ ('the Birds Directive'), and

— by failing, when authorising the planned construction of the S 18 Lake Constance dual carriageway, to comply

properly and fully with the requirements applicable by virtue of Article 6(4) of Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora ⁽²⁾ ('the Habitats Directive') in the case of execution of a project where there has been a negative assessment of the implications for the site,

— the Republic of Austria has failed to fulfil its obligations under Article 4(1) and (2) of the Birds Directive and Article 6(4) in conjunction with Article 7 of the Habitats Directive

2. order the Republic of Austria to pay the costs.

Pleas in law and main arguments:

The Republic of Austria informed the Commission of the designation of the area 'Lauteracher Ried' in Vorarlberg as a special protection area (SPA). That area is an important breeding ground for the bird species corncrake (*Crex crex*) mentioned in Annex I to the Birds Directive and an important breeding ground, habitat and/or stopping point for a variety of other species of migratory birds in Vorarlberg.

The Commission takes the view that, from an ornithological point of view, there is no logical explanation for the present boundaries of the SPA Lauteracher Ried and that, as far as specialists are concerned, if the 'Soren' and 'Gleggen-Köblern' sites are not encompassed, the area is not suitable to guarantee the long-term conservation of the population of the endangered species of birds. The Republic of Austria has therefore failed to comply with the requirements laid down in Article 4(1) and (2) of the Birds Directive.

Moreover, in connection with the planned construction of the S 18 Lake Constance dual carriageway, there has been a failure to comply with the obligations arising from Article 6(4) in conjunction with Article 7 of the Birds Directive as regards the requirements for protection of the Lauteracher Ried area. Whilst the conservation assessment — which reached a negative conclusion as to the impact of the planned road construction on the aims of protection and conservation of the bird species in the Lauteracher Ried area — seems, essentially, to have satisfied the requirements of an assessment of the implications for the site under Article 6(3), there has been a failure to comply with the further procedure to be followed under Article 6(4) in the event of a negative outcome of the assessment, that is to say, alternative solutions were not properly examined and compensatory measures were not properly implemented.

⁽¹⁾ OJ 1979 L 103, p. 3.

⁽²⁾ OJ 1992 L 206, p. 7.