

Action brought on 20 April 2011 — European Commission v Republic of Poland

(Case C-192/11)

(2011/C 211/24)

Language of the case: Polish

Parties

Applicant: European Commission (represented by: S. Petrova and K. Herrmann, acting as Agents)

Defendant: Republic of Poland

Form of order sought

— declare that, by not providing protection for all species of wild birds occurring naturally in the wild within the European territory of the Member States, as required by Directive 2009/147/EC of the European Parliament and of the Council of 30 November 2009 on the conservation of wild birds, ⁽¹⁾ and by improperly defining the conditions for the establishment of derogations from the prohibitions laid down in that directive, the Republic of Poland has failed to fulfil its obligations under Articles 1, 5 and 9(1) and (2) of Directive 2009/147;

— order the Republic of Poland to pay the costs.

Pleas in law and main arguments

The Republic of Poland improperly transposed Article 1 of Directive 2009/147 by reason of the fact that it failed to ensure species protection for bird species occurring in the wild within the European territory of the Member States. Under the national provisions, the only bird species covered by species protection are those which have been recorded within Polish territory and listed in Annexes I and II to the Regulation of the Minister for the Environment of 28 September 2004 concerning protected species of animals occurring in the wild. ⁽²⁾

The Republic of Poland also failed properly to transpose Article 5 of Directive 2009/147 by reason of the fact that the prohibition on keeping empty eggshells and on holding birds which belong to species the hunting and capture of which are prohibited covers only species of birds which have been recorded in Poland.

Furthermore, the Republic of Poland failed properly to transpose Article 9(1) of the Directive for the following reasons: (1) the introduction, in the Law of 16 April 2004 on nature conservation, ⁽³⁾ of the possibility of establishing derogations on grounds other than those mentioned in that article; (2) the fact that the provisions of the Law on nature conservation exceeded the scope of the conditions defined in the third indent of Article 9(1)(a) relating to the prevention of serious damage to crops, livestock, forests, fisheries and water;

(3) the authorisation, in the Regulation of the Minister for the Environment concerning protected species, of a derogation which is not mentioned in Article 9(1) of the Directive and which relates to activities connected with the rational management of farming, forestry or fisheries; (4) the authorisation, in the aforementioned Regulation, of a general derogation, at variance with Article 9(1) of the Directive, in relation to the cormorant (*Phalacrocorax carbo*) and the grey heron (*Ardea cinerea*) occurring in the vicinity of fish ponds which have been designated as breeding areas.

Finally, the Republic of Poland failed properly to transpose Article 9(2) of the Directive for the following reasons: (1) failure to introduce, in the provisions of national law, mandatory monitoring with regard to derogations which have been granted; (2) failure to set out in national law the conditions of risk in relation to the derogations granted; (3) failure to define any conditions whatsoever for the application — within the meaning of Article 9(2) of the Directive — of the general derogation relating to the cormorant (*Phalacrocorax carbo*) and the grey heron (*Ardea cinerea*) occurring in the vicinity of fish ponds which have been designated as breeding areas and are listed in Annex II to the Regulation of the Minister for the Environment concerning protected species.

⁽¹⁾ OJ 2010 L 20, p. 7.

⁽²⁾ *Dziennik Ustaw* 2004, No 220, Position 2237.

⁽³⁾ *Dziennik Ustaw* 2004, No 92, Position 880, as subsequently amended.

Reference for a preliminary ruling from the Cour constitutionnelle (Belgium) lodged on 28 April 2011 — Eric Libert, Christian Van Eycken, Max Bleecx, Syndicat national des propriétaires et copropriétaires (ASBL), Olivier de Clippele v Flemish Government

(Case C-197/11)

(2011/C 211/25)

Language of the case: French

Referring court

Cour constitutionnelle

Parties to the main proceedings

Applicants: Eric Libert, Christian Van Eycken, Max Bleecx, Syndicat national des propriétaires et copropriétaires (ASBL), Olivier de Clippele

Defendant: Flemish Government

Intervening parties: Collège de la Commission communautaire française, Gouvernement de la Communauté française, Conseil des ministres