

Other parties to the proceedings: European Commission, United Kingdom of Great Britain and Northern Ireland, Kingdom of Spain

Form of order sought

The applicant claims that the Court should:

- (a) set aside the Order of the General Court dated 24 May 2011 in Case T-176/09;
- (b) declare the Government's application in Case T-176/09 admissible;
- (c) refer the case back to the General Court for a decision on the Government's Application on the merits;
- (d) in the alternative to (b) and (c), refer the case back to the General Court with an order that the General Court now deals with any remaining issue of admissibility at the same time as its consideration of the merits of the case;
- (e) order the Commission and Spain to pay the Government's costs and expenses before the Court of Justice and in the proceedings before the General Court.

Pleas in law and main arguments

The appellant contests the judgment of the General Court on the following grounds:

1. the General Court committed an infringement of European Union law by applying or misapplying the law on partial annulment and severance in the circumstances of this case in that this case is equivalent to rectification of a register of the extent of a property and not of true partial annulment or severance; parts of Site ES6120032 were clearly wrongly designated or clearly based on erroneous and misleading information given by Spain. The area covered by the Site should be rectified by appropriate and proportionate annulment;
2. the General Court committed an infringement of European Union law by finding that the partial annulment of Decision 2009/95 ⁽¹⁾ in the way sought by the Government (1) would involve the Court redefining the geographical limits of Site ES6120032 and altering Site ES6120032 entirely and (2) would, therefore, alter the substance of Decision 2009/95 and would manifestly not be severable from the remainder of Decision 2009/95;
3. the General Court committed an infringement of European Union law by holding that there was no evidence that a new delimitation of Site ES6120032 in the way sought by the Government would satisfy the criteria laid down in Annex III to the Habitats Directive for classification as a Site of Community Importance when there was abundant evidence in fact and in law that it would so qualify and the contrary had never been suggested by any of the parties hereto, and in so finding the General Court

distorted the evidence and/or made a wrong legal characterisation of the facts and drew the wrong legal conclusions from them and/or made a manifest error in its assessment of the facts and furthermore applied the wrong legal test and, in the circumstances, adopted inappropriate procedures;

4. further or in the alternative to the above, the General Court committed a breach of procedure that adversely affected the interests of the Government by acting in breach of the rights of the defence in that it did not allow the Government an opportunity to comment on documents submitted by the other parties to the case and by not showing to the Government one document lodged by Spain that was important to the issue on which the Court would base its Order and by adopting, in the circumstances, inappropriate procedures;
5. further or in the alternative to the above, the General Court committed a breach of procedure that adversely affected the interests of the Government by failing to provide any reasoning to support its finding that there was no evidence that a new delimitation of Site ES6120032 as contended by the Government would satisfy the criteria laid down in Annex HI to the Habitats Directive for classification as a site of Community importance and/or for disregarding or rejecting the substantive evidence to the contrary.

⁽¹⁾ 2009/95/EC: Commission Decision of 12 December 2008 adopting, pursuant to Council Directive 92/43/EEC, a second updated list of sites of Community importance for the Mediterranean biogeographical region (notified under document number C(2008) 8049) OJ L 43, p. 393

Reference for a preliminary ruling from the Audiencia Provincial de Barcelona (Spain) lodged on 1 August 2011
— **Pedro Espada Sánchez and Others v Iberia Líneas Aéreas de España S.A.**

(Case C-410/11)

(2011/C 290/11)

Language of the case: Spanish

Referring court

Audiencia Provincial de Barcelona

Parties to the main proceedings

Applicants: Pedro Espada Sánchez and Others

Defendant: Iberia Líneas Aéreas de España S.A.

Questions referred

1. Must the limit of 1 000 Special Drawing Rights per passenger, laid down in Article 22 of the Montreal Convention for the Unification of Certain Rules for International Carriage by Air, concerning the liability of the carrier in the case of destruction, loss or damage of baggage, considered in conjunction with Article 3(3) of that convention, be interpreted as a maximum limit for each individual passenger where a number of passengers travelling check in their shared baggage together, regardless of whether there are fewer pieces of checked baggage than there are actual travellers?
 2. Or, on the contrary, must the limit to damages laid down in Article 22 of the Montreal Convention be interpreted as meaning that, for each piece of checked baggage, only one passenger may be entitled to claim compensation and that, accordingly, the maximum limit applied must be that fixed for a single passenger even if it is proved that the lost baggage identified by a single tag belongs to more than one passenger?
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