

the case and made a manifest error of assessment. The Court of First Instance thus infringed Articles 230, 232 and 234 EC as well as the Statute and the Rules of Procedure.

(¹) OJ C 44 of 22.2.2003.

Action brought on 21 February 2003 by Commission of the European Communities against Kingdom of Spain

(Case C-79/03)

(2003/C 101/39)

An action against the Kingdom of Spain was brought before the Court of Justice of the European Communities on 21 February 2003 by the Commission of the European Communities, represented by Gregorio Valero Jordana, of its Legal Service, with an address for service in Luxembourg.

The applicant claims that the Court should:

- declare that, by tolerating the practice of hunting with birdlime in the Autonomous Community of Valencia, governed by Decree 135/2000 of 12 September 2000 of the Government of Valencia laying down conditions and requirements for the granting of special permits for the hunting of thrush with birdlime in the Community of Valencia, the Kingdom of Spain has failed to fulfil its obligations under Article 8(1) and Article 9(1) of Council Directive 79/409/EEC (¹) of 2 April 1979 on the conservation of wild birds.
- order the Kingdom of Spain to pay the costs.

Pleas in law and main arguments

The 'parany' is an arrangement intended for the capture of thrush (²), which requires the use of small twigs impregnated with birdlime. Hunting with birdlime is a non-selective method of capture, as referred to in Annex IV(a) to Directive 79/409/EEC and, accordingly, prohibited under Article 8 thereof, since it cannot be guaranteed that birds of the species listed in Annex I to Directive 79/409/EEC or other protected migratory or non-hunting species are not caught in the parany and trapped in the lime.

The Commission takes the view that there are alternative methods for capturing thrushes with the aim of avoiding damage to crops, such as hunting with rifles or employing auditory or visual deterrents using flare guns, vibrating tapes or a combination of such methods. In other Spanish regions (Andalusia, Castilla-La Mancha, etc) there are extensive areas of olive groves and vineyards where hunting with lime is not permitted and where hunting with rifles in autumn and winter is considered adequate protection.

Finally, the derogation under Article 9(1)(c) of Directive 79/409/EEC cannot apply in view of the fact that the parany is a non-selective hunting method and the high number of specimens captured.

(¹) OJ 1979 L 103, p. 1.

(²) According to Article 4(1) of Decree 135/2000, 'the only species whose capture is permitted are the following: song thrush (*Turdus philomenus*), fieldfare (*Turdus pilaris*), redwing (*Turdus iliacus*) and mistle thrush (*Turdus viscivorus*)'.

Action brought on 24 February 2003 (by fax on 21 February 2003) by the Commission of the European Communities against the Republic of Austria

(Case C-81/03)

(2003/C 101/40)

An action against the Republic of Austria was brought before the Court of Justice of the European Communities on 24 February 2003 (by fax on 21 February 2003) by the Commission of the European Communities, represented by Maria Patakia, Legal Adviser in the Commission's legal service and Claudia Schmidt, a member of the Commission's legal service, with an address for service at the office of Luis Escobar Guerrero, a member of the Commission's legal service, Wagner Centre C 254, Luxembourg-Kirchberg.

The Commission claims that the Court should:

1. declare that, by prohibiting, under Paragraph 7a of the Bundesgesetz über die Regelung der gehobenen medizinisch-technischen Dienste (Federal Law on the Regulation of Higher Medico-Technical Services; 'MTD-Gesetz'), the independent exercise in Austria of certain medico-technical professions (laboratory, radiological and orthoptic services), the Republic of Austria has failed to fulfil its obligations under Articles 43 and 49 EC;
2. order the Republic of Austria to pay the costs.