

2. Infringement of the Act of Accession of Spain:

The restrictions laid down in that Act are being extended beyond the time-limit laid down in Article 166 thereof by means of the contested regulation and inasmuch as certain quotas have not been allocated to Spanish vessels in the North Sea and in the Baltic Sea.

3. Breach of the principle of relative stability

The contested regulation radically changes the decisive factors so far as concerns the percentage of catches since Spanish vessels are not on an equal footing with vessels of the other Member States in terms of the application of the principle of relative stability.

(¹) OJ L 344 of 31.12.2003, p. 1.

Action brought on 12 March 2004 by Kingdom of Spain against Commission of the European Communities

(Case C-134/04)

(2004/C 106/67)

An action against the Commission of the European Communities was brought before the Court of Justice of the European Communities on 12 March 2004 by the Kingdom of Spain, represented by Enrique Braquehais Conesa, Abogado del Estado, with an address for service in Luxembourg.

The applicant claims that the Court should:

1. Annul Council Regulation (EC) No 2287/2003 (¹) of 19 December 2003 fixing for 2004 the fishing opportunities and associated conditions for certain fish stocks and groups of fish stocks, applicable in Community waters and, for Community vessels, in waters where catch limitations are required, in so far as it does not assign specific quotas to the Spanish fleet in Community waters in the North Sea and the Baltic Sea;
2. Order the defendant to pay the costs.

Pleas in law and main arguments

1. Breach of the principle of non-discrimination:

Article 166 of the Act of Accession of Spain laid down, so far as concerns access to waters and resources of the Spanish fleet, a transitional period which ended upon the expiry of the period prescribed in Article 8(3) of Regulation (EEC) No

170/83, that is on 31 December 2002. However, the contested regulation in practice maintains the restrictions on access in respect of Spanish vessels to waters in the North Sea and in the Baltic Sea by granting practically no quotas in those waters, thus disregarding the fact that the transitional period has ended and discriminating against Spanish fishermen by comparison with those from other Member States.

2. Infringement of the Act of Accession of Spain:

The restrictions laid down in that Act are being extended beyond the time-limit laid down in Article 166 thereof by means of the contested regulation and inasmuch as certain quotas have not been allocated to Spanish vessels in the North Sea and in the Baltic Sea.

3. Infringement of Article 20(2) of Regulation (EC) No 2371/2002

The distribution of Community fishing opportunities among the Member States has not been carried out, in the case of existing resources, in accordance with the principle of relative stability and, in the case of new fishing opportunities, having regard to the interests of the Member States, in the present case, those of the Kingdom of Spain.

(¹) OJ L 344 of 31.12.2003, p. 1.

Action brought on 12 March 2004 by the Commission of the European Communities against the Kingdom of Spain

(Case C-135/04)

(2004/C 106/68)

An action against the Kingdom of Spain was brought before the Court of Justice of the European Communities on 12 March 2004 by the Commission of the European Communities, represented by Michel Van Beek, Legal Adviser, and Gregorio Valero Jordano, member of its Legal Service, with an address for service in Luxembourg.

The applicant claims that the Court should:

- declare that, by allowing the practice of hunting migratory birds (woodpigeon – *Columba palumbus*) in Guipúzcoa, the Kingdom of Spain has failed to fulfil its obligations under Article 7(4) 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 hunting of returning migratory birds, 'caza a contrapasa', in this instance woodpigeon returning to their rearing grounds, entails a failure to comply with Article 7(4) of Directive 79/409.

None of the reasons put forward by the Kingdom of Spain to justify the practice of that type of hunting in Guipúzcoa is acceptable:

- adoption of a derogation from Article 7(4) on the basis of Article 9(1)(c) of the Directive, since in this case the condition that there is no other satisfactory solution, which must be met for the system of exceptions to apply properly, is not fulfilled.
- historical and cultural traditions and social convention, since those are not reasons capable of justifying the derogations laid down in Article 9, given that they are not mentioned in that provision.
- judgment of the Court of Justice in Case 252/85 Commission v France, since the judgment was given in relation to a derogation from Article 8(1) of the Directive relating to hunting methods.

(¹) OJ L 103 of 25.4.1979.

Reference for a preliminary ruling by the Regeringsrätten (Sweden) by decision of that Court of 8 March 2004 in the case of Amy Rockler against the Riksförsäkringsverket (the social insurance office)

(Case C-137/04)

(2004/C 106/69)

Reference has been made to the Court of Justice of the European Communities by the Regeringsrätten (Supreme Administrative Court) for a preliminary ruling by decision of 8 March 2004, received at the Court Registry on 15 March 2004 in the case of Amy Rockler against the Riksförsäkringsverket on the following question:

Are the provisions of Article 39 EC to be interpreted as meaning that - on application of a provision of national law requiring a worker to have been insured for a certain qualifying period in order to receive payment at the rate of sickness benefit during parental leave - aggregation should be allowed with a period during which the worker was covered by the Joint Sickness Insurance Scheme in accordance with the rules in the Staff Regulations for officials of the European Communities?

Action brought on 15 March 2004 by the Commission of the European Communities against the Italian Republic

(Case C-139/04)

(2004/C 106/70)

An action against the Italian Republic was brought before the Court of Justice of the European Communities on 15 March 2004 by the Commission of the European Communities, represented by Gregorio Valero Jordana and Roberto Amorosi, acting as Agents.

The applicant claims that the Court should:

- Declare that, by communicating to the Commission only in part the methods used for the preliminary assessment of air quality under Article 3 in respect of the substances covered by Directive 1999/30/EC (¹) and by sending after 30 September 2002 the questionnaire adopted by Decision 2001/839/EC (²), providing only certain information in respect of 2001 on the substances covered by Directive 1999/30/EC, as laid down by Article 11(1)(a)(i) and (ii) and Article 11(1)(b) of Directive 1996/62/EC (³), the Italian Republic has failed to fulfil its obligations under Article 11 in conjunction with Article 4(1) of Directive 1996/62/EC and with Directive 1999/30/EC, and its obligations under Article 11 in conjunction with Article 4(1) of Directive 1996/62/EC, with Directive 1999/30/EC and with Article 1 of Decision 2001/839/EC;
- Order the Italian Republic to pay the costs.