

Re:

Request for a preliminary ruling — Tribunalul Argeş — Interpretation of Article 5 of the European Convention for the Protection of Human Rights and Fundamental Freedoms and of Article 8 of the Universal Declaration of Human Rights — Compensation of individuals who were the subject of politically-motivated convictions under the Communist regime — Whether national legislation reducing the right to compensation for the non-material damage suffered is permissible.

Operative part

The Court of Justice of the European Union clearly lacks jurisdiction to reply to the questions referred by the Tribunalul Argeş (Romania) by decisions of 4 April and 4 July 2011.

**Judgment of the Court (Fifth Chamber) of 15 December 2011 —
Commission v Spain**

(Case C-560/08)

(Failure of a Member State to fulfil obligations — Directive 85/337/EEC — Assessment of the effects of certain public and private projects on the environment — Directive 92/43/EEC — Conservation of natural habitats — Projects for the widening and/or upgrading of the M-501 road in Spain — ZEP ES0000056 ‘Encinares del río Alberche y río Cofio’ ZEP ES0000056 — Proposed SCI ES3110005 ‘Cuenca del río Guadarrama’ and proposed SCI ES3110007 ‘Cuenca de los ríos Alberche y Cofio’)

1. *Actions for failure to fulfil obligations — Pre-litigation procedure — Commission decision to suspend the bringing of an action before the Court of Justice — No renunciation of the unfettered discretion to bring an action before the Court — (Art. 258 TFEU) (see para. 72)*

2. *Environment — Assessment of the effects of certain projects on the environment — Directive 85/337 — Subject-matter of the assessment — Cumulative, indirect effects of the project on the environment not taken into consideration — Failure to fulfil obligations (Council Directive 85/337, as amended by Directive 2003/35, Arts 2(1), 3, 4(2) and 5(1) and Annexes II, III and IV) (see paras 98, 100, 133)*
3. *Environment — Assessment of the effects of certain projects on the environment — Directive 85/337 — Ambit of the assessment — Change or extension of projects — Included (Council Directive 85/337, as amended by Directive 2003/35, Art. 4(2) and Annex II, point 13) (see paras 103, 105-106, 137)*
4. *Environment — Assessment of the effects of certain projects on the environment — Directive 85/337 — Duty to inform the public of the request for development consent and of the availability of the information gathered — Assessment of the effects of the projects on the environment not carried out beforehand — Failure to fulfil obligations (Council Directive 85/337, as amended by Directive 2003/35, Arts 6(2) and 8) (see paras 108-109, operative part 1)*
5. *Environment — Assessment of the effects of certain projects on the environment — Directive 85/337 — Duty to inform the public of the decision granting or refusing consent to carry out a project — Publication of the environmental impact statement — Insufficient — Failure to fulfil obligations (Council Directive 85/337, as amended by Directive 2003/35, Art. 9) (see para. 112, operative part 1)*
6. *Environment — Conservation of natural habitats and of wild fauna and flora — Directive 92/43 — Authorisation for a plan or project on a protected site — Conditions — Prior examination — Assessment of the effects of the project on the site — Appropriate assessment — No assessment suggesting that there would be no*

adverse effects — Failure to fulfil obligations (Council Directive 92/43, Art. 6(3)) (see paras 131-132, 139, operative part 1)

7. *Environment — Conservation of natural habitats and of wild fauna and flora — Directive 92/43 — Consent given for imperative reasons relating to an overriding public interest for a plan or project on a protected site — Condition — No prior identification of the effects of that plan or project on the site — Failure to fulfil obligations (Council Directive 92/43, Art. 6(3) and (4)) (see paras 138-139, operative part 1)*
8. *Environment — Conservation of natural habitats and of wild fauna and flora — Directive 92/43 — Consent given for a plan or project on a protected site without the measures being taken that were necessary in order to prevent the deliberate disturbance of protected animal species living on sites of Community importance — Failure to fulfil obligations (Council Directive 92/43, Arts 6(3) and (4), 7 and 12(1)(b) and (d)) (see paras 140-142, 144, operative part 1)*

Re:

Failure of a Member State to fulfil obligations — Infringement of Articles 2(1), 3, 4(1) or 2, 5, 6(2), 8 and 9 of Council Directive 85/337/EEC of 27 June 1985 on the assessment of the effects of certain public and private projects on the environment (OJ 1985 L 175, p. 40) and Article 6(3) and (4), read in conjunction with Articles 7 and 12(1)(b) and (d) of Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora (OJ 1992 L 206, p. 7), as interpreted by the judgments of the Court of Justice of 13 January 2005 in Case C-117/03 *Società Italiana Dragaggi and Others* and of 14 September 2006 in Case C-244/05 *Bund Naturschutz in Bayern and Others* — Projects for the widening and/or upgrading of the M-501 road — ZEP ES0000056 ‘Encinares del río Alberche y río Cofio’ — Proposed SCI ES310005 ‘Cuenca del río Guadarrama’ and proposed SCI ES3110007 ‘Cuenca de los ríos Alberche y Cofio’.

Operative part

The Court:

1. Declares that, by failing to fulfil the requirements laid down:
 - by Articles 2(1), 3, 4(1) or (2), as the case may be, and 5 of Council Directive 85/337/EEC of 27 June 1985 on the assessment of the effects of certain public and private projects on the environment, as amended by Directive 2003/35/EC of the European Parliament and of the Council of 26 May 2003, in relation to separate projects for widening and/or upgrading sections 1, 2 and 4 of the M-501 road;
 - by Articles 6(2) and 8 of Directive 85/337, as amended by Directive 2003/35, as regards separate projects for widening and/or upgrading of sections 2 and 4 of that road;
 - by Article 9 of Directive 85/337, as amended by Directive 2003/35, in relation to separate projects for widening and/or upgrading sections 1, 2 and 4 of that road;
 - by Article 6(3) and (4) of Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora, read in conjunction with Article 7 of that directive, in relation to separate projects for widening and/or upgrading sections 1, 2 and 4 of the M-501 road, as regards special protection area ‘Encinares del río Alberche y río Cofio’; and
 - by Article 12(1)(b) and (d) of that directive, in relation to separate projects for widening and/or upgrading section 1 of the M-501 road, as regards proposed site of Community importance ES3110005 ‘Cuenca del río Guadarrama’ and sections 2 and 4 of that road, as regards proposed site of Community importance ES3110007 ‘Cuencas de los ríos Alberche y Cofio’;

2. the Kingdom of Spain has failed to fulfil its obligations under those provisions.
3. Orders the Kingdom of Spain to pay the costs.
4. Orders the Republic of Poland to bear its own costs.

**Judgment of the Court (Eighth Chamber) of 15 December 2011 —
Commission v France**

(Case C-624/10)

(Failure of a Member State to fulfil obligations — Taxation — Directive 2006/112/EC — Articles 168, 171, 193, 194, 204 and 214 — Legislation of a Member State obliging a seller or provider established outside the national territory to designate a tax representative and to identify himself for VAT purposes in that Member State — Legislation allowing deductible VAT paid by the seller or provider established outside the national territory to be offset against the VAT collected by him in the name and for the account of his customers)

Tax provisions — Harmonisation of laws — Turnover taxes — Common system of value added tax — Persons liable to pay the tax — Derogations from a national reverse charge system — National legislation requiring of a seller or provider established outside the Member State concerned the designation of a tax representative and identification for value added tax purposes in that Member State — Legislation additionally authorising that seller or provider to offset the deductible tax paid against that collected in the name and for the account of its customers — Failure to fulfil obligations (Council Directive 2006/112, Arts 168, 171, 193, 194, 204 and 214) (see paras 39, 42, 46, 50)