Case Law Report

Case Law of the Court of Justice of the European Union and the General Court

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Overview of the Judgments¹

1 On the Use of Traditional Killing Methods for Birds

Judgment of the Court (First Chamber) of 17 March 2021 in Case C-900/19 – *One Voice en Ligue pour la protection des oiseaux*

1.1 *Subject Matter*

This request for a preliminary ruling concerns the interpretation of Article 9(1), letter c), of Directive 2009/147/EC on the protection of birds. The request has been made in the context of proceedings between, on the one hand, One Voice and la Ligue pour la protection des oiseaux, two non-governmental organisations, and the Ministre de la Transition écologique et solidaire (Ministry for the ecological and solidary transition, France), on the other, about the validity

¹ Only opinions, judgements and orders available on Curia.eu under the subject matter ‘environment’, ‘energy’ and ‘provisions concerning the institutions/access to documents’ have been included in this report. Due to the length constraints, only those proceedings that in the subjective opinion of the editor were considered interesting are included.

of five ministerial decrees about the use of mistletoe for catching thrushes and blackbirds during the hunting season 2018/2019. The French Council of State hearing the case wated to know, in essence, how to interpret the possibility to derogate from the prohibition of using such methods to permit, under strictly supervised conditions and on a selective basis, the capture, keeping or other judicious use of certain birds in small numbers.

1.2 *Judgment (Not Available in English)*

1) L'article 9, paragraphes 1 et 2, de la directive 2009/147/CE du Parlement européen et du Conseil, du 30 novembre 2009, concernant la conservation des oiseaux sauvages, doit être interprété en ce sens que le caractère traditionnel d'une méthode de capture d'oiseaux ne suffit pas, en soi, à établir qu'une autre solution satisfaisante, au sens de cette disposition, ne peut être substituée à cette méthode.

2) L'article 9, paragraphe 1, sous c), de la directive 2009/147 doit être interprété en ce sens qu'il s'oppose à une réglementation nationale qui autorise, par dérogation à l'article 8 de cette directive, une méthode de capture entraînant des prises accessoires, dès lors que celles-ci, même de faible volume et pour une durée limitée, sont susceptibles de causer aux espèces capturées non ciblées des dommages autres que négligeables.

2 On Access to Justice Under Article 263 TFEU

Judgment of the Court (Sixth Chamber) of 25 March 2021 in Case C-565/19 P – *Armando Carvalho and Others*

2.1 *Subject Matter*

This action for annulment concerns the appeal brought by Mr Armando Carvalho and 36 other appellants, against the order of the General Court of the European Union of 8 May 2019, *Carvalho and Others v Parliament and Council* (T-330/18, EU:T:2019:324), by which the General Court dismissed as inadmissible their action seeking, first, the partial annulment of (i) Directive (EU) 2018/410 amending Directive 2003/87/EC to enhance cost-effective emission reductions and low-carbon investments, (ii) Regulation (EU) 2018/842 on binding annual greenhouse gas emission reductions by Member States from 2021 to 2030, and (iii) Regulation (EU) 2018/841 on the inclusion of greenhouse gas emissions and removals from land use, land use change and forestry in the 2030 climate and energy framework, and, second, compensation in the form of an injunction for the damage which the appellants claim to have suffered.

Regarding, on the one hand, the claim for annulment, the General Court held that the appellants did not satisfy any of the locus standi criteria laid down in the fourth paragraph of Article 263 TFEU. Regarding, on the other hand, the claim for damages, the General Court considered, in essence, in paragraphs 67 to 70 of the order under appeal, that that claim sought, in reality, to obtain a result similar to the result of annulling the acts at issue and that, consequently, it had to be declared inadmissible, like the appellants' claim for annulment.

2.2 *Judgment*

1. Dismisses the appeal.

3 On the Principles of Legal Certainty and of the Protection of Legitimate Expectations and the Promotion of the Use of Energy from Renewable Sources

Judgment of the Court (First Chamber) of 15 April 2021 in Joined Cases C-798/18 and C-799/18 – *Federazione nazionale delle imprese elettrotecniche ed elettroniche (Anie) and Others (C-798/18), Athesia Energy Srl and Others (C-799/18)*

3.1 *Subject Matter*

These requests for a preliminary ruling concern the interpretation of Article 216(2) TFEU, read in conjunction with the Energy Charter Treaty, Articles 16 and 17 of the Charter of Fundamental Rights of the European Union ('the Charter'), and Directive 2009/28/EC on the promotion of the use of energy from renewable sources, read in the light of the principles of legal certainty, the protection of legitimate expectations, sincere cooperation, and effectiveness. The requests have been made in proceedings between, on the one hand, in Case C-798/18, the *Federazione nazionale delle imprese elettrotecniche ed elettroniche (Anie)* (National Federation of Electrotechnical and Electronics Companies), together with 159 undertakings producing electricity from photovoltaic installations, and, in Case C-799/18, *Athesia Energy Srl*, together with 15 other undertakings operating in the same sector, and, on the other, the ministero dello Sviluppo economico (Ministry of Economic Development, Italy) and *Gestore dei servizi energetici (GSE) SpA* concerning the annulment of decrees implementing national legislative provisions providing for a revision of the feed-in tariffs for electricity production by photovoltaic installations and the related payment arrangements. The Tribunale amministrativo regionale per il Lazio (Regional Administrative Court, Lazio, Italy), wanted to know, in essence, whether Article 3(3)(a) of Directive 2009/28 and Articles 16 and

17 of the Charter, read in the light of the principles of legal certainty and of the protection of legitimate expectations, as well as Article 10 of the Energy Charter, must be interpreted as precluding national legislation which provides for the reduction or delay of the payment of incentives for energy produced by solar photovoltaic installations which were previously granted by administrative decisions and confirmed by special agreements concluded between the operators of those installations and a public company.

3.2 *Judgment*

Subject to verifications to be carried out by the referring court taking into account all the relevant factors, Article 3(3)(a) of Directive 2009/28/EC of the European Parliament and of the Council of 23 April 2009 on the promotion of the use of energy from renewable sources and amending and subsequently repealing Directives 2001/77/EC and 2003/30/EC, and Articles 16 and 17 of the Charter of Fundamental Rights of the European Union, read in the light of the principles of legal certainty and of the protection of legitimate expectations, must be interpreted as not precluding national legislation which provides for the reduction or delay of the payment of incentives for energy produced by solar photovoltaic installations which were previously granted by administrative decisions and confirmed by special agreements concluded between the operators of those installations and a public company, where that legislation concerns incentives for which provision has previously been made but which are not yet due.

4 **On the Right of Access to Environmental Information in the File of Closed Court Proceedings**

Judgment of the Court (First Chamber) of 15 April 2021 in Case C-470/19 – *Friends of the Irish Environment Ltd*

4.1 *Subject Matter*

This request for a preliminary ruling concerns the interpretation of Article 2, point 2, of Directive 2003/4/EC on public access to environmental information. The request has been made in proceedings between Friends of the Irish Environment Ltd and the Commissioner for Environmental Information (Ireland) concerning access to the file of the court proceedings in a closed case. The High Court (Ireland), hearing the case, wanted to know in essence whether the first sentence of the second subparagraph of Article 2, point 2, of Directive 2003/4 must be interpreted as meaning that the option which it allows Member States not to regard as ‘public authorities’, within the meaning

of that directive, 'bodies or institutions acting in a judicial capacity' may be exercised only in so far as information contained in files relating to pending court proceedings is concerned, to the exclusion of closed proceedings.

4.2 *Key Findings*

34 It is clear from both the Aarhus Convention itself and Directive 2003/4, the purpose of which is to implement that Convention in EU law, that, by referring to 'public authorities', their authors intended to designate not judicial authorities, in particular courts, but, as the Court has previously held, only administrative authorities since, within States, it is they which are normally required, in the exercise of their functions, to hold environmental information (see, to that effect, judgment of 14 February 2012, *Flachglas Torgau*, C-204/09, EU:C:2012:71, paragraph 40).

35 Indeed, the courts are clearly not part of the government or the other public administrations referred to in point (a) of the first subparagraph of Article 2, point 2, of Directive 2003/4. Nor can they be assimilated to natural or legal persons performing 'public administrative functions ..., including specific duties, activities or services in relation to the environment' referred to in point (b) of the first subparagraph of Article 2, point 2, of that directive, which designates the bodies or institutions which, although not forming part of the government or other public administrations referred to in that first provision, perform executive functions related to the environment or assist in the performance of those functions. Point (c) of the first subparagraph of Article 2, point 2, of that directive concerns only persons or bodies acting under the control of one of the bodies or institutions referred to in points (a) and (b) of the first subparagraph of Article 2, point 2, thereof and having public responsibilities or functions relating to the environment, so that it cannot include either courts or, a fortiori, natural or legal persons under their control.

39 Article 6 of Directive 2003/4 concerns only access to justice for citizens wishing to assert the rights which they derive from the provisions of that directive, guaranteeing them in particular the possibility of challenging any decisions to refuse them access to environmental information.

40 It follows from the foregoing that, in the absence of any express reference to that effect in Directive 2003/4, courts and natural or legal persons under their control are not 'public authorities' within the meaning of the first subparagraph of Article 2, point 2, of that directive. They do not therefore fall within the scope of that directive and, accordingly, are not subject to the obligation laid down in the directive to provide public access to environmental information in their possession. In those circumstances, it is for the Member States alone to provide, where appropriate, for a right of public access to information contained in court files and to determine the manner in which it may be exercised.

44 In the light of the foregoing, the answer to the question referred is that Article 2, point 2, of Directive 2003/4 must be interpreted as meaning that it does not govern access to environmental information contained in court files, where neither the courts nor the bodies or institutions under their control, which thus have close links with those courts, constitute ‘public authorities’ within the meaning of that provision and therefore do not fall within the scope of that directive.

5 On the Quantity of Sturgeon Caviar that Can Be Brought as a Present in Derogation to CITES Regulation

Judgment of the Court (Seventh Chamber) of 12 May 2021 in Case C-87/20 – *Hauptzollamt B*

5.1 *Subject Matter*

This request for a preliminary ruling concerns the interpretation of Article 7(3) of Council Regulation (EC) No 338/97 on the protection of species of wild fauna and flora by regulating trade therein. The request has been made in proceedings between the Hauptzollamt B (Principal Customs Office B, Germany) and XY, concerning the confiscation of six tins of sturgeon caviar weighing 50 grams (g) each due to the failure of the person concerned to present an import permit when entering the customs territory of the European Union. The Bundesfinanzhof (Federal Finance Court, Germany), hearing the case, wanted to know in essence whether Article 7(3) of Regulation No 338/97 must be interpreted as meaning that sturgeon caviar, when introduced into the customs territory of the Union, may be regarded as a ‘personal or household item’ within the meaning of that provision where it is intended to be offered as a gift to a third party, and may thus benefit from the derogation, provided for in that provision, from the obligation on the importer to present an import permit. Moreover, it wanted to know, in essence, whether Article 57(5)(a) of Regulation No 865/2006 is to be interpreted as meaning that only the quantity of sturgeon caviar imported in excess of the limit of 125 g per person is to be confiscated by the customs authority, on the ground that the importer is not in possession of a permit issued for the purpose of the import carried out, and not the entire quantity brought into the customs territory of the Union.

5.2 *Judgment*

1. Article 7(3) of Council Regulation (EC) No 338/97 of 9 December 1996 on the protection of species of wild fauna and flora by regulating trade therein, as

amended by Commission Regulation (EU) No 1320/2014 of 1 December 2014, must be interpreted as meaning that sturgeon caviar, when brought into the customs territory of the European Union, may be regarded as a 'personal or household item' within the meaning of that provision, when it is intended to be offered as a gift to a third party, provided that there is no evidence of a commercial purpose, and may thus benefit from the derogation provided for in that provision from the obligation on the importer to present an import permit.

2. Article 57(5)(a) of Commission Regulation (EC) No 865/2006 of 4 May 2006 laying down detailed rules for the implementation of Council Regulation No 338/97, as amended by Commission Regulation (EU) 2015/870 of 5 June 2015 must be interpreted as meaning that, where the quantity of sturgeon caviar brought into the customs territory of the European Union exceeds the limit of 125 grams per person and the importer is not in possession of a permit issued for the purpose of the import, the entire quantity of sturgeon caviar so imported is to be confiscated by the competent customs authority.

6 On the Combined Effects of the Water Framework Directive and the Habitats Directive in Order to Protect Natural Habitats from Damage Caused by Groundwater Bodies in a Bad Qualitative Status

Judgment of the Court (Fifth Chamber) of 24 June 2021 in Case C-559/19 – *European Commission v Kingdom of Spain*

6.1 Subject Matter

The action for infringement brought by the European Commission against Spain for not having adopted sufficient measures to protect the Natura 2000 site of Doñana against the negative effects caused by the bad quality of the groundwater bodies in the area.

6.2 Judgment (Not Available in English)

- 1) Le Royaume d'Espagne a manqué aux obligations qui lui incombent:
 - en vertu de l'article 5, paragraphe 1, de la directive 2000/60/CE du Parlement européen et du Conseil, du 23 octobre 2000, établissant un cadre pour une politique communautaire dans le domaine de l'eau, telle que modifiée par la directive 2013/64/UE du Conseil, du 17 décembre 2013, lu en combinaison avec le point 2.2 de l'annexe II de cette directive, en n'ayant pas pris en compte le captage d'eau illégal et le captage d'eau destiné à l'approvisionnement urbain lors de l'estimation du captage des eaux souterraines de la région de Doñana (Espagne) dans le cadre de la caractérisation

plus détaillée du Plan Hidrológico del Guadalquivir 2015–2021 (plan hydrologique du Guadalquivir 2015–2021), approuvé par le Real Decreto 1/2016 por el que se aprueba la revisión de los Planes Hidrológicos de las demarcaciones hidrográficas del Cantábrico Occidental, Guadalquivir, Ceuta, Melilla, Segura y Júcar, y de la parte española de las demarcaciones hidrográficas del Cantábrico Oriental, Miño-Sil, Duero, Tajo, Guadiana y Ebro (décret royal 1/2016 portant approbation de la révision des plans hydrographiques des districts hydrographiques de la Cantabrie occidentale, du Guadalquivir, de Ceuta, de Melilla, du Segura et du Júcar, ainsi que de la partie espagnole des districts hydrographiques de la Cantabrie orientale, du Miño-Sil, du Duero, du Tage, du Guadiana et de l'Èbre), du 8 janvier 2016;

- en vertu de l'article 11 de la directive 2000/60, lu en combinaison avec l'article 4, paragraphe 1, sous c), de cette directive, en n'ayant prévu, dans le programme de mesures établi dans le cadre du plan hydrologique du Guadalquivir 2015–2021, aucune mesure pour prévenir une perturbation des types d'habitats protégés situés dans la zone protégée « Doñana » portant le code ZEPA/LIC ES0000024, par le captage des eaux souterraines pour les besoins de la zone touristique de Matalascañas (Espagne), et
- en vertu de l'article 6, paragraphe 2, de la directive 92/43/CEE du Conseil, du 21 mai 1992, concernant la conservation des habitats naturels ainsi que de la faune et de la flore sauvages, en n'ayant pas pris les mesures appropriées pour éviter les perturbations significatives des types d'habitats protégés, situés dans la zone protégée « Doñana » portant le code ZEPA/LIC ES0000024, la zone protégée « Doñana Norte y Oeste » portant le code ZEPA/LIC ES6150009 et la zone protégée « Dehesa del Estero y Montes de Moguer » portant le code ZEC ES6150012, occasionnées par le captage des eaux souterraines de l'espace naturel protégé de Doñana depuis le 19 juillet 2006.

7 On the Principle of Energy Solidarity

Judgment of the Court (Grand Chamber) of 15 July 2021 in Case C–848/19 – *Federal Republic of Germany*

7.1 *Subject Matter*

This action for annulment concerns and appeal, made by the Federal Republic of Germany seeking to have set aside the judgment of the General Court of the European Union of 10 September 2019, *Poland v Commission* (T-883/16,

EU:T:2019:567), by which the General Court annulled Commission Decision C(2016) 6950 on review of the exemption of the Baltic Sea Pipeline Connector ('the OPAL pipeline') from the requirements on third-party access and tariff regulation granted under Directive 2003/55/EC concerning common rules for the internal market in natural gas due to a breach of the principle of energy solidarity. The General Court found, in paragraphs 81 and 82 of the judgment under appeal, that that decision undermined the principle of energy solidarity, in so far as, first, the Commission did not carry out an examination of the impact of the variation of the regime governing the operation of the OPAL pipeline on the security of supply in Poland and, second, it does not appear that the Commission examined what the medium-term consequences, *inter alia* for the energy policy of the Republic of Poland, might be of the transfer to the Nord Stream 1/OPAL transit route of part of the volumes of natural gas previously transported via the Yamal and Bratierstwo pipelines, or that it balanced those effects against the increased security of supply that it had observed at EU level. The Court of Justice dismisses the appeal and in so doing it confirms the importance of the principle of energy solidarity, as enshrined in the following key findings.

7.2 *Key Findings*

37 Article 194 TFEU provides in paragraph 1 that, in the context of the establishment and functioning of the internal market and with regard for the need to preserve and improve the environment, European Union policy on energy is to aim, in a spirit of solidarity between Member States, to ensure the functioning of the energy market, ensure security of energy supply in the European Union, promote energy efficiency and energy saving and the development of new and renewable forms of energy and promote the interconnection of energy networks (judgment of 4 May 2016, *Commission v Austria*, C-346/14, EU:C:2016:322, paragraph 72 and the case-law cited).

38 Thus, the spirit of solidarity between Member States, mentioned in that provision, constitutes a specific expression, in the field of energy, of the principle of solidarity, which is itself one of the fundamental principles of EU law.

44 It follows, in particular, that acts adopted by the EU institutions, including by the Commission under that policy, must be interpreted, and their legality assessed, in the light of the principle of energy solidarity.

52 Thus, the principle of energy solidarity, read in conjunction with the principle of sincere cooperation, requires that the Commission verify whether there is a danger for gas supply on the markets of the Member States, when adopting a decision on the basis of Article 36 of Directive 2009/73.

69 Thus, the EU institutions and the Member States must take into account the principle of energy solidarity, referred to in Article 194 TFEU, in the context of the establishment and functioning of the internal market and, in particular, the internal market in natural gas, by ensuring security of energy supply in the European Union, which means not only dealing with emergencies when they arise, but also adopting measures to prevent crisis situations. To that end, it is necessary to assess whether there are risks for the energy interests of the Member States and the European Union, and in particular to security of energy supply, before going on to conduct the analysis to which reference is made in paragraph 53 of the present judgment.