Comment on case C-362/06 P Sahlstedt and Others v. Commission—Judgment of the Court (Second Chamber), 23.4.2009 (published in Jeepl 6.2 p. 259)

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Mr. Sahlstedt and the other appellants brought an appeal against the order of the Court of First Instance in case T-150/05⁹ which had dismissed their action for annulment of Decision 2005/101.¹⁰ In that Decision, the Commission had adopted a list of sites of Community importance for the Boreal biogeographical region.

I. The facts

The Commission was obliged to establish lists of sites of Community importance for each biogeographical area, according to Article 4(2.) of Directive 92/43, the Habitats Directive.¹¹ The Commission had to base itself on proposals of the Member States to have sites included in the Community list; Directive 92/43 laid down a number of provisions on the criteria for the selection of the sites and on the procedure for establishing the national proposals and the Community lists. The Community lists were to be established in 1998.¹² Due to delayed notification of proposals from Member States and administrative problems, the Commission was about seven years late, when it adopted Decision 2005/101.

Once a specific site was put on a list of Community importance, the Member State concerned had to designate that site as a special area of conservation “as soon as possible and within six years at most”¹³ and had to take conservation measures in order to avoid the deterioration of the habitat and the significant disturbance of the species for which the site had been designated. According to Article 4(5) of Directive 92/43, as soon as a site is placed on a Community list, Article 6(2) to (4) of Directive 92/43 shall apply. Article 6(3) provides: “Any

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⁹) Court of First Instance, case T-150/05 Sahlstedt and Others v. Commission, ECR 2006, p. II-1851.
plan or project not directly connected with or necessary to the management of the site but likely to have a significant effect thereon, either individually or in combination with other plans or projects, shall be subject to appropriate assessment of its implication for the site in view of the site’s conservation objectives. In the light of the conclusions of the assessment of the implications for the site and subject to the provisions of paragraph 4, the competent national authorities shall agree to the plan or project only after having ascertained that it will not adversely affect the integrity of the site concerned and, if appropriate, after having obtained the opinion of the general public”. Article 6(4) of Directive 92/43 allows to realise the plan or project, provided that there is no alternative solution and that the plan or project must be carried out “for imperative reasons of overriding public interest”. The burden of proof of the absence of alternative solutions is with the Member State. Mr. Sahlstedt and the other applicants are landowners. They were of the opinion that their property rights were affected by Decision 2005/101 and asked for the annulment of the Decision.

II. The order of the Court of First Instance

According the Article 230(4) EC Treaty, an action against a decision which is addressed to another person, is only admissible, where the decision is of direct and individual concern to the applicant. The Court of First Instance was of the opinion that Mr. Sahlstedt and the other applicants were not directly concerned by Decision 2005/101. It argued as follows: Decision 2005/101 does not produce, by itself, effects on the applicants’ legal situation. “the inclusion of those sites in the list of sites of Community importance imposes no obligation whatsoever on economic operators or private persons”. All measures provided for in Article 6(2) to (4) of Directive 92/43 necessitate a measure on the part of the Member State concerned. Decision 2005/101 was thus only binding on Finland “as to the result to be achieved, whilst the choice of conservation measures to be undertaken and the authorisation procedures to be followed is left to the competent national authorities”. The action was therefore declared inadmissible.

15) The applicant MTK ry is an association is a national Finnish association of farmers and foresters, representing some 163,000 persons, the majority of them being landowners. The following lines will not deal with the application of MTK ry, as the reasoning with regard to individual landowners applies, mutatis mutandis, also to them.