

Case C-342/05

Commission of the European Communities

v

Republic of Finland

(Failure of a Member State to fulfil obligations — Directive 92/43/EEC — Conservation of natural habitats — Wild fauna and flora — Wolf hunting)

Opinion of Advocate General Kokott delivered on 30 November 2006 I - 4716
Judgment of the Court (Second Chamber), 14 June 2007 I - 4730

Summary of the Judgment

1. *Environment — Conservation of natural habitats and of wild fauna and flora — Directive 92/43 — Protection of species — Derogations*
(Council Directive 92/43, Arts 12, 13, 14, 15(a) and (b), and 16(1))
2. *Environment — Conservation of natural habitats and of wild fauna and flora — Directive 92/43 — Protection of species*
(Council Directive 92/43, Arts 12, 13, 14, 15(a) and (b), and 16(1))

3. *Actions for failure to fulfil obligations — Action against an administrative practice contrary to Community law*
(Art. 226 EC)
4. *Environment — Conservation of natural habitats and of wild fauna and flora — Directive 92/43 — Strict protection of animal species appearing in Annex IV(a)*
(Council Directive 92/43, Arts 12(1) and 16(1) and Annex IV(a))

1. Since Article 16(1) of Directive 92/43 on the conservation of natural habitats and of wild fauna and flora provides for a system which is in derogation from the prohibitions laid down by Articles 12, 13, 14 and 15(a) and (b), which must be interpreted strictly and must impose on the authority taking the decision the burden of proving that the necessary conditions are present for each derogation, the Member States are required to ensure that all action affecting the protected species is authorised only on the basis of decisions containing a clear and sufficient statement of reasons which refers to the reasons, conditions and requirements laid down in Article 16(1) of that directive.
2. Whilst Article 16(1) of Directive 92/43 on the conservation of natural habitats and of wild fauna and flora, which provides for a system which is in derogation from the prohibitions laid down by Articles 12, 13, 14 and 15(a) and (b), makes the favourable conservation status of the populations of the species concerned in their natural range a necessary precondition in order for the derogations for which it provides to be granted, the grant of such derogations remains possible by way of exception where it is duly established that they are not such as to worsen the unfavourable conservation status of those populations or to prevent their restoration to a favourable conservation status. Following the example of the views formulated by the Commission, in particular in paragraphs 47 to 51 of Section III of its Guidance document on the strict protection of animal species of Community interest under Directive 92/43, it is possible that the killing of a limited number of specimens may have no effect on the objective envisaged in Article 16(1) of that directive, which consists in maintaining the population of the species concerned at a favourable conservation status in its natural range. Such a

(see para. 25)

derogation would therefore be neutral for that species.

(see paras 28, 29)

3. A failure to fulfil obligations under Article 226 EC may arise due to the existence of an administrative practice which infringes Community law, if that practice is to some degree consistent and general, even if the applicable national legislation itself complies with that law.

(see paras 22, 33)

4. A Member State which authorises the hunting on a preventive basis of the wolf (*Canis lupus*), an animal species appearing in Annex IV(a) of Directive 92/43 on the conservation of natural habitats and of wild fauna and flora, without it being established that the hunting is such as to prevent serious damage within the meaning of Article 16(1)(b) of that directive, fails to fulfil its obligations under Articles 12(1) and 16(1)(b) of that directive.

(see para. 47, operative part)