

OPINION OF ADVOCATE GENERAL

KOKOTT

delivered on 30 November 2006¹

I — Introduction

1. In the present case the Court is called upon to give its view on the conditions for the coexistence of modern European society and predators which have already died out almost everywhere in Europe.

hibition under certain conditions. The practical application of Article 16 has not yet been considered in the Court's case-law.

II — Legal context

A — The provisions of the Habitats Directive

3. The objectives of the Habitats Directive are set out in Article 2:

2. The Commission takes issue with the Finnish administrative practice in relation to permitting the hunting of wolves (*Canis lupus*). Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora ('the Habitats Directive'²) prohibits, inter alia, the deliberate killing and capture of wolves outside the Finnish reindeer management area. Nevertheless Article 16 of the Habitats Directive allows derogations from this pro-

'1. The aim of this Directive shall be to contribute towards ensuring bio-diversity through the conservation of natural habitats and of wild fauna and flora in the European territory of the Member States to which the Treaty applies.

¹ — Original language: German.

² — OJ 1992 L 206, p. 7.

2. Measures taken pursuant to this Directive shall be designed to maintain or restore, at

favourable conservation status, natural habitats and species of wild fauna and flora of Community interest.

5. The wolf is identified as follows in Annex IV(a):

3. Measures taken pursuant to this Directive shall take account of economic, social and cultural requirements and regional and local characteristics.'

'*Canis lupus* (except the ... Finnish populations within the reindeer management area as defined in paragraph 2 of the Finnish Act No 848/90 of 14 September 1990 on reindeer management).'

4. The relevant legal prohibitions in relation to the protection of species are laid down in Article 12(1)(a):

6. Article 16(1) of the Habitats Directive determines the conditions subject to which derogations are possible:

'Member States shall take the requisite measures to establish a system of strict protection for the animal species listed in Annex IV(a) in their natural range, prohibiting:

'Provided that there is no satisfactory alternative and the derogation is not detrimental to the maintenance of the populations of the species concerned at a favourable conservation status in their natural range, Member States may derogate from the provisions of Articles 12, 13, 14 and 15(a) and (b):

(a) all forms of deliberate capture or killing of specimens of these species in the wild;

(a) in the interest of protecting wild fauna and flora and conserving natural habitats;

...'

(b) to prevent serious damage, in particular to crops, livestock, forests, fisheries and water and other types of property;

(c) in the interests of public health and public safety, or for other imperative reasons of overriding public interest, including those of a social or economic nature and beneficial consequences of primary importance for the environment;

The *conservation status* will be taken as “favourable” when

(d) for the purpose of research and education, of repopulating and re-introducing these species and for the breeding operations necessary for these purposes, including the artificial propagation of plants;

— population dynamics data on the species concerned indicate that it is maintaining itself on a long-term basis as a viable component of its natural habitats, and

(e) to allow, under strictly supervised conditions, on a selective basis and to a limited extent, the taking or keeping of certain specimens of the species listed in Annex IV in limited numbers specified by the competent national authorities.’

— the natural range of the species is neither being reduced nor is likely to be reduced for the foreseeable future, and

7. The conservation status of species is defined in Article 1(i) of the Habitats Directive:

‘(i) *conservation status of a species* means the sum of the influences acting on the species concerned that may affect the long-term distribution and abundance of its populations within the territory referred to in Article 2.

— there is, and will probably continue to be, a sufficiently large habitat to maintain its populations on a long-term basis’.

B — *The Finnish provisions*

8. According to the Finnish Government's account, which is not contradicted by the Commission, Articles 12 and 16 of the Habitats Directive have been transposed, largely word for word, into Finnish hunting law.³

9. However there are additional provisions relating to permits for killing wolves.⁴ The competent game management district must give permission for the hunting of wolves in each individual case. However, the Ministry of Agriculture and Forestry sets the regional upper limits, that is to say the maximum number of wolves which may be hunted in individual districts during the hunting season from 1 November to 31 March. The upper limit is set so that in the event that it is reached the population in the relevant district is not endangered. All information about wolf mortality is taken into account, in particular mortality due to traffic accidents and to human activities.

10. In granting specific hunting permits the game management districts must have

regard to the provisions of Article 16(1) of the Habitats Directive, which have been transposed into national law. They must also, when operating within the upper limit, take into account the specific information which is available to them on the death of wolves in the relevant district. It is possible to exceed the upper limit only if the preconditions in Article 16(1) are met and special ministerial permission is granted.

11. In addition the police may kill animals in exceptional circumstances. Article 16(1) of the Habitats Directive applies in this case too.

III — Pre-litigation procedure and forms of order sought

12. The Commission commenced the infringement procedure with a letter of formal notice dated 10 April 2001. After Finland had replied by letter dated 6 July 2001, the Commission sent a reasoned opinion on 4 July 2002. Finland responded by letter dated 28 August 2002.

13. Nevertheless, the Commission continues to consider that there has been an infringement of Community law and it commenced the present action on 12 September 2005.

3 — The provisions are reproduced in the Finnish *Management Plan for the Wolf Population in Finland* of 2005, <http://wwwb.mmm.fi/tiedoteliitteet/sudenhoitosuunnitelma.pdf>, p. 20; an English version can be found at the following address: http://wwwb.mmm.fi/julkaisut/julkaisusarja/2005/MMMjulkaisu2005_11b.pdf, p. 20. All of the citations below relate to this English version.

4 — Management Plan (cited in footnote 3, p. 28 et seq.).

14. It claims that the Court should:

- declare that, by regularly permitting the hunting of wolves contrary to the grounds of derogation laid down in Article 16(1) of Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora, the Republic of Finland has failed to fulfil its obligations under Articles 12(1) and 16(1) of the directive;
- order the Republic of Finland to pay the costs.

15. The Republic of Finland contends that the Court should dismiss the action and order the Commission to pay the costs.

IV — Legal appraisal

16. In the present action the Commission does not take issue with either the Finnish provisions or specific individual cases of wolves being killed, but with the adminis-

trative practice of the Finnish authorities. This is possible. A failure to fulfil obligations may arise from the existence of an administrative practice which infringes Community law, even if the applicable national legislation itself complies with Community law.⁵

17. The Commission must establish such a failure to fulfil obligations on the basis of sufficiently documented and detailed evidence of the national administration's alleged practice for which the Member State concerned is answerable.⁶ The practice must be, to some degree, of a consistent and general nature.⁷

18. Finland correctly points out that the question whether a Member State has failed to fulfil its obligations must be assessed as at the expiry of the time-limit which was set in the reasoned opinion, namely as at 4 September 2002 in the present case. However, contrary to Finland's interpretation, events after the expiry of the time-limit may also be taken into account as evidence of a *continuing* administrative practice.⁸

5 — Case C-441/02 *Commission v Germany* [2006] ECR I-3449, paragraph 47, with further references.

6 — *Commission v Germany* (cited in footnote 5, paragraph 49).

7 — *Commission v Germany* (cited in footnote 5, paragraph 50, with further references).

8 — Case C-494/01 *Commission v Ireland* (landfill of waste) [2005] ECR I-3331, paragraph 37 et seq.

19. The parties are in agreement that the Finnish authorities issue permits for hunting wolves outside the reindeer management area every year.⁹ A consistent administrative practice exists in relation to this. This practice is compatible with the Habitats Directive only if the requirements of Article 16(1) are observed.

20. Since Article 16(1) of the Habitats Directive is a provision derogating from the general provisions on the protection of species, in this instance — as with Article 6(4) of the Habitats Directive¹⁰ and Article 9 of the Birds Directive¹¹ — the burden of proving that the necessary conditions are present for each derogation rests with the authority taking the decision.¹² In relation to the present infringement proceedings it therefore follows that Finland must in principle prove justification for killing wolves.

21. However, where there is a dispute about an administrative practice this burden of

proof cannot extend to the Member State having to demonstrate that all the preconditions for derogation are wholly fulfilled in relation to each individual case or even just in a large number of examples. On the contrary it is sufficient to give an overall description of the system of applying derogations, as Finland does.

22. If this description meets the requirements of Community law, it is for the Commission to demonstrate why in spite of this the practice of the Member State concerned infringes Community law. For this purpose the Commission may either object in abstract terms to parts of the system which has been described or submit specific objections to a sufficiently large number of individual cases. It must ascertain the necessary information about these individual cases either by means of requests for information to the relevant Member State¹³ or by gathering it from other sources.

23. Article 16(1) of the Habitats Directive is similar to Article 6(4) of that directive and Article 9 of the Birds Directive not only in relation to the burden of proof but also as regards its content. All of the provisions determine precisely the preconditions under which the Member States may derogate from

9 — See also the Management Plan in relation to this (cited in footnote 3, p. 29).

10 — See, in relation to this, my Opinion in Case C-209/04 *Commission v Austria* (Lauteracher Ried) [2005] ECR I-2755, point 68, with further references; my Opinion in Case C-239/04 *Commission v Portugal* (Castro Verde) [2006] ECR I-10183, point 41, with further references; and, to that effect, the judgment in the latter case, paragraph 40.

11 — Council Directive 79/409/EEC of 2 April 1979 on the conservation of wild birds (OJ 1979 L 103, p. 1). See, in relation to this, Case C-344/03 *Commission v Finland* (spring hunting of aquatic birds) [2005] ECR I-11033, paragraphs 36, 39, 42 and 60, and Case C-60/05 *WWF Italia and Others* [2006] ECR I-5083, paragraph 34.

12 — See the wording in *WWF Italia and Others*, cited in footnote 11.

13 — See, in relation to this, *Commission v Ireland* (cited in footnote 8, paragraph 42 et seq.).

their obligations under the directive and must therefore be interpreted strictly.¹⁴

tory alternatives. Whether alternatives exist depends on the objectives of the relevant measure.

24. These derogating rules also give concrete expression to the principle of proportionality.¹⁵ According to this principle, which is one of the general principles of Community law, measures adopted may not exceed the limits of what is appropriate and necessary in order to attain the objectives legitimately pursued by the legislation in question; when there is a choice between several appropriate measures, recourse must be had to the least onerous, and the disadvantages caused must not be disproportionate to the aims pursued.¹⁶

26. Consequently it is necessary, first of all, to identify the objective of the measure. The objective can justify the measure only if it can be attributed to at least one of the grounds for derogation, that is to say if the measure is appropriate to attain one of the purposes listed there. Even if it is possible to attribute the measure's objective to one of the grounds for derogation, the measure may not be implemented if its objective can be attained by less drastic means, that is to say by means of a satisfactory alternative within the meaning of Article 16(1) of the Habitats Directive.¹⁷

25. The need for such an interpretation is apparent particularly in the relationship between the grounds for derogation listed in Article 16(1)(a) to (e) of the Habitats Directive and the consideration of satisfac-

27. However an alternative is satisfactory not only if it would attain the objectives of the derogation equally well, but also if the disadvantages caused by the derogation would be disproportionate to the aims pursued and the alternative would ensure proportionality. This is the final part of the review of proportionality, called appropriateness or proportionality in the strict sense.¹⁸

14 — See, in relation to Article 16(1), Case C-6/04 *Commission v United Kingdom* (conformity) [2005] ECR I-9017, paragraph 25; in relation to Article 6(4), *Commission v Portugal* (Castro Verde) (cited in footnote 10, paragraph 35); and, in relation to Article 9 of the Birds Directive, *WWF Italia* (cited in footnote 11, paragraph 34).

15 — See, in relation to Article 6(4) of the Habitats Directive, my Opinions in Case C-127/02 *Waddenvereniging and Vogelbeschermingsvereniging* (Waddenzee) [2004] ECR I-7405, point 106, and in *Commission v Portugal* (Castro Verde), cited in footnote 10, point 42.

16 — Joined Cases C-96/03 and C-97/03 *Tempelman and van Schaijk* [2005] ECR I-1895, paragraph 47; Case C-220/01 *Lennox* [2003] ECR I-7091, paragraph 76; Case C-112/00 *Schmidberger* [2003] ECR I-5659, paragraph 79; Joined Cases C-27/00 and C-122/00 *Omega Air and Others* [2002] ECR I-2569, paragraph 62; and Case C-189/01 *Jippes and Others* [2001] ECR I-5689, paragraph 81.

17 — See, to this effect, the consideration of the similarly structured Article 9 of the Birds Directive in Case C-10/96 *Ligue royale pour la protection des oiseaux and Others* [1996] ECR I-6775, paragraphs 16 et seq. and 24 et seq.

18 — See above, point 24, with further references.

28. As regards the grounds for derogation, the Commission objects to the fact that in Finland the killing of wolves is permitted under Article 16(1)(b) on grounds relating to prevention, that is for the purposes of avoiding damage. It maintains that on the contrary the application of this derogation requires that serious damage has first occurred. In this regard, the Commission relies on a judgment according to which a certain degree of damage is required for derogation from the general system of protection under the comparable provision in the third indent of Article 9(1)(a) of the Birds Directive.¹⁹

29. However, Finland correctly points out in opposition to this criticism of the preventative killing of wolves that, on its very wording, Article 16(1)(b) of the Habitats Directive — like the third indent of Article 9(1)(a) of the Birds Directive — is aimed at the prevention of damage. It would be manifestly disproportionate to require that it is necessary to first wait for damage to be sustained before measures are taken.

30. This interpretation does not contradict the judgment which the Commission has referred to. The passage cited from those infringement proceedings did not concern prevention but whether measures may also

be taken in relation to minor damage and not only to prevent *serious* damage.

31. Regardless of the basic applicability of the derogation under Article 16(1)(b) of the Habitats Directive to preventative measures, there is the question of under what circumstances the killing of wolves is appropriate for prevention, of when less drastic alternatives exist and of whether the objective of prevention is proportionate to the interest in the conservation of the individual wolves.

32. The Court is able to review these three points only to the extent that the Commission sufficiently specifies its objections to the Finnish practice. The Commission does this exclusively with regard to the fact that the Finnish authorities do not issue hunting permits for particular wolves which cause damage, but in each case authorise in the abstract the killing of a particular number of wolves. By this submission the Commission questions both the appropriateness of the measures entailing killing for the purposes of preventing damage and the absence of a less harsh measure. On the one hand, it seems doubtful that damage can be prevented by the indiscriminate killing of wolves instead of concentrating on the animals which cause damage. On the other hand, it might be possible to achieve the same preventative effect by restricting the hunting to those few animals which cause damage.

¹⁹ — Case 247/85 *Commission v Belgium* (conformity) [1987] ECR 3029, paragraph 56.

33. It is first necessary to make it clear that the Commission's complaint fails in so far as it relates to the upper limits for hunting which are set for the individual game management districts by the competent ministry. According to the Finnish Government's submissions, which are undisputed, these upper limits only determine the framework within which the game management districts are able to issue permits, provided that *in addition* the preconditions of Article 16(1) of the Habitats Directive are fulfilled. They are accordingly a means of preventing hunting from being excessively detrimental to the conservation status of the species.

34. With regard to individual hunting permits, Finland submits that the permit to kill is related to particular individual wolves at any rate where they can be identified. It states that the game management districts are aware of the local situation and ensure, in cooperation with the Riista ja kalatalouden tutkimuslaitos (RKTL — Game and Fisheries Research Institute), that the correct animals are killed.

35. However, it is apparent from the Finnish Government's account too that in the remaining cases hunting is in principle permitted in the form of specific numbers for slaughter being allocated to the respective game management districts. In relation to this Finland expresses the view — for the first time in the rejoinder — that with a herd

animal like the wolf it is not possible to restrict the shooting permit to particular animals. It maintains that in part it is in practice even impossible, where damage is caused by a herd, to identify individual animals as having caused damage.

36. However, Finland's above submissions do not specify how shooting permits which are not specific to individual wolves contribute to preventing serious damage, that is to say whether this practice is appropriate at all for attaining this objective. In North America, wolf populations had to be *greatly* reduced over a fairly long period of time before losses of game decreased.²⁰ It cannot be ruled out that this also applies to harm to livestock. Finland defends itself, however, inter alia with the argument that the wolf population has increased in spite of the hunting — a decrease in damage therefore appears unlikely.

37. It would also be conceivable that the permits are only to facilitate direct defence against specific attacks, for example on dogs

20 — Commission on Life Sciences (CLS), *Wolves, Bears, and Their Prey in Alaska: Biological and Social Challenges in Wildlife Management* (1997), pp. 183 and 184 (<http://fermat.nap.edu/books/0309064058/html>).

or sheep. However, there is no evidence to support that.

appears possible that as a result they will change their habits and maintain more of a distance in future.

38. The Management Plan which was introduced into the proceedings by the Commission suggests a further explanation. According to the plan, the hunting of wolves is supposed to maintain their fear of people. As a result of this timidity, wolves will avoid people and their settlements and they have less opportunity to kill livestock or endanger people.²¹ On the basis of this objective, hunting may amount to the prevention of damage within the meaning of Article 16(1)(b) of the Habitats Directive.

39. Wolves are indeed considered very timid but the damage caused by them shows that they do not completely avoid people. It is apparent from the application of the Finnish compensatory provisions for damage caused by wolves that in the years 2000 to 2003 wolves killed annually between 23 and 135 sheep, between one and nine cattle, 270 to 561 reindeer and 20 to 31 dogs. An increasing trend can be discerned at least in relation to sheep and reindeer.²² If in fact those herds are hunted that come closest to people and cause the most damage,²³ it

40. However, on the basis of the information available, this theory likewise cannot justify indiscriminately permitting the shooting of a particular number of wolves. On the contrary it would require scientific corroboration before it could be accepted. This would have to provide explanation not only about the extent to which hunting is appropriate at all for maintaining wolves' fear, but also about the form in which it would have effect and would be of as little detriment as possible to the wolf population, for example whether, and if so under what circumstances, the herd's alpha animals or only young animals or even the entire herd should be killed. It would also have to be examined whether instead of killing wolves other measures, for instance those suggested by the Commission, suffice, namely bringing cattle into sheds at night or keeping them then behind effective fences, odours or other means of frightening off wolves, and compensation for damage caused.

41. Article 16(1) of the Habitats Directive also subjects each derogation from the strict protective provisions of Article 12 to the additional condition that derogation must not be detrimental to the maintenance of the populations of the species concerned at a favourable conservation status in their natural range.

21 — Management Plan (cited in footnote 3, p. 49).

22 — Management Plan (cited in footnote 3, p. 17).

23 — According to the Management Plan (cited in footnote 3, p. 17) 10% to 20% of the wolves cause 80% of the damage.

42. Article 1(i) of the Habitats Directive bases the definition of the favourable conservation status of a species on three criteria. The second and third of these criteria relate to the natural range and the habitat of the species. In the present case there is no apparent doubt that these criteria as to a favourable conservation status are met.

43. However, there is a dispute as to the first criterion for a favourable conservation status, namely whether population dynamics data on the wolf indicate that this species is maintaining itself on a long-term basis as a viable component of its natural habitats.

44. It is not disputed that the Finnish wolf population has significantly grown in numbers in recent years and that it has also expanded considerably into new areas. Despite the shooting permits, the conservation status of the species has therefore not deteriorated overall but improved. Consequently one could conclude, like the Finnish Government, that the wolf population in Finland satisfies the requirements for a favourable conservation status.

status of the wolf was not favourable during the pre-litigation procedure and on expiry of the time-limit which it had set in the reasoned opinion, namely on 4 September 2002. The Commission supports this view with a study which assessed the wolf as being endangered in Finland on the basis of data from 1998 and with the Finnish Management Plan for the wolf. As Finland emphasises, the study is only of secondary importance in the present proceedings since the relevant point in time is 4 September 2002. The conservation status of the wolf population at that time is documented in the Management Plan.

46. The Management Plan assumes, even taking into account the migration of wolves from the population in Russian Karelia, that the Finnish wolf population is maintaining itself on a long-term basis as a viable component of its natural habitat in Finland only if it comprises at least 20 breeding pairs.²⁴ However, according to the plan, in 2002 — the relevant year — there were only 12 such pairs and in the previous years there were even fewer. By 2005 the number grew to 16 and therefore had not reached the threshold level for a viable long-term population.²⁵

45. The Commission is nevertheless of the opinion that in Finland the conservation

24 — Management Plan (cited in footnote 3, p. 41 and pp. 15 and 16).

25 — Management Plan (cited in footnote 3, pp. 9 and 10).

47. Finland states in reply to the Commission that the assessment of favourable conservation status does not depend on the concept of the smallest viable population, but on the population dynamics which, it argues, are clearly favourable.

lived longer they would at some point leave their herd and possibly find a partner.²⁷ In view of the limited number of wolves in Finland, without the killing of individual specimens the conservation status of the population would therefore presumably have improved even more than it actually did.

48. The Finnish Government's above argument is not very convincing since it contradicts the assessment which its own Management Plan clearly made on the basis of the best available scientific knowledge. Consequently the conservation status of the wolf in Finland cannot be regarded as favourable at the relevant time.

50. Accordingly it cannot be found that the shooting was not detrimental to the maintenance of the Finnish wolf population at a favourable conservation status or that there was no detriment to the population. Consequently, for this reason too, at the relevant time a justification for the hunting of wolves could not be compatible with the wording of Article 16(1) of the Habitats Directive.

49. In addition, contrary to Finland's view, it must be assumed that the shooting of individual wolves was disadvantageous for the population's conservation status. The fact that the populations grew despite the killings does not necessarily exclude the possibility that each of the killings, taken individually, initially harmed the conservation status.²⁶ If breeding wolves are shot, this reduces directly the number of breeding pairs which is decisive for the conservation status. However, shooting wolves which have not yet bred has indirect effects on the number of breeding pairs. If these specimens

51. However, the Finnish Government justifiably raises the question as to whether under Article 16 of the Habitats Directive any justification of a measure which is disadvantageous for the strictly protected species in accordance with Article 12 is impossible in the absence of a favourable conservation status. That would mean that until a favourable conservation status is achieved for the species in Annex IV the Member States would not be able to allow any of the prohibited forms of detriment regardless of

26 — See Case C-209/02 *Commission v Austria* (Wörschach Golf Course) [2004] ECR I-1211, paragraph 27, and *Commission v Portugal* (Castro Verde) (cited in footnote 10, paragraph 24).

27 — See the Management Plan (cited in footnote 3, p. 11).

the objectives of a measure. This would amount to absolute protection for many species, since they are strictly protected because their conservation status is not favourable.

52. However, specifically in relation to immediate risk to those things that are most precious, for example human life and human health, it must be possible to derogate from the legal prohibitions relating to the protection of species, regardless of the conservation status of the species, if this is the only way of averting the danger. Consequently, a relaxation of the requirements for justifying detriment to strictly protected species is inevitable despite the necessity for a strict interpretation of Article 16(1) of the Habitats Directive. As Finland correctly submits the Commission recognises this, at least implicitly, in its guidance on the application of Article 12 and 16, since in this guidance it does not exclude the justification of derogations even where the conservation status is unfavourable.²⁸

53. There is a basis for such a relaxation of the requirements in the Court's case-law, which has already recognised in relation to

the law on nature conservation that exceptional grounds may justify detriment to legally protected interests in the natural world even if this would not be possible according to the text of the relevant provisions.²⁹ Those grounds must correspond to a general interest which is superior to the general interest represented by the ecological objective of the directive (in that case it was coastal protection and the danger of flooding).³⁰ The fact that the project in that case had specific positive consequences for the affected species was also taken into account.³¹

54. In practical terms, it is, as in the case of Article 16(1) of the Habitats Directive, a question of applying the principle of proportionality, which is certainly not restricted, with regard to the possible objectives of derogations, to the list of grounds for derogation under Article 16(1)(a) to (e) and above all does not recognise the condition requiring the maintenance of the species at a favourable conservation status.

55. In the present case, however, such a relaxation of the requirements of Article 16(1) of the Habitats Directive cannot justify the Finnish practice either. Since permission for the hunting of wolves is not restricted to those specimens which need to be killed in order to prevent damage and in addition no

28 — Guidance document on the strict protection of animal species of Community interest provided by the 'Habitats' Directive 92/43/EEC, draft — version 5 (April 2006), Chapter III, paragraph 49 et seq., particularly paragraph 54 (pp. 63 and 64.) (http://forum.europa.eu.int/Public/irc/env/species_protection/library?l=/commission_guidance&vm=detailed&sb=Title).

29 — Case C-57/89 *Commission v Germany* ('Leybucht') [1991] ECR I-883, paragraph 21.

30 — *Leybucht* (cited in footnote 29, paragraph 23).

31 — *Leybucht* (cited in footnote 29, paragraph 25).

adequate scientific basis for its effectiveness has been put forward, it cannot be supposed that there were any exceptional grounds for the hunting.

56. It is therefore appropriate to uphold the Commission's action.

V — Costs

57. Under Article 69(2) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings. Since the Commission is successful and has applied for costs, the Republic of Finland must be ordered to pay the costs.

VI — Conclusion

58. I therefore propose that the Court should:

- (1) declare that, by permitting the hunting of wolves without being able to prove that the conditions were met for a derogation under Article 16(1) of Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora, the Republic of Finland has failed to fulfil its obligations under Articles 12(1) and 16(1) of the directive;
- (2) order the Republic of Finland to bear the costs of the proceedings.