

Case C-418/04

Commission of the European Communities

v

Ireland

(Failure of a Member State to fulfil obligations — Directive 79/409/EEC — Conservation of wild birds — Articles 4 and 10 — Transposition and application — IBA 2000 — Value — Quality of the data — Criteria — Margin of discretion — Directive 92/43/EEC — Conservation of natural habitats and of wild fauna and flora — Article 6 — Transposition and application)

Opinion of Advocate General Kokott delivered on 14 September 2006 . . . I - 10951

Judgment of the Court (Second Chamber), 13 December 2007 I - 10997

Summary of the Judgment

1. *Environment — Conservation of wild birds — Directive 79/409 — Selection and delimitation of special protection areas*
(Council Directive 79/409, as amended by Directive 97/49, Art. 4(1) and (2))

2. *Environment — Conservation of wild birds — Directive 79/409 — Classification as a special protection area*
(Council Directive 79/409, as amended by Directive 97/49, Art. 4)
3. *Environment — Conservation of wild birds — Directive 79/409 — Special conservation measures*
(Council Directive 79/409, as amended by Directive 97/49, Art. 4(1) and (2))
4. *Environment — Conservation of wild birds — Directive 79/409 — Failure to classify as a special protection area*
(Council Directives 79/409, as amended by Directive 97/49, Art. 4(4), and 92/43, Arts 6(2) to (4), and 7)
5. *Environment — Conservation of natural habitats and of wild fauna and flora — Directive 92/43 — Special protection areas*
(Council Directive 92/43, Art. 6(3))

1. In choosing the areas most appropriate for classification as special protection areas (SPAs) in accordance with Article 4(1) and (2) of Directive 79/409 on the conservation of wild birds, as amended by Directive 97/49, Member States have a certain margin of discretion, which is limited by the fact that the classification of those areas is subject exclusively to the ornithological criteria determined by that directive. The economic requirements mentioned in Article 2 of that directive may therefore not be taken into account when selecting an SPA and defining its boundaries.

of the ornithological value of each of the areas in question but must be carried out in the light of the natural boundaries of the wetland ecosystem and, second, that the ornithological criteria which form the foundation of the classification must have a scientific basis. The use of flawed, allegedly ornithological criteria might lead to an incorrect demarcation of the boundaries of SPAs.

(see paras 39, 141, 142)

It follows, first, that SPA classification cannot be the result of an isolated study

2. Article 4 of Directive 79/409 on the conservation of wild birds, as amended by Directive 97/49, lays down a protec-

tion regime which is specifically targeted and reinforced both for the species listed in Annex I and for migratory species, an approach justified by the fact that they are, respectively, the most endangered species and the species constituting a common heritage of the Community. Furthermore, it is clear from the ninth recital in the preamble to that directive that the preservation, maintenance or restoration of a sufficient diversity and area of habitats is essential to the conservation of all species of birds. The Member States are therefore required to adopt the measures necessary for the conservation of those species.

up-to-date and accurate reference for identifying the most suitable sites in number and in size for the conservation of the regularly occurring migratory species not listed in Annex I.

(see paras 46, 47, 66, 67)

For that purpose, the updating of scientific data is necessary to determine the situation of the most endangered species and the species constituting the common heritage of the Community in order to classify the most suitable areas as SPAs. In order to assess whether there has been a failure to fulfil obligations under the directive, it is therefore necessary to use the most up-to-date scientific data available at the end of the period laid down in the reasoned opinion. In that regard, in the absence of scientific studies capable of rebutting the results of the Inventory of Important Bird Areas in the European Community ('IBA 2000'), that inventory is the most

3. Article 4(1) and (2) of Directive 79/409 on the conservation of wild birds, as amended by Directive 97/49, requires the Member States to provide SPAs with a legal protection regime that is capable, in particular, of ensuring both the survival and reproduction of the bird species listed in Annex I to the directive and the breeding, moulting and wintering of migratory species not listed in Annex I which are, nevertheless, regular visitors. The protection of SPAs may not be limited to avoiding harmful human effects but must also include positive measures to preserve or improve the state of the area, as the case may be.

(see paras 153, 154)

4. The protective aims formulated by of Directive 79/409 on the conservation of

wild birds, as amended by Directive 97/49, as expressed in the ninth recital in the preamble thereto, could not be achieved if Member States were obliged to comply with the obligations under Article 4(4) of that directive only in cases where a special protection area (SPA) had previously been designated. The text of Article 7 of Directive 92/43 on the conservation of natural habitats and of wild fauna and flora states that Article 6(2) to (4) of that directive replaces the first sentence of Article 4(4) of Directive 79/409 as from the date of implementation of Directive 92/43 or the date of classification by a Member State under Directive 79/409, where the latter date is later. Areas which have not been classified as SPAs but which should have been so classified continue to fall under the regime governed by the first sentence of Article 4(4) of Directive 79/409.

(see paras 84, 120, 172, 173)

5. Article 6(3) of Directive 92/43 on the conservation of natural habitats and of wild fauna and flora makes the requirement for an appropriate assessment of the implications of a plan or project not directly connected with or necessary to the management of a site in a special conservation area conditional on there

being a probability or a risk that that plan or project will have a significant effect on the site concerned. In the light, in particular, of the precautionary principle, such a risk exists if it cannot be excluded on the basis of objective information that the plan or project will have a significant effect on the site concerned. It follows that that directive requires that any plan or project undergo an appropriate assessment of its implications if it cannot be excluded on the basis of objective information that that plan or project will have a significant effect on the site concerned. Such an assessment implies that, prior to its approval, all aspects of the plan or project which can, by themselves or in combination with other plans or projects, affect the site's conservation objectives must be identified in the light of the best scientific knowledge in the field.

The competent national authorities are to authorise an activity on the protected site only if they have made certain that it will not adversely affect the integrity of that site. That is the case where no reasonable scientific doubt remains as to the absence of such effects.

(see paras 226, 227, 243)