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Judgment of the Court of Justice in Case C-76/08

Commission v Malta

**BY AUTHORISING SPRING HUNTING OF QUAILS AND TURTLE DOVES FROM
2004 TO 2007, MALTA HAS FAILED TO COMPLY WITH THE WILD BIRDS
DIRECTIVE**

The opening of the spring hunting season for those two species for approximately two months, during their migration period, which results in a mortality rate three times higher for quails and eight times higher for turtle doves than that resulting from the autumn hunting season, is disproportionate.

The Wild Birds Directive¹ provides that certain species of birds may be hunted. Member States are to ensure that the practice of hunting complies with the principles of wise use and ecologically balanced control of the species of birds concerned. In particular, migratory species are not to be hunted during their return to their rearing grounds. Derogation from those rules is permitted where there is no other satisfactory solution.

Quails (*Coturnix coturnix*) and turtle doves (*Streptopelia turtur*) are two migratory species which may be hunted in accordance with the Directive. Each year, between 2004 and 2007, hunting of those species was authorised in Malta during the spring migration. Taking the view that that authorisation did not comply with the requirements of the Directive, the Commission instituted infringement proceedings. Malta replied that the conditions for application of the derogation had been met because there was no other satisfactory solution since only a limited number of specimens of those species are available to hunt during the autumn hunting season. Since it did not find that reply convincing, the Commission brought the present case.

The Court finds that, although the two species at issue are in fact present in autumn in Malta, during the years in question hunters were able to capture only a negligible number of birds. Moreover, during that season, only a restricted part of the territory of Malta is visited by those birds. Finally, the population of the two species of bird hunted is not below a satisfactory level. It is apparent, in particular, from the International Union for the Conservation Nature Red List of Threatened Species that the species in question are listed in the 'least concern' category. The Court considers that, in those very specific circumstances, autumnal hunting of those two species cannot be regarded as constituting, in Malta, another satisfactory solution to the opening of a spring hunting season.

¹ Council Directive 79/409/EEC of 2 April 1979 on the conservation of wild birds (OJ 1979 L 103, p. 1).

Nevertheless, that finding, far from opening up, without limit, the possibility of authorising hunting in spring, does so only so far as it is strictly necessary and provided that the other objectives pursued by the Directive, in particular protection of the population of the species concerned, are not jeopardised.

Thus, the Court considers that **opening a spring hunting season**, during which those two species are returning to their rearing grounds, **which results in a mortality rate three times higher** (around 15 000 birds killed) **for quails and eight times higher** (around 32 000 birds killed) **for turtle doves than for the autumn hunting season, does not constitute an adequate solution that is strictly proportionate to the Directive's objective of conservation of the species.**

In those circumstances, the Court rules that, even though only a negligible number of the two species at issue are present in autumn and for a very limited period, and since hunting is not impossible in autumn, by authorising the opening of the spring hunting season for quails and turtle doves for several weeks each year, from 2004 to 2007, **Malta has failed to comply with the conditions for a derogation and, accordingly, has failed to fulfil its obligations under the Directive.**

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Languages available: EN FR MT

The full text of the judgment may be found on the Court's internet site

<http://curia.europa.eu/jurisp/cgi-bin/form.pl?lang=EN&Submit=rechercher&numaff=C-76/08>

It can usually be consulted after midday (CET) on the day judgment is delivered.

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*Pictures of the delivery of the judgment are available on EbS "Europe by Satellite",
a service provided by the European Commission, Directorate-General Press and
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