



Press and Information

Court of Justice of the European Union
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Judgment in Case C-557/15
Commission v Republic of Malta

By adopting a certain derogation regime allowing the capture of seven species of wild birds, Malta has failed to fulfil its obligations under EU law

That regime does not comply with the strict conditions laid down by the Directive on the conservation of wild birds

An EU Directive¹ provides that Member States must take the requisite measures to establish a general system of protection for several bird species. Nevertheless, Member States may derogate from that obligation where there is no other satisfactory solution, to permit, under strictly supervised conditions and on a selective basis, the capture, keeping or other judicious use of certain birds in small numbers.

In 2014 and 2015, Malta adopted several measures which enable it to benefit from the derogation laid down in the Directive. Those measures authorise the capture of seven species of finches by means of traditional nets ('clap-nets'), subject to compliance with certain conditions.

The Commission considers that the derogation regime laid down by Malta in the course of those two years does not meet the conditions of the Directive. It therefore decided to bring an action for failure to fulfil obligations against that Member State before the Court of Justice.

In today's judgment, **the Court rules, first, that the 2014 and 2015 measures authorising the autumn trapping of finches do not comply with the Directive since they do not contain any reference to the absence of another satisfactory solution.** The Court recalls its case-law according to which the Member States may authorise actions affecting the protected species only on the basis of decisions containing a clear and sufficient statement of reasons which refers to the conditions of the Directive. The Court finds that the declarations at issue do not contain such a statement. In addition to the fact that they do not contain any reference to the absence of another satisfactory solution, they do not refer to the technical, legal and scientific reports submitted to the Ornithological Committee, nor to the recommendations based on that information.

Second, the Court concludes that **Malta has not complied with the condition of the Directive according to which the permitted derogation must concern only 'small numbers' of birds.** The Court states that the condition relating to trapping in 'small numbers' cannot be met if the trapping of birds authorised by way of derogation does not ensure the maintenance of the population of the species concerned at a satisfactory level. The Court considers that Malta has not adduced sufficient evidence to show that that condition is met.

In that regard, the Court notes in particular that, **according to a 2007 study by the non-governmental organisation BirdLife Malta, trapping in Malta is so intensive that only a handful of each of the common finch species regularly breed on the islands, whereas they breed in high numbers in other areas of the Mediterranean.**

Moreover, the Court points out that, even though Malta claims to have taken into account only reference populations from countries with stable or increasing populations, Malta's selection of

¹ Directive 2009/147/EC of the European Parliament and of the Council of 30 November 2009 on the conservation of wild birds (OJ 2010 L 20, p. 7).

those populations has not always been consistent with the stated methodology. It is thus apparent from the Maltese authorities' technical memoranda that those authorities took into account, for the purpose of the 2015 autumn capturing season, reference populations in decline or whose conservation status was not known.

Third, the Court notes that, where the condition of trapping in small numbers is not met, recreational trapping of birds cannot be considered judicious. Furthermore, **the Court considers that the condition that only the selective live-capturing of finches can be permitted is not met either**. In particular, given that the Maltese authorities have notably admitted the existence of 'by-catch', the Court points out the non-selective nature of the method of capture using nets.

Finally, the Court finds that **Malta has not adduced evidence that the derogation at issue is used under strictly supervised conditions within the meaning of the Directive**. It considers that in the context of Malta, characterised by a very high density of licence holders, namely over 4 000, and of registered trapping stations, namely over 6 400, the fact that merely 23% of hunters have been subject to individual checks seems inadequate.

Furthermore, evidence shows that failure to observe the restrictions relating to authorised catch periods and locations, in particular by trapping inside 'Natura 2000' sites, has been rather frequent during the 2014 autumn capturing season.

Consequently, the Court rules that Malta has failed to fulfil its obligations under the Directive.

NOTE: An action for failure to fulfil obligations directed against a Member State which has failed to comply with its obligations under European Union law may be brought by the Commission or by another Member State. If the Court of Justice finds that there has been a failure to fulfil obligations, the Member State concerned must comply with the Court's judgment without delay.

Where the Commission considers that the Member State has not complied with the judgment, it may bring a further action seeking financial penalties. However, if measures transposing a directive have not been notified to the Commission, the Court of Justice can, on a proposal from the Commission, impose penalties at the stage of the initial judgment.

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The [full text](#) of the judgment is published on the CURIA website on the day of delivery.

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