

ORDER OF THE COURT OF FIRST INSTANCE (First Chamber)

22 June 2006 \*

In Case T-136/04,

**Rasso Freiherr von Cramer-Klett**, residing in Aschau im Chiemgau (Germany),

**Rechtlerverband Pfronten**, established in Pfronten (Germany),

represented by T. Schönfeld and L. Thum, lawyers,

applicants,

v

**Commission of the European Communities**, represented by M. van Beek and B. Schima, acting as Agents,

defendant,

\* Language of the case: German.

supported by

**Republic of Finland**, represented by T. Pynnä and A. Guimaraes-Purokoski, acting  
as Agents,

intervener,

ACTION for annulment of Commission Decision 2004/69/EC of 22 December 2003  
adopting, pursuant to Council Directive 92/43/EEC, the list of sites of Community  
importance for the Alpine biogeographical region (OJ 2004 L 14, p. 21),

THE COURT OF FIRST INSTANCE  
OF THE EUROPEAN COMMUNITIES (First Chamber),

composed of R. García-Valdecasas, President, I. Labucka and V. Trstenjak, Judges,

Registrar: E. Coulon,

makes the following

## **Order**

### **Legal and factual background**

- <sup>1</sup> On 21 May 1992, the Council adopted Directive 92/43/EEC on the conservation of natural habitats and of wild fauna and flora (OJ 1992 L 206, p. 7; ‘the habitats directive’).
- <sup>2</sup> The aim of the habitats directive is, according to Article 2(1) thereof, to contribute towards ensuring biodiversity through the conservation of natural habitats and of wild fauna and flora in the territory of the Member States to which the EC Treaty applies.
- <sup>3</sup> Article 2(2) of the habitats directive provides that the measures taken for its implementation are to be designed to maintain or restore, at favourable conservation status, natural habitats and species of wild fauna and flora of Community interest.
- <sup>4</sup> According to the sixth recital in the preamble to the habitats directive, it is necessary, in order to ensure the restoration or maintenance of natural habitats and species of Community interest at a favourable conservation status, to designate special areas of conservation in order to create a coherent European ecological network in accordance with a specified timetable.

- 5 By virtue of Article 3(1) of the habitats directive, such network, under the title 'Natura 2000', is to include special areas of conservation as well as special protection areas classified by the Member States pursuant to Council Directive 79/409/EEC of 2 April 1979 on the conservation of wild birds (OJ 1979 L 103, p. 1).
- 6 Under Article 1(l) of the habitats directive, 'special area of conservation' means 'a site of Community importance designated by the Member States through a statutory, administrative and/or contractual act where the necessary conservation measures are applied for the maintenance or restoration, at a favourable conservation status, of the natural habitats and/or the populations of the species for which the site is designated'.
- 7 Article 4 of the habitats directive lays down a three-stage procedure for the designation of special areas of conservation. Under Article 4(1), each Member State is to propose a list of sites indicating which natural habitat types in Annex I and which species in Annex II that are native to its territory the sites host. Within three years of the notification of the habitats directive, that list is to be transmitted to the Commission, together with information on each site.
- 8 Under Article 4(2) of the habitats directive, the Commission is to establish, from those lists and on the basis of the criteria set out in Annex III to the directive and in agreement with each Member State, a draft list of sites of Community importance. The list of sites of Community importance is to be adopted by the Commission in accordance with the procedure laid down in Article 21 of the habitats directive. In accordance with Article 4(3), that list is to be established within six years of the notification of the habitats directive.

- 9 Article 4(4) of the habitats directive provides that, once a site of Community importance has been adopted in accordance with the procedure laid down in Article 4(2), the Member State concerned is to designate that site as a special area of conservation as soon as possible and within six years at most, establishing priorities in the light of the importance of the sites for the maintenance or restoration, at a favourable conservation status, of a natural habitat type in Annex I or a species in Annex II and for the coherence of Natura 2000, and in the light of the threats of degradation or destruction to which those sites are exposed.
- 10 Article 4(5) of the habitats directive states that as soon as a site is placed on the list of sites of Community importance established by the Commission it is to be subject to Article 6(2) to (4) of the habitats directive.
- 11 Under the terms of Article 6 of the habitats directive:

‘1. For special areas of conservation, Member States shall establish the necessary conservation measures involving, if need be, appropriate management plans specifically designed for the sites or integrated into other development plans, and appropriate statutory, administrative or contractual measures which correspond to the ecological requirements of the natural habitat types in Annex I and the species in Annex II present on the sites.

2. Member States shall take appropriate steps to avoid, in the special areas of conservation, the deterioration of natural habitats and the habitats of species as well as disturbance of the species for which the areas have been designated, in so far as such disturbance could be significant in relation to the objectives of this Directive.

3. Any plan or project not directly connected with or necessary to the management of the site but likely to have a significant effect thereon, either individually or in combination with other plans or projects, shall be subject to appropriate assessment of its implications for the site in view of the site's conservation objectives. In the light of the conclusions of the assessment of the implications for the site and subject to the provisions of paragraph 4, the competent national authorities shall agree to the plan or project only after having ascertained that it will not adversely affect the integrity of the site concerned and, if appropriate, after having obtained the opinion of the general public.

4. If, in spite of a negative assessment of the implications for the site and in the absence of alternative solutions, a plan or project must nevertheless be carried out for imperative reasons of overriding public interest, including those of a social or economic nature, the Member State shall take all compensatory measures necessary to ensure that the overall coherence of Natura 2000 is protected. It shall inform the Commission of the compensatory measures adopted.

Where the site concerned hosts a priority natural habitat type and/or a priority species, the only considerations which may be raised are those relating to human health or public safety, to beneficial consequences of primary importance for the environment or, further to an opinion from the Commission, to other imperative reasons of overriding public interest.'

<sup>12</sup> Commission Decision 2004/69/EC of 22 December 2003 adopting, pursuant to the habitats directive, the list of sites of Community importance for the Alpine biogeographical region (OJ 2004 L 14, p. 21; 'the contested decision') was adopted on the basis of the third subparagraph of Article 4(2) of that directive. Among the sites of Community importance included in the list are the following sites:

— DE 8239304 Hochries-Laubensteingebiet und Spitzstein;

— DE 8429303 Kienberg mit Magerrasen im Tal der Steinacher Ach.

- <sup>13</sup> The first applicant is the owner of land in the site of Community importance with reference DE 8239304. The second applicant is a corporation formed of the owners of lands in the site of Community importance with reference DE 8429303. The applicants exploit their forested lands by means of undertakings created for that purpose.

## Procedure

- <sup>14</sup> The applicants brought this action by application lodged at the Registry of the Court of First Instance on 8 April 2004.
- <sup>15</sup> By document lodged at the Court Registry on 2 September 2004, the Republic of Finland ('the intervener') applied for leave to intervene in these proceedings in support of the Commission. By order of 14 October 2004, the President of the First Chamber of the Court of First Instance granted leave to intervene. The intervener lodged a statement confining itself to the action's admissibility. The applicants and the Commission lodged no observations on that statement.
- <sup>16</sup> By document lodged at the Court Registry on 28 September 2004, the Commission raised an objection of inadmissibility under Article 114(1) of the Rules of Procedure of the Court of First Instance. The applicants lodged their observations on that objection on 17 November 2004.

**Forms of order sought by the parties**

17 In its objection of inadmissibility, the Commission contends that the Court should:

- dismiss the action as inadmissible;
- order the applicants to pay the costs.

18 In its statement in intervention, the intervener contends that the Court should dismiss the action as inadmissible.

19 In their observations on the objection of inadmissibility, the applicants claim that the Court should:

- reject the objection of inadmissibility;
- annul the contested decision;
- order the Commission to pay the costs.



**Law**

- 20 Under Article 114 of the Rules of Procedure, if a party applies to the Court of First Instance for a decision on admissibility without going into the substance of the case, the remainder of the proceedings on the objection of inadmissibility is to be oral, unless the Court decides otherwise. In the present case, the Court considers itself to be sufficiently informed by the documents in the Court file and decides that there is no need to open the oral proceedings.

*Arguments of the parties*

- 21 The Commission submits, primarily, that the applicants have no legal interest in bringing proceedings.
- 22 It maintains that the contested decision is merely a provisional measure within the meaning of the judgment of the Court of Justice in Case 60/81 *IBM v Commission* [1981] ECR 2639, paragraph 10. The contested decision is not an actionable measure, since the establishment of the list of sites of Community importance did not conclude the procedure leading to the establishment of the Natura 2000 network.
- 23 The Commission observes that the contested decision has no direct effect on the applicants' legal position. It submits that possible legal effects will befall the applicants only if and when the national authorities adopt measures applying the habitats directive and the contested decision.

- 24 The Commission submits, accordingly, that the contested decision has had no effect whatsoever on the legal rights of the applicants. Therefore, they are not entitled — lacking a legal interest in bringing proceedings — to institute an action for annulment against that decision under the fourth paragraph of Article 230 EC.
- 25 The Commission submits, in the alternative, that the applicants are not directly and individually concerned.
- 26 As regards direct concern to the applicants, the Commission submits that the consequences of the establishment of the list of sites of Community importance, namely the Member States' obligation to designate those sites as special areas of conservation and to establish conservation measures for them, do not arise automatically. Even though the list of sites establishes with binding effect the extent of the areas as well as the types of natural habitats and the species to be protected, the Member States retain a certain discretion concerning the conservation measures specified in Article 6(1) of the habitats directive. Those are the only measures that produce effects on the applicants' legal position. It is therefore inconceivable that the applicants could be directly concerned by the contested decision.
- 27 Nor, the Commission adds, does it follow from Article 4(5) of the habitats directive, which provides that a site is to be subject to the provisions of Article 6(2) to (4), as soon as it is entered on the list referred to in the third subparagraph of Article 4(2), that the applicants are directly concerned. In that regard, the Commission maintains that Article 6(2) of the habitats directive imposes the obligation to avoid deterioration or disturbance of the site. Article 6(3) and (4) of the directive lays down a procedure for authorising plans and projects likely to affect the site. In both cases, they are obligations on Member States and not on individuals.

- 28 The Commission concludes from this that, since the contested decision therefore has no direct effect on the applicants' legal position, they are not directly concerned by that decision and, in consequence, are not entitled to bring an action for annulment.
- 29 As regards being individually concerned, the Commission submits that the contested decision defines neither the rights nor the obligations of owners of the lands but simply establishes a list of the sites to which other provisions will apply subsequently, which, again, do not concern the property in the land. The aim of those provisions is to protect the sites against deterioration in their conservation status, whatever the conduct which causes such deterioration.
- 30 The Commission submits that, as the contested decision imposes no obligations on land owners, the applicants cannot argue that it affects their specific rights, or that it has caused them exceptional damage, such as to differentiate them from all other economic operators. Even if it is accepted that the contested decision may impose obligations on the applicants, that results from objectively determined circumstances, namely the geographical situation of the sites referred to in the annex.
- 31 Nor, according to the Commission, are the applicants differentiated on account of the fact that the Commission is obliged, by virtue of specific provisions, to take account of the effects on the applicants' situation of the measure which it envisages adopting. It submits that only scientific criteria relating to the protection of nature apply to the procedure which led to the adoption of the contested decision. Moreover, no provision of Community law required the Commission, in order to adopt the contested decision, to follow a procedure during which the applicants would have been able to assert any rights, such as the right to be heard.

- 32 The Commission submits that the applicants are therefore not individually concerned by the contested decision. It concludes, in the light of all the foregoing, that the action must be dismissed as inadmissible.
- 33 The intervener supports the Commission's argument and claims, also, that the present action is inadmissible.
- 34 As regards direct concern to the applicants, the intervener adds that the contested decision clearly leaves the Member States free to adopt or not to adopt certain measures. Thus, the contested decision's effects will depend on the manner in which the national authorities exercise their discretion.
- 35 As regards individual concern to the applicants, the intervener submits that the contested decision neither prevents them from exercising their exclusive rights nor deprives them of their rights. The contested decision does not regulate the applicants' rights and obligations, but only establishes the list of geographically defined areas. The possible negative effects relied upon in the action are only indirect effects of the contested decision.
- 36 The intervener submits that it must also be held that the contested decision does not concern the applicants as owners of exclusive rights. Even assuming that it does affect them, that could be only in their capacity as land owners, in the same way as it affects the legal position of all the owners of the lands listed in its annex.
- 37 The intervener also points out that, even if the contested decision enables the owners of the lands referred to in its Annex I to be identified in some cases, that by no means implies that the applicants must be regarded as individually concerned,

since the fact remains that that decision is to apply by virtue of an objective factual situation defined by it, namely the natural value of the lands in question (see Case T-213/02 *SNF v Commission* [2004] ECR II-3047, paragraph 59, and the case-law cited therein).

38 The applicants claim that they are directly and individually concerned by the contested decision.

39 As regards direct concern, the applicants refer to Article 4(5) of the habitats directive, which provides that, following the adoption of the contested decision, the sites referred to in that decision are to be subject to the prohibition of deterioration under Article 6(2) of the habitats directive and to the procedure of authorisation applicable to plans or projects for the purposes of Article 6(3) and (4). They submit that, even though those obligations apply to the Member States, they are nonetheless of direct concern to the applicants, since Article 6 creates in their regard direct obligations to act. According to the applicants, Article 6(2) to (4) of the habitats directive allows the Member States no discretion.

40 As regards individual concern, the applicants submit that it is unarguable that the legal disadvantages suffered by them are not fundamentally different from those suffered by the other owners of lands in the sites covered by the contested decision. Nonetheless, they submit, it is necessary to take account of all land owners in the Community, as a reference group.

41 They add that the provisions of Article 6(2) to (4) of the habitats directive entail limitations on the use of their property. The geographical situation of the lands is a reference criterion for the contested decision, because the scheme of the directive

refers to that sole criterion. It cannot be argued that the applicants have no cause of action against that directive because they are not directly or individually concerned by it.

- 42 The applicants submit, therefore, that the requirements of effective judicial protection would be rendered nugatory if the land owners were not regarded as individually concerned by the contested decision, since they are covered only because of the geographical situation of the lands which they own.

### *Findings of the Court*

- 43 The fourth paragraph of Article 230 EC provides that '[a]ny natural or legal person may institute proceedings against a decision addressed to that person or against a decision which, although in the form of a regulation or decision addressed to another person, is of direct and individual concern to the former'.

- 44 Since it is common ground that the contested decision is not addressed to the applicants, it is appropriate to examine whether that decision is of direct or individual concern to them.

- 45 As regards direct concern to the applicants, it must be recalled that that condition requires in this case that the contested decision must directly affect their legal situation and leave no discretion to the addressees entrusted with the task of implementing it, such implementation being purely automatic and resulting from Community rules without the application of other intermediate rules (see Case

C-386/96 P *Dreyfus v Commission* [1998] ECR I-2309, paragraph 43, and the case-law cited therein, and Joined Cases T-172/98 and T-175/98 to T-177/98 *Salamander and Others v Parliament and Council* [2000] ECR II-2487, paragraph 52).

<sup>46</sup> This means that, where a Community measure is addressed to a Member State by an institution, if the action to be taken by the Member State to implement that measure is automatic or is, in one way or another, a foregone conclusion, it is of direct concern to any person affected by that action. If, on the other hand, the measure leaves the Member State free to act or not to act, or does not require it to act in a certain way, it is the Member State's action or inaction which is of direct concern to the person affected, and not the measure itself (see, to that effect, the order of the Court of First Instance in Case T-223/01 *Japan Tobacco and JT International v Parliament and Council* [2002] ECR II-3259, paragraph 46).

<sup>47</sup> The Court considers that it cannot be held that the contested decision — which designates, as sites of Community importance, areas of Germany in which the applicants own land — produces, by itself, effects on the applicants' legal situation. The contested decision contains no provision as regards the system of protection of sites of Community importance, such as conservation measures or authorisation procedures. Thus, it affects neither the rights or obligations of the land owners nor the exercise of those rights. Contrary to the applicants' argument, the inclusion of those sites in the list of sites of Community importance imposes no obligation whatsoever on economic operators or private persons.

<sup>48</sup> Article 4(4) of the habitats directive states that once a site of Community importance has been adopted by the Commission, the Member State concerned is to designate that site as a 'special area of conservation' within six years at most. In that regard, Article 6(1) of the habitats directive states that the Member States are to establish the necessary conservation measures for special areas of conservation, the aim being to meet the ecological requirements of the natural habitat types and species present on the sites.

- 49 Article 4(5) of the habitats directive states also that, as soon as a site is placed on the list of sites of Community importance, it is to be subject to the provisions of Article 6(2) to (4).
- 50 Thus, Article 6(2) of the habitats directive provides that the Member States are to take appropriate steps to avoid, in the special areas of conservation, the deterioration of natural habitats and the habitats of species as well as disturbance of the species for which the areas have been designated, in so far as such disturbance could be significant in relation to the objectives of that directive.
- 51 Likewise, Article 6(3) of the habitats directive provides that any plan or project not directly connected with or necessary for the management of the site but likely to have a significant effect thereon is to undergo an appropriate assessment of its implications for the site on the basis of the site's conservation objectives. In the light of the conclusions of the assessment of those implications for the site, the competent national authorities are to agree to the plan or project only after ascertaining that it would not adversely affect the integrity of the site concerned. In that regard, Article 6(4) of the habitats directive provides that, if such a plan or project must nevertheless be carried out for imperative reasons of overriding public interest, the Member State is to take all compensatory measures necessary to ensure the overall coherence of the Natura 2000 network.
- 52 On perusal of those obligations, which bind the Member States concerned once sites of Community importance have been designated by the contested decision, it must be held that none of those obligations applies directly to the applicants. All those obligations necessitate a measure on the part of the Member State concerned, in order to specify how it intends to implement the obligation in question, whether it relates to necessary conservation measures (Article 6(1) of the habitats directive), steps appropriate to avoid deterioration of the site (Article 6(2) of the habitats directive), or the agreement to be given by the competent national authorities to a project likely to have a significant effect on it (Article 6(3) and (4) of the habitats directive).



- 53 It follows therefore from the habitats directive, on the basis of which the contested decision was adopted, that it is binding on the Member State as to the result to be achieved, whilst the choice of the conservation measures to be undertaken and the authorisation procedures to be followed is left to the competent national authorities. That conclusion cannot be undermined by the fact that the discretion thus conferred on the Member States must be exercised in accordance with the aims of the habitats directive.
- 54 It follows from all the foregoing that the applicants are not directly concerned by the contested decision, within the meaning of the fourth paragraph of Article 230 EC and, therefore, that the action must be dismissed as inadmissible, without the necessity of broaching the question whether the applicants are individually concerned by the contested decision.
- 55 However, whilst they cannot apply for the annulment of the contested decision, the applicants may still challenge the measures adopted in implementation of Article 6 of the habitats directive which affect them and, in that context, they retain the possibility of relying on its illegality before the national courts, adjudicating in accordance with Article 234 EC (Case C-70/97 P *Kruidvat v Commission* [1998] ECR I-7183, paragraphs 48 and 49, and the order of the Court of First Instance in Case T-45/00 *Conseil national des professions de l'automobile and Others v Commission* [2000] ECR II-2927, paragraph 26).

## Costs

- 56 Under Article 87(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 applicants have been unsuccessful, and the Commission has applied for costs, the applicants must be ordered to pay the Commission's costs.

57 Under the first subparagraph of Article 87(4) of the Rules of Procedure, Member States which intervene must bear their own costs. In the present case, the Republic of Finland must therefore be ordered to bear its own costs.

On those grounds,

THE COURT OF FIRST INSTANCE (First Chamber)

hereby orders:

- 1. The action is dismissed as inadmissible.**
- 2. The applicants shall bear their own costs and pay those incurred by the Commission.**
- 3. The Republic of Finland shall bear its own costs.**

Luxembourg, 22 June 2006.

E. Coulon

Registrar

R. García-Valdecasas

President