



# WORKSHOP ON PRINCIPLES

An Cliquet – ERA Course judges, 29 October 2020

Actual rulings



# Case 1



# Preventive principle

- Para 26: Article 12(1)(a) and (d) of the Habitats Directive requires the Member States to take the requisite measures to establish a system of strict protection for the animal species listed in Annex IV(a) to that directive in their natural range, prohibiting all forms of deliberate capture or killing of specimens of these species in the wild and deterioration or destruction of breeding sites or resting places.
- Para 27: In order to comply with that provision, the Member States must not only adopt a comprehensive legislative framework but also implement concrete and specific protection measures. Similarly, the system of strict protection presupposes the adoption of coherent and coordinated measures of a preventive nature. Such a system of strict protection must therefore enable the actual avoidance of deliberate capture or killing in the wild, and of deterioration or destruction of breeding sites or resting places, of the animal species listed in Annex IV(a) to the Habitats Directive.

# Precautionary principle

- Para 66: In that context, it must also be noted that, in accordance with the precautionary principle enshrined in Article 191(2) TFEU, if, after examining the best scientific data available, there remains uncertainty as to whether or not a derogation will be detrimental to the maintenance or restoration of populations of an endangered species at a favourable conservation status, the Member State must refrain from granting or implementing that derogation.
- Para 67: It is therefore for the referring court to determine whether the Agency has established, on the basis of scientific data, that the territorial and quantitative limits in respect of the derogation permits at issue in the main proceedings are sufficient to ensure that those derogations will not be detrimental to the maintenance of the population of the concerned species at a favourable conservation status in its natural range.

# Precautionary principle

- Para 68: Secondly, as regards the effect of an unfavourable conservation status of a species on the possibility of authorising derogations under Article 16(1) of the Habitats Directive, the Court has already held that the grant of such derogations remains possible by way of exception where it is duly established that they are not such as to worsen the unfavourable conservation status of those populations or to prevent their restoration at a favourable conservation status. According to the Court, it is possible that the killing of a limited number of specimens may have no effect on the objective envisaged in Article 16(1) of the Habitats Directive, which consists in maintaining the wolf population at a favourable conservation status in its natural range. Such a derogation would therefore be neutral for the species concerned (judgment of 14 June 2007, Commission v Finland, C-342/05, EU:C:2007:341, paragraph 29).
- Para 69: However, it must be noted that the grant of such derogations by way of exception must be assessed also in the light of the precautionary principle, as referred to in paragraph 66 of the present judgment.



## Case 2

# Sustainable development

- Para 50: The Republic of Poland maintains that, in reality, the active forest management operations at issue are conservation measures in keeping with the sustainable management of forests, which therefore correspond to those carried out in other Member States. Furthermore, they are limited to one part of the Natura 2000 Puszcza Białowieska site and do not affect the area that is strictly protected.

# Preventive principle

- Para 35: ...according to the Commission, the active forest management operations at issue contribute to the degradation and destruction of the habitat of the saproxylic beetle populations ...and therefore to the loss of specimens, which is an infringement of Article 12(1)(a) and (d) of the Habitats Directive.
- Para 36: ... the same is also true for certain bird species referred to in Annex I to the Birds Directive. Not only do the active forest management operations at issue fail to prevent either the deliberate destruction of, or damage to, the nests and eggs of the relevant birds, or the disturbance of those birds, but they may even cause such destruction, damage or disturbance, in particular during the breeding period, which is contrary to the provisions of Article 5(b) and (d) of that directive.

# Precautionary principle

- Application for interim measures is justified:
  - ▣ Para 42: It follows that, taking account also of the precautionary principle, which is one of the foundations of the high level of protection aimed at by EU policy on the environment, as provided for in the first paragraph of Article 191(2) TFEU, and in the light of which EU law on environmental protection must be interpreted, it must be held that the action in the main proceedings cannot be considered prima facie to be without reasonable substance.

# Precautionary principle

- Urgency for taking interim measures:
  - ▣ Para 59: Such consequences are likely to constitute serious and irreparable damage for the interests of the European Union and for its common heritage. Indeed, once it has occurred, the damage caused by the felling and removal of the old trees and deadwood, including standing trees that are dying, would be impossible to rectify subsequently, should the Commission's allegations concerning Poland's failure to fulfil obligations be established, due to the obvious fact that, as the Commission rightly submits, it would be impossible to restore the areas affected by such operations to their former state. In addition, the seriousness of the damage alleged by the Commission is demonstrated by the fact that those operations, in view also of their scale and intensity, risk causing, if they are pursued, the irreversible transformation of a significant area of a natural forest into a harvested forest, risking the loss of the habitats of rare species, including a number of birds and endangered beetles.

# Precautionary principle

- ▣ Para 60: Furthermore, as has been recalled in paragraph 42 of this order, EU law on the protection of the environment must be interpreted in the light of the precautionary principle.
- ▣ Para 61: given the prima facie lack of scientific information excluding beyond all reasonable doubt that the active forest management operations at issue have damaging and irreversible effects on the protected habitats of the Natura 2000 Puszcza Białowieska site referred to in the Commission's action, it must be held that the urgency of the interim measures requested by the Commission has been established.

# Precautionary principle

- Weighing up of interests:
  - ▣ Para 63: According to the Commission, bearing in mind, in particular, the precautionary principle, the public interest of maintaining a favourable conservation status for the natural habitats and species of the natural forests of the Natura 2000 Puszcza Białowieska site outweighs the Republic of Poland's interest in fighting the spruce bark beetle.