

Case C-79/03

Commission of the European Communities

v

Kingdom of Spain

(Failure of a Member State to fulfil obligations — Directive 79/409/EEC — Conservation of wild birds — Hunting using lured twigs)

Opinion of Advocate General Geelhoed delivered on 9 September 2004 . . . I - 11621

Judgment of the Court (Second Chamber), 9 December 2004 I - 11632

Summary of the judgment

1. *Environment — Conservation of wild birds — Directive 79/409 — Implementation by the Member States — Derogations from the prohibition on killing or capturing protected species — Prevention of serious damage to crops — Condition — Lack of satisfactory alternative solution*

(Council Directive 79/409, Art. 9(1)(a))

2. *Environment — Conservation of wild birds — Directive 79/409 — Implementation by the Member States — Derogations from the prohibition on killing or capturing protected species — Condition — Capture in small numbers — Criteria*
(Council Directive 79/409, Art. 9(1)(c))

1. A derogation under Article 8 of Directive 79/409 on the conservation of wild birds, which prohibits the use of all means, arrangements or methods used for large-scale or non-selective capture or hunting, may, according to Article 9(1) of the directive, be made only where there is no other satisfactory solution and for reasons exhaustively listed in Article 9(1)(a) and (c), including serious damage to crops.

(see para. 24)

2. In order to assess whether the derogation granted by a Member State under Article 9(1)(c) of Directive 79/409 on the conservation of wild birds fulfils the

condition that the capture of the birds in question should be carried out in small numbers, the Court may, in the absence before the Court of any element of scientific proof to the contrary, use as a basis of reference the opinion of the ORNIS committee, the Committee for the Adaptation to Technical and Scientific Progress, instituted under Article 16 of the Directive, by means of the acknowledged scientific value of those opinions. That applies to the opinion proposing the criterion of small numbers, notwithstanding the fact that it is not legally binding on the Member States.

(see para. 41)