



Press and Information

Court of Justice of the European Union

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Judgment in Case C-900/19

One Voice and Ligue pour la protection des oiseaux v Ministre de la
Transition écologique et solidaire

A Member State may not authorise a method of capture of birds leading to by-catch where that by-catch is likely to cause harm other than negligible harm to the species concerned

The fact that a method of capture of birds, such as the method of hunting using limes, is traditional is not, in itself, sufficient to establish that another satisfactory solution cannot be used instead

The associations One Voice and the Ligue pour la protection des oiseaux (League for the Protection of Birds) oppose the use of limes for the purpose of capturing birds. They have challenged, before the Conseil d'État (Council of State, France), the legislation authorising the use of limes in certain French departments.¹ In support of their actions, the two associations have alleged infringement of provisions of the Birds Directive² and, in particular, Article 9 thereof, which lays down the requirements and conditions under which the competent authorities may derogate, inter alia, from the prohibition of hunting using limes, which is laid down in Article 8 and in point (a) of Annex IV to that directive.

In those circumstances, the Conseil d'État (Council of State) has referred questions to the Court of Justice about the interpretation of those provisions of the Birds Directive. In its judgment, the Court provides clarification on the possibility for the competent authorities to derogate from the prohibition, laid down in Article 8 of that directive, of certain methods of capture of protected birds in the context of hunting activities.

Findings of the Court

In the first place, the Court holds that **Article 9(1) and (2) of the Birds Directive must be interpreted as meaning that the fact that a method of capture of birds is traditional is not, in itself, sufficient to establish that another satisfactory solution, within the meaning of that provision, cannot be substituted for that method.**

In its judgment, it notes, first of all, that, when applying the derogating provisions, the Member States are required to ensure that all action affecting protected species is authorised solely on the basis of decisions containing a clear and sufficient statement of reasons which refers to the reasons, conditions and requirements laid down in Article 9(1) and (2) of the Birds Directive. In that regard, it is stated that national legislation making use of a derogation does not fulfil the conditions relating to the obligation to state reasons where it merely states that there is no other satisfactory solution, that statement not being supported by a detailed statement of reasons based on the best relevant scientific knowledge.

Next, the Court notes that, **although traditional methods of hunting may constitute 'judicious use' authorised by the Birds Directive, the preservation of traditional activities cannot,**

¹ That legislation concerns five decrees of 24 September 2018 on the use of limes for the capture of thrushes and blackbirds intended for use as decoys during hunting seasons in certain French departments (JORF of 27 September 2018, texts Nos 10 to 13 and 15) and a decree of 17 August 1989 on the same subject matter (JORF of 13 September 1989, p. 11560).

² 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).

however, constitute an autonomous derogation from the system of protection established by that directive.

Lastly, the Court notes that, when determining that there are no other satisfactory solutions, the competent authority must compare the various solutions that fulfil the conditions of the derogation in order to determine the solution that appears to be the most satisfactory. For that purpose, since, in formulating and implementing the European Union's policies in certain areas, the European Union and the Member States are, pursuant to Article 13 TFEU, to pay full regard to the welfare requirements of animals, the satisfactory nature of the alternative solutions must be assessed in the light of the reasonable options and the best available techniques. The Court points out that such solutions appear to exist. It has already held that the breeding and reproduction of protected species in captivity may, if they prove to be possible, constitute another satisfactory solution and that the transport of birds which have been lawfully captured or kept also constitutes judicious use. In that regard, the fact that the breeding and reproduction of the species concerned in captivity are not yet feasible on a large scale by reason of the national legislation is not, in itself, capable of calling into question the relevance of those solutions.

In the second place, the Court holds that **Article 9(1)(c) of the Birds Directive must be interpreted as precluding national legislation which authorises, by way of derogation from Article 8 of that directive, a method of capture leading to by-catch where that by-catch, even in small quantities and for a limited period, is likely to cause harm other than negligible harm to the non-target species captured.**

The Court notes that the Member States may derogate from the prohibition of certain methods of hunting, provided, inter alia, that those methods permit the capture of certain birds on a selective basis. In that regard, it states that, for the purpose of assessing the selectivity of a method, it is necessary to consider not only the details of that method and the size of the catch that it entails for the non-target birds, but also its possible consequences for the species captured in terms of the harm caused to the birds captured.

Accordingly, in the context of a non-lethal method of capture leading to by-catch, the condition of selectivity cannot be satisfied unless that by-catch is limited in size, that is to say, it concerns only a very small number of specimens captured accidentally for a limited period, and can be released without sustaining harm other than negligible harm. However, the Court states that **it is highly likely, subject to the findings ultimately made by the Conseil d'État (Council of State), that, despite being cleaned, the birds captured sustain irreparable harm, since limes are capable, by their very nature, of damaging the feathers of any bird captured.**

NOTE: A reference for a preliminary ruling allows the courts and tribunals of the Member States, in disputes which have been brought before them, to refer questions to the Court of Justice about the interpretation of European Union law or the validity of a European Union act. The Court of Justice does not decide the dispute itself. It is for the national court or tribunal to dispose of the case in accordance with the Court's decision, which is similarly binding on other national courts or tribunals before which a similar issue is raised.

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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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