JUDGMENT OF THE COURT (Second Chamber)

23 April 2009 (*)

(Appeals – Conservation of natural habitats – List, adopted by a Commission decision, of sites of Community importance for the Boreal biogeographical region – Admissibility of an action for annulment brought by natural or legal persons against that decision)

In Case C-362/06 P,

APPEAL under Article 56 of the Statute of the Court of Justice, lodged on 4 September 2006,

Markku Sahlstedt and Others, represented by K. Marttinen, asianajaja,

applicant,

the other parties to the proceedings being:

Commission of the European Communities, represented by M. Huttunen and M. van Beek, acting as Agents, with an address for service in Luxembourg,

defendant at first instance,

supported by:

Kingdom of Spain, represented by F. Díez Moreno, acting as Agent, with an address for service in Luxembourg,

intervener in the appeal,

Republic of Finland,

intervener at first instance,

THE COURT (Second Chamber),

composed of K. Schiemann, acting for the President of the Second Chamber, J. Makarczyk, P. Kūris, L. Bay Larsen (Rapporteur) and C. Toader, Judges,

Advocate General: Y. Bot,

Registrar: K. Sztranc-Sławiczek, Administrator,

having regard to the written procedure and further to the hearing on 28 February 2008,

after hearing the Opinion of the Advocate General at the sitting on 23 October 2008,

gives the following

Judgment

1 By their appeal, Mr Sahlstedt and Others ('the appellants') request the Court to set aside the order in Case T-150/05 *Sahlstedt and Others* v *Commission* [2006] ECR II-1851 ('the order under appeal') by which the Court of First Instance dismissed their action for annulment of Commission Decision 2005/101/EC of 13 January 2005 adopting, pursuant to Council Directive 92/43/EEC, the list of sites of Community importance for the Boreal biogeographical region (OJ 2005 L 40, p. 1; 'the contested decision').

Legal context

2 According to the sixth recital in the preamble to Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora (OJ 1992 L 206, p. 7; '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.

3 Article 4 of the Habitats Directive provides:

‘1. On the basis of the criteria set out in Annex III (Stage 1) and relevant scientific information, each Member State shall 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. For animal species ranging over wide areas these sites shall correspond to the places within the natural range of such species which present the physical or biological factors essential to their life and reproduction…

The list shall be transmitted to the Commission, within three years of the notification of this Directive, together with information on each site. That information shall include a map of the site, its name, location, extent and the data resulting from application of the criteria specified in Annex III (Stage 1) provided in a format established by the Commission in accordance with the procedure laid down in Article 21.

2. On the basis of the criteria set out in Annex III (Stage 2) and in the framework both of each of the five biogeographical regions referred to in Article 1(c)(iii) and of the whole of the territory referred to in Article 2(1), the Commission shall establish, in agreement with each Member State, a draft list of sites of Community importance drawn from the Member States’ lists identifying those which host one or more priority natural habitat types or priority species.

…

The list of sites selected as sites of Community importance, identifying those which host one or more priority natural habitat types or priority species, shall be adopted by the Commission in accordance with the procedure laid down in Article 21.

3. The list referred to in paragraph 2 shall be established within six years of the notification of this Directive.

4. Once a site of Community importance has been adopted in accordance with the procedure laid down in paragraph 2, the Member State concerned shall 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.

5. As soon as a site is placed on the list referred to in the third subparagraph of paragraph 2 it shall be subject to Article 6(2), (3) and (4).’

4 Article 6 of the Directive is worded as follows:

‘…

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.’

Background to the dispute

5 By the contested decision, the Commission adopted the list of sites of Community importance for the Boreal biogeographical region.

6 Some of the land covered by the sites listed in that decision belongs to private persons; those landowners include all the appellants, with the exception of Maa- ja metsätaloustuottajain keskusliitto MTK ry (‘MTK’), an association of approximately 163 000 farmers and foresters.

The procedure before the Court of First Instance and the order under appeal

7 By application lodged at the Registry of the Court of First Instance on 18 April 2005, the appellants brought the action which gave rise to the order under appeal.

8 By document lodged at the Registry of the Court of First Instance on 5 July 2005, the Commission raised an objection of inadmissibility under Article 114(1) of the Rules of Procedure of the Court of First Instance.

9 By the order under appeal, the Court of First Instance dismissed the action as inadmissible on the ground that the contested decision is not addressed to the appellants and is not of direct concern to them.

10 In paragraph 54 of the order under appeal, the Court of First Instance considered that the contested decision, which designates areas of Finland as sites of Community importance, does not produce, by itself, effects on the legal situation of the appellants, who own land in those areas. According to the Court, since the decision contains no provision regarding the system for protecting sites of Community importance – such as conservation measures or authorisation procedures to be followed – it affects neither the landowners' rights and obligations nor the exercise of those rights. The Court held that, contrary to the appellants' argument, the inclusion of those areas in the list of sites of Community importance imposes no obligation whatsoever on economic operators or private persons.

11 It emerges from paragraph 59 of the order under appeal that, in the view of the Court of First Instance, none of the obligations referred to in Article 6(1) to (4) of the Habitats Directive applies directly to the appellants. Rather, all of 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), to steps appropriate to avoid deterioration of the site (Article 6(2) of that directive), or to the agreement to be given by the competent national authorities to a project likely to have a significant effect on a site (Article 6(3) and (4) of that directive).

12 In paragraph 61 of the order under appeal, the Court of First Instance went on to hold that, in the same way as the individual appellants, the members of MTK cannot be regarded as directly concerned by the contested decision and that MTK has not demonstrated that it has an interest of its own in pursuing the action, such as a negotiating position affected by the contested decision.

13 Finally, in paragraph 62 of the order under appeal, the Court of First Instance held that since the appellants were not directly concerned by the contested decision, there was no need to rule on the question whether they were individually concerned by that decision.

14 However, the Court of First Instance stated in paragraph 63 of the order under appeal that, whilst the appellants are not entitled to apply for the annulment of the contested decision, they 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 pleading before the national courts, adjudicating in accordance with Article 234 EC, that the contested decision is illegal.

Forms of order sought

15 By their appeal, the appellants request the Court to set aside the order under appeal and to annul the contested decision. They also claim that the Commission should be ordered to pay the costs.

16 The Commission asks the Court to dismiss the appeal in its entirety and to order the appellants to pay the costs.

17 The Kingdom of Spain also contends that the appeal should be dismissed.

The appeal

18 In their appeal, the appellants rely on three pleas in law, alleging (i) failure to state adequate reasons for the order under appeal; (ii) an error of law vitiating the assessment made by the Court of First Instance that they were not directly concerned by the contested decision; and (iii) disregard for the right to effective judicial protection.

Findings of the Court

19 As a preliminary point, it should be borne in mind that, under the fourth paragraph of Article 230 EC, any 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 a decision addressed to another person, is of 'direct and individual' concern to the former.

20 In the present case, it is common ground that the contested decision is not addressed to the appellants.

21 Although the Commission also contended that the appellants were not individually concerned by the contested decision, the Court of First Instance gave a ruling only on the question whether they were directly concerned by the decision.

22 It should be borne in mind that the rule laid down in the fourth paragraph of Article 230 EC that proceedings brought by a

natural or legal person against a decision addressed to another person are admissible only if the decision is of direct and individual concern to the former raises an absolute bar to proceeding which the Community judicature may consider at any time, even of its own motion (to that effect, see, inter alia, Case C-341/00 P *Conseil national des professions de l'automobile and Others* v *Commission* [2001] ECR I-5263, paragraph 32, and Case C-176/06 P *Stadtwerke Schwäbisch Hall and Others* v *Commission* [2007] ECR I-170, paragraph 18).

23 Thus, even supposing that the appellants could be regarded as directly concerned by the contested decision, they must also be individually concerned by the decision if their action against it is to be admissible.

24 As was pointed out in paragraph 46 of the order under appeal, the appellants argue that the contested decision is of individual concern, in particular, to all the landowners who own land within the sites on the list approved by the Commission and with regard to which the rule that deterioration is to be prevented will apply.

25 It is apparent from paragraphs 25, 31, 33 and 34 of the order under appeal that the Commission contended before the Court of First Instance that the appellants were not individually concerned, arguing, in particular, that the sites on the list adopted by the contested decision are defined exclusively on the basis of biological criteria; that it is not possible, on the basis of the contested decision or, at least, on the basis of the information which the Commission used in drawing it up, to identify the owners of the sites; and that those sites are of concern also to sections of society other than the landowners, such as construction companies, non-governmental organisations or other citizens.

26 It should be recalled that, according to settled case-law, persons other than those to whom a decision is addressed may claim to be individually concerned only if that decision affects them by reason of certain attributes which are peculiar to them or by reason of circumstances in which they are differentiated from all other persons and by virtue of those factors distinguishes them individually just as in the case of the person addressed by such a decision (see, inter alia, Case 25/62 *Plaumann* v *Commission* [1963] ECR 95, at 107, and Case C-78/03 P *Commission* v *Aktionsgemeinschaft Recht und Eigentum* [2005] ECR I-10737, paragraph 33).

27 A decision such as the contested decision falls under Article 4 of the Habitats Directive, which sets up a procedure for classifying natural sites as special areas of conservation ('SACs'), which is intended in particular – as is clear from Article 3(2) of that directive – to permit the establishment of a coherent European ecological network of SACs to be known as 'Natura 2000', composed of sites hosting the natural habitat types and habitats of the species listed in Annex I and Annex II to the directive respectively, to enable them to be maintained or, where appropriate, restored at a favourable conservation status in their range (see, to that effect, Case C-317/98 *First Corporate Shipping* [2000] ECR I-9235, paragraphs 19 and 20).

28 Thus, the contested decision, which concerns a number of areas of land which are classified as sites of Community importance in order to enable the establishment of the Natura 2000 network, is, vis-à-vis any person concerned, of general application inasmuch as it applies to all economic operators who, in whatever capacity, carry on or are likely to carry on activities in the areas concerned which could jeopardise the conservation objectives of the Habitats Directive.

29 It should be borne in mind, however, that the Court has repeatedly held that the fact that a provision is, by its nature and scope, a provision of general application inasmuch as it applies to the economic operators concerned in general, does not of itself prevent that provision from being of individual concern to some (see, to that effect, Case C-309/89 *Codorniu* [1994] ECR I-1853, paragraph 19, and Joined Cases C-182/03 and C-217/03 *Belgium and Forum187* v *Commission* [2006] ECR I-5479, paragraph 58).

30 The Court has held in that regard that where the decision affects a group of persons who were identified or identifiable when that measure was adopted by reason of criteria specific to the members of the group, those persons may be individually concerned by that measure inasmuch as they form part of a limited class of economic operators (Case C-125/06 P *Commission* v *Infront WM* [2008] ECR I-1451, paragraph 71 and the case-law cited therein).

31 However, the fact that it is possible to determine more or less precisely the number, or even the identity, of the persons to whom a measure applies by no means implies that that measure must be regarded as being of individual concern to those persons where it is established that that application takes effect by virtue of an objective legal or factual situation defined by the measure in question (see, in particular, Case C-451/98 *Antillean Rice Mills* v *Council* [2001] ECR I-8949, paragraph 52; the order in Case C-96/01 P *Galileo and Galileo International* v *Council* [2002] ECR I-4025, paragraph 38; and the order in Case C-503/07 P *Saint-Gobain Glass Deutschland* v *Commission* [2008] ECR I-2217, paragraph 70 and the case-law cited therein).

32 In the present case, however, with the exception of MTK, it appears that the contested decision is of concern to the appellants only in so far as they have rights in the lands covered by some of the sites of Community interest adopted by the Commission with a view to enabling the establishment of a coherent European ecological network of SACs, that is to say, by virtue of an objective legal or factual situation defined by the measure in question and not in accordance with criteria specific to the category of landowners.

33 Moreover, since the contested decision was not adopted in the light of the specific situation of the landowners, it cannot be regarded as a group of individual decisions addressed to each landowner.

34 It follows that, with the exception of MTK, the appellants cannot be regarded as individually concerned by the contested

decision for the purposes of the fourth paragraph of Article 230 EC.

35 With regard to MTK, it should be borne in mind that the defence of the general and collective interests of a category of persons is not sufficient to establish the admissibility of an action for annulment brought by an association. In the absence of special circumstances, such as the role which it could have played in a procedure leading to the adoption of the measure in question, such an association is not entitled to bring an action for annulment on behalf of its members where the latter cannot do so individually (see, in particular, the order in Case C-409/96 P *Sveriges Betodlares and Henrikson* v *Commission* [1997] ECR I-7531, paragraph 45).

36 As has been noted in paragraph 34 of the present judgment, natural or legal persons who own land within the sites of Community interest adopted by the contested decision are not individually concerned by that decision. Accordingly, even supposing that MTK includes such persons among its members, it cannot, of itself, be regarded as individually concerned by that decision.

37 It follows from the foregoing that the appellants are not individually concerned by the contested decision.

38 In consequence, the first two pleas – alleging, respectively, failure to state adequate reasons for the order under appeal and an error of law vitiating the assessment made by the Court of First Instance to the effect that the appellants were not directly concerned by the contested decision – must be rejected as irrelevant.

39 The third plea in law, alleging disregard for the right to effective judicial protection, must therefore be considered.

Arguments of the parties

40 By their third plea, the appellants claim that if they are refused the right to bring an action, they will have no way of challenging the decision by which the area in which their land is located was included in the Natura 2000 network and restrictions were imposed in the form of the prohibition on allowing land to deteriorate and the obligation to undergo an assessment.

41 The Kingdom of Spain contends that there is no basis for the appellants' assertion that they would have no way of defending themselves. Classification as an SAC can be challenged before the national courts.

Findings of the Court

42 Contrary to the appellants' argument, the finding made by the Court of First Instance that the pleas in support of their action for annulment of the contested decision had to be rejected as inadmissible does not constitute a denial of justice.

43 In that regard, it is sufficient to bear in mind – as can be seen, essentially, from paragraph 63 of the order under appeal – that individuals are entitled to effective judicial protection of the rights they derive from the Community legal order. The judicial protection of natural or legal persons who are unable, by reason of the conditions for admissibility laid down in the fourth paragraph of Article 230 EC, to challenge directly Community measures of the same kind as the contested decision must be guaranteed effectively by a right of action before the national courts. Those courts are under a duty, in accordance with the principle of cooperation in good faith laid down by Article 10 EC, so far as possible, to interpret and apply national procedural rules governing the exercise of rights of action in a way that enables those persons to challenge before the courts the legality of any decision or other national measure relative to the application to them of a Community act such as that at issue, by pleading the illegality of such an act and by asking those courts to make a reference to the Court of Justice for a preliminary ruling on legality (Case C-15/06 P *Regione Siciliana* v *Commission* [2007] ECR I-2591, paragraph 39).

44 Accordingly, the third plea in law must also be rejected.

45 It follows from the foregoing considerations that the appeal must be dismissed in its entirety.

Costs

46 Under the first subparagraph of Article 69(2) of the Rules of Procedure, which applies to appeal proceedings by virtue of Article 118 thereof, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings.

47 Since the Commission has applied for an order for costs against the appellants and they have been unsuccessful, they must be ordered to pay the costs.

48 Pursuant to the first subparagraph of Article 69(4) of the Rules of Procedure, also applicable to appeal proceedings by virtue of Article 118 of those Rules, the Member States which intervene in the proceedings are to bear their own costs. Accordingly, the Kingdom of Spain and the Republic of Finland must be ordered to bear their own costs.

On those grounds, the Court (Second Chamber) hereby:

1. **Dismisses the appeal.**

2. **Orders Mr Sahlstedt and Others to pay the costs;**

3. **Orders the Kingdom of Spain and the Republic of Finland to bear their own costs.**

[Signatures]

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* Language of the case: Finnish.