

**Regina v. Secretary of State for the Environment (Respondent) *ex parte* Royal Society
for the Protection of Birds (Appellants)**

JUDGMENT

Die Jovis 13^o Martii 1997

Upon further consideration in the cause Regina against Secretary of State for the Environment *ex parte* the Royal Society for the Protection of Birds, That by an Order of this House of the 9th day of February 1995 the following questions were referred to the Court of Justice of the European Communities for a preliminary ruling pursuant to Article 177 of the Treaty establishing the European Economic Community:

1. Is a Member State entitled to take account of the considerations mentioned in Article 2 of Directive 79/409/EEC of 2nd April 1979 on the conservation of wild birds in classification of an area as a Special Protection Area and/or in defining the boundaries of such an area pursuant to Article 4(1) and/or 4(2) of that Directive?
2. If the answer to question 1 is "no", may a Member State nevertheless take account of Article 2 considerations in the classification process insofar as:
 - (a) they amount to a general interest which is superior to the general interest which is represented by the ecological objective of the Directive (i.e. the test which the European Court has laid down in e.g. *Commission v. Germany* ("Leybucht Dykes") Case 57/89 for derogation from the requirements of Article 4(4)); or
 - (b) they amount to imperative reasons of overriding public interest such as might be taken into account under Article 6(4) of Directive 92/43/EEC of 21st May 1992 on the conservation of natural habitats and of wild fauna and flora?:

That by a Judgment of the Court of Justice of the European Communities of the 11th day of July 1996 the following ruling was given in respect of the said questions:

- "1. Article 4(1) or (2) of Council Directive 79/409/EEC of 2 April 1979 on the conservation of wild birds is to be interpreted as meaning that a Member State is not authorized to take account of the economic requirements mentioned in Article 2 thereof when designating a Special Protection Area and defining its boundaries.

2. Article 4(1) or (2) of Directive 79/409 is to be interpreted as meaning that a Member State may not, when designating a Special Protection Area and defining its boundaries, take account of economic requirements as constituting a general interest superior to that represented by the ecological objective of that directive.
3. Article 4(1) or (2) of Directive 79/409 is to be interpreted as meaning that a Member State may not, when designating a Special Protection Area and defining its boundaries, take account of economic requirements which may constitute imperative reasons of overriding public interest of the kind referred to in Article 6(4) of Directive 92/43/EEC of 21 May 1992 on the conservation of the natural habitats of wild fauna and flora."

And due consideration had this day of what was offered on either side in this Cause and of the said Judgment of the Court of Justice of the European Communities of 11th day of July 1996:

It is *Ordered and Adjudged*, by the Lords Spiritual and Temporal in the Court of Parliament of Her Majesty the Queen assembled, That the Order of Her Majesty's Court of Appeal of the 18th day of August 1994 complained of in the said Appeal and the Order of the High Court of the 8th day of July 1994 be, and the same is hereby, **Set Aside** and that it is hereby *declared* that the decision of the Secretary of State for the Environment on the 15th day of December 1993 designating the Medway Estuary and Marshes as a Special Protection Area for birds but in defining its boundaries excluding an area known as Lappel Bank was unlawful by reason of the fact that the Secretary of State took into account economic requirements mentioned in Article 2 of Directive 79/409/EEC of the 2nd day of April 1979 on the conservation of wild birds; it is further *declared* that the Secretary of State had no discretion when designating the said Special Protection Area under Directive 79/409/EEC and defining its boundaries to take account of economic requirements which he may have considered constituted imperative reasons of overriding public interest of the kind referred to in Article 6(4) of Directive 92/43/EEC or constituted a general interest superior to the general interest represented by the ecological objective of Directive 79/409/EEC; And it is further *Ordered*, That the Respondent do pay or cause to be paid to the said Appellants the costs incurred by them in the Courts below and in this House, the amount of such last-mentioned costs to include the costs incurred in respect of the reference of the said Questions to the European Court of Justice pursuant to the Order of this House of the 9th day of February 1995, and to be certified by the Clerk of the Parliaments if not agreed between the parties.

Cler: Parliamentor: