

### Questions referred

1. Must Article 4a(1) of Framework Decision 2002/584/JHA <sup>(1)</sup>, as inserted by Council Framework Decision 2009/299/JHA <sup>(2)</sup>, be interpreted as precluding national judicial authorities, in the circumstances specified in that provision, from making the execution of a European arrest warrant conditional upon the conviction in question being open to review, in order to guarantee the rights of defence of the person requested under the warrant?
2. In the event of the first question being answered in the affirmative, is Article 4a(1) of Framework Decision 2002/584/JHA compatible with the requirements deriving from the right to an effective judicial remedy and to a fair trial, provided for in Article 47 of the Charter of Fundamental Rights of the European Union, and from the rights of defence guaranteed under Article 48(2) of the Charter?
3. In the event of the second question being answered in the affirmative, does Article 53, interpreted systematically in conjunction with the rights recognised under Articles 47 and 48 of the Charter, allow a Member State to make the surrender of a person convicted *in absentia* conditional upon the conviction being open to review in the requesting State, thus affording those rights a greater level of protection than that deriving from European Union law, in order to avoid an interpretation which restricts or adversely affects a fundamental right recognised by the Constitution of the first-mentioned Member State?

<sup>(1)</sup> Council Framework Decision 2002/584/JHA of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States (OJ 2002 L 190, p. 1).

<sup>(2)</sup> Council Framework Decision 2009/299/JHA of 26 February 2009 amending Framework Decisions 2002/584/JHA, 2005/214/JHA, 2006/783/JHA, 2008/909/JHA and 2008/947/JHA, thereby enhancing the procedural rights of persons and fostering the application of the principle of mutual recognition to decisions rendered in the absence of the person concerned at the trial (OJ 2009 L 81, p. 24).

### Action brought on 27 July 2011 — European Commission v Kingdom of Spain

(Case C-403/11)

(2011/C 290/09)

Language of the case: Spanish

#### Parties

*Applicant:* European Commission (represented by: G. Valero Jordana and I. Hadjiyiannis, Agents)

*Defendant:* Kingdom of Spain

#### Form of order sought

The Commission claims that the Court should:

- Declare that the Kingdom of Spain has failed to fulfil its obligations under Article 13(1), (2), (3) and (6) (with the exception of the river basin district of Catalonia), Article

14(1)(c) (with the exception of the river basin management plans for the river basin district of Catalonia, the Balearic Islands, Tenerife, Guadiana, Guadalquivir, Andalusian Mediterranean basin, Tinto-Odiel-Piedras, Guadalete-Barbate, Galicia-Costa, Miño-Sil, Duero, Cantábrico Occidental and Cantábrico Oriental), and Article 15(1) (with the exception of the river basin district of Catalonia) of Directive 2000/60/EC <sup>(1)</sup> of the European Parliament and of the Council of 23 October 2000 establishing a framework for Community action in the field of water policy ('the directive').

- Order the Kingdom of Spain to pay the costs.

#### Pleas in law and main arguments

Infringement of Articles 13 and 15 of the directive:

Since Spain has not adopted or published national river basin management plans (with the exception of the management plan for the river basin district of Catalonia), the Commission did not receive a copy of these plans either by 22 March 2010, the time-limit laid down in the directive, and has not received them to date. Consequently, the Commission considers that Spain has failed to fulfil its obligations under Article 15(1) of the directive (with the exception of the management plan for the river basin district of Catalonia).

Infringement of Article 14 of the directive:

With regard to Article 14(1)(c) of the framework directive, in conjunction with Article 13(6) of that directive, the Commission considers that, in addition to the river basin district of Catalonia whose plan has already been adopted, the public information and consultation process in relation to the draft river basin management plans has already begun in twelve other river basin districts: the Balearic Islands, Tenerife, Guadiana, Guadalquivir, Andalusian Mediterranean basin, Tinto-Odiel-Piedras, Guadalete-Barbate, Galicia-Costa, Miño-Sil, Duero, Cantábrico Occidental and Cantábrico Oriental.

The Commission concludes that, with the exception of those thirteen river basin districts, Spain has failed to fulfil its obligations under Article 14(1)(c) of the directive.

<sup>(1)</sup> OJ 2000 L 327, p. 1.

### Appeal brought on 1 August 2011 by Government of Gibraltar against the order of the General Court (Seventh Chamber) delivered on 24 May 2011 in Case T-176/09: Government of Gibraltar v European Commission

(Case C-407/11 P)

(2011/C 290/10)

Language of the case: English

#### Parties

*Appellant:* Government of Gibraltar (represented by: D. Vaughan QC, M. Llamas, Barrister)

*Other parties to the proceedings:* European Commission, United Kingdom of Great Britain and Northern Ireland, Kingdom of Spain

### Form of order sought

The applicant claims that the Court should:

- (a) set aside the Order of the General Court dated 24 May 2011 in Case T-176/09;
- (b) declare the Government's application in Case T-176/09 admissible;
- (c) refer the case back to the General Court for a decision on the Government's Application on the merits;
- (d) in the alternative to (b) and (c), refer the case back to the General Court with an order that the General Court now deals with any remaining issue of admissibility at the same time as its consideration of the merits of the case;
- (e) order the Commission and Spain to pay the Government's costs and expenses before the Court of Justice and in the proceedings before the General Court.

### Pleas in law and main arguments

The appellant contests the judgment of the General Court on the following grounds:

1. the General Court committed an infringement of European Union law by applying or misapplying the law on partial annulment and severance in the circumstances of this case in that this case is equivalent to rectification of a register of the extent of a property and not of true partial annulment or severance; parts of Site ES6120032 were clearly wrongly designated or clearly based on erroneous and misleading information given by Spain. The area covered by the Site should be rectified by appropriate and proportionate annulment;
2. the General Court committed an infringement of European Union law by finding that the partial annulment of Decision 2009/95 <sup>(1)</sup> in the way sought by the Government (1) would involve the Court redefining the geographical limits of Site ES6120032 and altering Site ES6120032 entirely and (2) would, therefore, alter the substance of Decision 2009/95 and would manifestly not be severable from the remainder of Decision 2009/95;
3. the General Court committed an infringement of European Union law by holding that there was no evidence that a new delimitation of Site ES6120032 in the way sought by the Government would satisfy the criteria laid down in Annex III to the Habitats Directive for classification as a Site of Community Importance when there was abundant evidence in fact and in law that it would so qualify and the contrary had never been suggested by any of the parties hereto, and in so finding the General Court

distorted the evidence and/or made a wrong legal characterisation of the facts and drew the wrong legal conclusions from them and/or made a manifest error in its assessment of the facts and furthermore applied the wrong legal test and, in the circumstances, adopted inappropriate procedures;

4. further or in the alternative to the above, the General Court committed a breach of procedure that adversely affected the interests of the Government by acting in breach of the rights of the defence in that it did not allow the Government an opportunity to comment on documents submitted by the other parties to the case and by not showing to the Government one document lodged by Spain that was important to the issue on which the Court would base its Order and by adopting, in the circumstances, inappropriate procedures;
5. further or in the alternative to the above, the General Court committed a breach of procedure that adversely affected the interests of the Government by failing to provide any reasoning to support its finding that there was no evidence that a new delimitation of Site ES6120032 as contended by the Government would satisfy the criteria laid down in Annex HI to the Habitats Directive for classification as a site of Community importance and/or for disregarding or rejecting the substantive evidence to the contrary.

<sup>(1)</sup> 2009/95/EC: Commission Decision of 12 December 2008 adopting, pursuant to Council Directive 92/43/EEC, a second updated list of sites of Community importance for the Mediterranean biogeographical region (notified under document number C(2008) 8049) OJ L 43, p. 393

**Reference for a preliminary ruling from the Audiencia Provincial de Barcelona (Spain) lodged on 1 August 2011**  
**— Pedro Espada Sánchez and Others v Iberia Líneas Aéreas de España S.A.**

(Case C-410/11)

(2011/C 290/11)

*Language of the case: Spanish*

### Referring court

Audiencia Provincial de Barcelona

### Parties to the main proceedings

*Applicants:* Pedro Espada Sánchez and Others

*Defendant:* Iberia Líneas Aéreas de España S.A.