

# CELEX: 61999J0510

**Judgment of the Court (Sixth Chamber) of 23 October 2001. - Criminal proceedings against Xavier Tridon. - Reference for a preliminary ruling: Tribunal de grande instance de Grenoble - France. - Wild fauna and flora - Endangered species - Application in the Community of the Washington Convention. - Case C-510/99.**

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## Keywords

*1. Environment - International trade in endangered species of wild fauna and flora - Species covered by Appendix I to the Washington Convention or Annex A to Regulation No 338/97 - General prohibition in the territory of a Member State of all commercial use of captive born and bred specimens - Whether permissible*

*(Council Regulations No 3626/82 and No 338/97, Annex A)*

*2. Environment - International trade in endangered species of wild fauna and flora - Species covered by Appendix II to the Washington Convention or Annex B to Regulation No 338/97 - Commercial use of specimens of those species - Whether permissible - Conditions - General prohibition in the territory of a Member State of all use of captive born and bred specimens of those species imported from other Member States - Not permissible - Condition*

*(EC Treaty, Art. 36 (now, after amendment, Art. 30 EC); Council Regulations No 3626/82, Arts 6(2) and 15, and No 338/97, Art. 8(5) and Annex B)*

## Summary

*1. As regards species covered by Appendix I to the Convention on international trade in endangered species of wild fauna and flora, concluded in Washington on 3 March 1973, Regulation No 3626/82 on the implementation in the Community of the Convention on international trade in endangered species of wild fauna and flora must be interpreted as not precluding legislation of a Member State which lays down a general prohibition in its territory of all commercial use of captive born and bred specimens.*

*As regards species covered by Annex A to Regulation No 338/97 on the protection of species of wild fauna and flora by regulating trade therein, that regulation must be interpreted as not precluding legislation of a Member State which lays down a general prohibition in its territory of all commercial use of captive born and bred specimens.*

*( see para. 41 and operative part 1 )*

*2. As regards species covered by Appendix II to the Convention on international trade in endangered species of wild fauna and flora, concluded in Washington on 3 March 1973, Regulation No 3626/82 on the implementation in the Community of the Convention on international trade in endangered species of wild fauna and flora does not prohibit the commercial use of those species, apart from the case referred to in Article 6(2) of that regulation where the specimens have been introduced contrary to Article 5 of the regulation, paragraph 1 of which prescribes inter alia that the introduction into the Community of those specimens is to be subject to presentation of an import permit or import certificate at the customs office at which the customs formalities are completed.*

*As regards species covered by Annex B to Regulation No 338/97 on the protection of species of wild fauna and flora by regulating trade therein, that regulation does not prohibit the commercial use of specimens of those species, provided that the conditions laid down in Article 8(5) are met, that is to say, it is proved to the satisfaction of the competent authority of the Member State concerned that such specimens were acquired and, if they originated outside the Community, were introduced into it, in accordance with the legislation in force for the conservation of wild fauna and flora.*

*Those regulations preclude legislation of a Member State imposing a general prohibition in its territory of all commercial use of captive born and bred specimens of those species, in so far as it applies to specimens imported from other Member States, if it is apparent that the objective of protection of the latter, as referred to in Article 15 of Regulation No 3626/82 or Article 36 of the EC Treaty (now, after amendment, Article 30 EC), may be achieved just as effectively by measures which are less restrictive of intra-Community trade.*

*( see para. 60 and operative part 2 )*

## ***Parties***

*In Case C-510/99,*

*REFERENCE to the Court under Article 234 EC by the Tribunal de grande instance de Grenoble (France) for a preliminary ruling in the criminal proceedings before that court against*

*Xavier Tridon,*

*third parties:*

*Fédération départementale des chasseurs de l'Isère*

*and*

*Fédération Rhône-Alpes de protection de la nature (Frapna), section Isère,*

*on the interpretation of Articles 30 and 36 of the EC Treaty (now, after amendment, Articles 28 EC and 30 EC), Council Regulation (EEC) No 3626/82 of 3 December 1982 on the implementation in the Community of the Convention on international trade in endangered species of wild fauna and flora (OJ 1982 L 384, p. 1), in particular Articles 6 and 15, Council Regulation (EC) No 338/97 of 9 December 1996 on the protection of species of wild fauna and flora by regulating trade therein (OJ 1997 L 61, p. 1) and the Convention on international trade in endangered species of wild fauna and flora concluded in Washington on 3 March 1973, in particular Articles VII and XIV,*

*THE COURT (Sixth Chamber),*

*composed of: F. Macken, President of the Chamber, N. Colneric, C. Gulmann (Rapporteur), J.-P. Puissochet and R. Schintgen, Judges,*

*Advocate General: C. Stix-Hackl,*

*Registrar: H.A. Rühl, Principal Administrator,*

*after considering the written observations submitted on behalf of:*

*- the Procureur de la République, by V. Escolano, deputy of the Procureur de la République at the Tribunal de grande instance de Grenoble,*

*- Mr Tridon, by M. Quatravaux, avocat,*

*- the French Government, by K. Rispal-Bellanger and D. Colas, acting as Agents,*

*- the Commission of the European Communities, by R.B. Wainwright, acting as Agent, assisted by H. Lehman, avocat,*

*having regard to the Report for the Hearing,*

*after hearing the oral observations of Mr Tridon, represented by M. Quatravaux, the French Government, represented by C. Bergeot, acting as Agent, and the Commission, represented by R.B. Wainwright, assisted by H. Lehman, at the hearing on 23 November 2000,*

*after hearing the Opinion of the Advocate General at the sitting on 6 February 2001,*

*gives the following*

*Judgment*

## **Grounds**

*1 By judgment of 15 November 1999, received at the Court on 28 December 1999, the Tribunal de grande instance de Grenoble (Regional Court, Grenoble) referred to the Court for a preliminary ruling under Article 234 EC two questions on the interpretation of Articles 30 and 36 of the EC Treaty (now, after amendment, Articles 28 EC and 30 EC), Council Regulation (EEC) No 3626/82 of 3 December 1982 on the implementation in the Community of the Convention on international trade in endangered species of wild fauna and flora (OJ 1982 L 384, p. 1), in particular Articles 6 and 15, Council Regulation (EC) No 338/97 of 9 December 1996 on the protection of species of wild fauna and flora by regulating trade therein (OJ 1997 L 61, p. 1) and the Convention on international trade in endangered species of wild fauna and flora (CITES) concluded in Washington on 3 March 1973, in particular Articles VII and XIV.*

*2 The questions were raised in criminal proceedings against Mr Tridon, of Champagnier (France), who is charged inter alia with having, in Champagnier between November 1995 and November 1997, sold by way of trade to partners or customers captive born and bred specimens of species of macaw occurring in the overseas département of Guyane (France), whose use for commercial purposes is prohibited throughout national territory by the Ministerial Decree of 15 May 1986 fixing protection measures for all or part of the national territory for birds occurring in the département of Guyane (JORF, 25 June 1986, p. 7884, hereinafter the Guyane decree).*

*Legal background*

*CITES*

*3 The object of CITES is to protect certain endangered species of wild fauna and flora by regulating international trade. It lays down different rules on protection for different species, which are divided into three categories, corresponding to the three appendices to the convention, according to how great the threat of extinction is for them.*

*4 Appendix I to CITES includes the most endangered species, with the strictest rules on protection. The species in Appendix II, which include those not necessarily now threatened with extinction, are subject to less strict rules on protection.*

*5 Article VII(4) of CITES provides that specimens of an animal species included in Appendix I bred in captivity for commercial purposes are to be deemed to be specimens of species included in Annex II.*

*6 Under Article XIV(1)(a), the provisions of CITES are in no way to affect the right of parties to adopt stricter domestic measures regarding the conditions for trade, taking possession or transport of specimens of species included in Appendices I, II and III, or the complete prohibition thereof.*

## *Community legislation*

*7 Article 1 of Regulation No 3626/82 states that CITES, as set out in Annex A to that regulation, is to apply throughout the Community under the conditions laid down in the regulation.*

*8 Under Article 6(1) of Regulation No 3626/82, the display to the public for commercial purposes and the sale, keeping for sale, offering for sale or transporting for sale of specimens of the species included in Appendix I to CITES is prohibited, subject to exemptions which may be granted by the Member States inter alia for captive-bred specimens of an animal species, account being taken of the objectives of that convention and the requirements of Council Directive 79/409/EEC of 2 April 1979 on the conservation of wild birds (OJ 1979 L 103, p. 1).*

*9 Article 6(2) of Regulation No 3626/82 provides that the prohibitions referred to in paragraph 1 are to also apply to specimens of the species included in Appendix II to CITES which are not covered by paragraph 1 if they were introduced in violation of Article 5 of that regulation, paragraph 1 of which prescribes inter alia that the introduction into the Community of those specimens is to be subject to presentation of an import permit or import certificate at the customs office at which the customs formalities are completed.*

*10 The first subparagraph of Article 15(1) of Regulation No 3626/82 reads as follows:*

*In respect of the species to which this Regulation applies, Member States may maintain or take stricter measures, providing that they comply with the Treaty, and in particular Article 36 thereof, for one or more of the following purposes:*

*(a) improvement of conditions of survival of living specimens in recipient countries;*

*(b) the conservation of native species;*

*(c) the conservation of a species or a population of a species in the country of origin.*

*11 Regulation No 338/97 replaced Regulation No 3626/82 and has been applicable since 1 June 1997. It was adopted with the aim of improving the protection of species of wild flora and fauna, taking into account the scientific knowledge acquired since the adoption of Regulation No 3626/82 and the current structure of trade.*

*12 Under Article 7(1)(a) of Regulation No 338/97, specimens of species listed in Annex A to that regulation that have been born and bred in captivity or artificially propagated are to be treated in accordance with the provisions applicable to specimens of species listed in Annex B, except where Article 8 applies.*

*13 Article 8(1) of the regulation prohibits the purchase, offer to purchase, acquisition for commercial purposes, display to the public for commercial purposes, use for commercial*

*gain and sale, keeping for sale, offering for sale or transporting for sale of specimens of the species listed in Annex A.*

*14 Article 8(3)(d) provides that, in accordance with the requirements of other Community legislation on the conservation of wild fauna and flora, exemption from the prohibitions referred to in Article 8(1) may be granted by issuance of a certificate to that effect by a management authority of the Member State in which the specimens are located, on a case-by-case basis, inter alia where the specimens are captive born and bred.*

*15 Article 8(4) provides that the Commission may define general derogations from the prohibitions referred to in Article 8(1) based on the conditions referred to in Article 8(3).*

*16 Article 8(5) of the regulation reads:*

*The prohibitions referred to in paragraph 1 shall also apply to specimens of the species listed in Annex B except where it can be proved to the satisfaction of the competent authority of the Member State concerned that such specimens were acquired and, if they originated outside the Community, were introduced into it, in accordance with the legislation in force for the conservation of wild fauna and flora.*

*17 Commission Regulation (EC) No 939/97 of 26 May 1997 laying down detailed rules concerning the implementation of Regulation No 338/97 (OJ 1997 L 140, p. 9) provides in Article 32:*

*The prohibitions of Article 8(1) of Regulation (EC) No 338/97 and the provision in Article 8(3) thereof, that exemptions therefrom shall be granted by the issuance of a certificate on a case-by-case basis, shall not apply to:*

*(a) live specimens of captive born and bred animals of the species listed in Annex VIII, and hybrids thereof, provided that specimens of annotated species are marked in accordance with Article 36(1) of this Regulation;*

*(b) live specimens of captive born and bred animals that are marked in accordance with Article 36(1) of this Regulation and accompanied by a certificate referred to in Article 20(3)(e) this Regulation, issued to the breeder by a competent management authority of a Member State;*

*...*

*National legislation*

*18 Article L.211-1 of the Code rural (Countryside Code) provides:*

*Where a specific scientific interest or the requirements of preserving the living heritage justify the conservation of species of wild animals or plants, the following shall be prohibited:*

*1. the destruction or removal of eggs or nests, the mutilation, destruction, capture or removal, intentional disturbance or preservation by taxidermy of animals of those species or, whether they are living or dead, the transport, door-to-door sale, use, keeping, offering for sale, sale or purchase thereof;*

...

*19 The Guyane decree, adopted in application inter alia of Article L.211-1 of the Code rural, prohibits, for the wild species it lists, which include certain species of macaw, the destruction or removal of eggs or nests, the destruction, mutilation, capture or removal or the preservation by taxidermy of birds or, whether they are living or dead, the transport, door-to-door sale, use, offering for sale, sale or purchase thereof.*

*20 Under Article L.215-1 of the Code rural, infringements of the provisions of Article L.211-1 of the code are punishable as criminal offences.*

*The main proceedings and the questions referred for a preliminary ruling*

*21 Mr Tridon operates a centre for the artificial incubation of parrot eggs in Champagnier. He is accused in the main proceedings of having transferred for consideration captive born and bred specimens of species of macaw whose use for commercial purposes is prohibited throughout national territory by the Guyane decree. As a defence to the prosecution brought against him, Mr Tridon submits that the provisions of the Code rural, in particular Article L.211-1 thereof, and the Guyane decree are incompatible both with CITES and with Articles 30 and 36 of the Treaty and Regulations No 3626/82 and No 338/97, which were adopted successively for the application of CITES in the Community.*

*22 In those circumstances, the Tribunal de grande instance de Grenoble stayed the proceedings and referred the following questions to the Court for a preliminary ruling:*

*1. In respect of the period before 1 June 1997, must the provisions of the Convention on international trade in endangered species of wild fauna and flora (CITES), in particular Articles VII and XIV thereof, Regulation (EEC) No 3626/82 of 3 December 1982, in particular Articles 6 and 15 thereof, and Articles 30 and 36 of the EC Treaty be interpreted as allowing a Member State to take or maintain domestic measures prohibiting at any time and in the whole territory of that State any commercial use of captive born and bred specimens of wild species occurring in the wild in all or part of the territory of that State?*

*2. With effect from 1 June 1997, must the provisions of the Convention on international trade in endangered species of wild fauna and flora (CITES), in particular Articles VII and XIV thereof, Council Regulation (EC) No 338/97 of 9 December 1996 on the protection of species of wild fauna and flora by regulating trade therein, and Articles 30 and 36 of the EC Treaty be interpreted as allowing a Member State to take or maintain domestic measures prohibiting at any time and in the whole territory of that State any*

*commercial use of captive born and bred specimens of wild species occurring in the wild in all or part of the territory of that State?*

*Preliminary observations*

*23 It may be observed, first, that under Article 1(1) of Regulation No 3626/82, CITES applies in the Community under the conditions laid down in that regulation, and that Regulation No 338/97, as stated in the second recital in its preamble, replaces Regulation No 3626/82.*

*24 Therefore, without there being any need to determine whether the Court has jurisdiction, in the context of the cooperation between it and the national courts under Article 234 EC, to rule on the interpretation of the provisions of CITES, such an interpretation is in any event unnecessary in the present case, since those provisions apply at Community level only via the two regulations cited in the preceding paragraph.*

*25 However, since Regulation No 3626/82 and Regulation No 338/97 both apply, as stated in the second paragraph of Article 1 in each case, in compliance with the objectives, principles and (in the case of Regulation No 338/97) provisions of CITES, the Court cannot disregard those elements, in so far as they have to be taken into account in order to interpret the provisions of the regulations.*

*26 It should be noted, second, that the judgment making the reference appears to imply that the macaws concerned in the main proceedings belong to species of birds included in Appendix I or II to CITES or in Annex A or B to Regulation No 339/97.*

*27 In those circumstances, and in view of the fact that the legal rules which apply to those species depend on which appendix to CITES or annex to Regulation No 338/97 they are listed in, the national court's questions must be considered with respect to those appendices and annexes.*

*28 In the procedure of cooperation established by Article 234 EC, it is not for the Court of Justice, however, but for the national court to ascertain the facts which have given rise to the dispute and to establish the consequences which they have for the judgment it is required to deliver (see, inter alia, Case C-435/97 WWF and Others [1999] ECR I-5613, paragraph 32).*

*The questions referred for a preliminary ruling*

*Species covered by Appendix I to CITES or Annex I to Regulation No 338/97*

*29 It should be noted, first, that under Article 6(1) of Regulation No 3626/82, all commercial use of specimens of the species in Appendix I to CITES is prohibited.*

*30 That provision admittedly states that Member States may, in certain cases, grant exemptions to the prohibition of commercial use of specimens of the species in Appendix I*

*to CITES, in particular for specimens of an animal species which have been bred in captivity. However, as the Procureur de la République, the French Government and the Commission rightly point out, this is only an option, not an obligation, for the Member States.*

*31 In this connection, it should also be noted that, while Article VII(4) of CITES provides that specimens of an animal species included in Appendix I bred in captivity for commercial purposes are deemed to be specimens of species included in Appendix II, with the consequence that they may be traded in accordance with the rules on trade in specimens of species included in Appendix II, Article XIV(1)(a) of CITES also states that the provisions of CITES are not to affect the parties' right to adopt stricter domestic measures regarding in particular the conditions for trade in specimens of species included in Appendices I and II, or even the complete prohibition of such trade.*

*32 The general prohibition of commercial use of specimens of the species in Appendix I to CITES, as laid down in Article 6(1) of Regulation No 3626/82, is thus covered by Article XIV(1)(a) of CITES.*

*33 Second, it should be noted that under Article 8(1) of Regulation No 338/97 all commercial use of specimens of the species listed in Annex A to that regulation is prohibited.*

*34 Under Article 8(3)(d) of Regulation No 338/97 exemptions may be granted, on a case-by-case basis, from the prohibition in Article 8(1), where the specimens are captive born and bred. That provision authorises, but does not require, exemptions from the prohibition it lays down.*

*35 In so far as Appendix I to CITES and Annex A to Regulation No 338/97 coincide, and in view of what has been stated in paragraph 30 above, the general prohibition of commercial use of specimens of the species listed in Annex A, as laid down in Article 8(1) of the regulation, is covered by Article XIV(1)(a) of CITES.*

*36 Moreover, under Article 8(4) of Regulation No 338/97, the Commission may define general derogations from the prohibition in Article 8(1).*

*37 For live animals, Article 32 of Regulation No 939/97 introduces such general derogations, first, for live specimens of captive born and bred animals of the species listed in Annex VIII to that regulation, and hybrids thereof, provided that the specimens are marked in accordance with Article 36(1) of the regulation, and, second, for live specimens of captive born and bred animals that are marked in accordance with Article 36(1) and accompanied by a certificate referred to in Article 20(3) of the regulation, issued to the breeder by a competent management authority of a Member State.*

*38 According to the French Government, those two derogations limit the French Republic's possibility of prohibiting, after the date of entry into force of Regulation No*

939/97, namely 1 June 1997, all trade in captive born and bred specimens of species listed in Annex A to Regulation No 338/97.

39 In this respect, since macaws are not mentioned in Annex VIII to Regulation No 939/97, it is not apparent that the derogation in Article 32 of that regulation concerning live specimens of captive born and bred animals of the species listed in that annex is relevant in the main proceedings. As to the other derogation in that provision, there is nothing in the documents in the case to show that the conditions for its application are met.

40 It is nevertheless for the national court to ascertain whether the facts which have given rise to the main proceedings may fall within one of those derogations and to establish the consequences for the judgment which it is required to deliver.

41 In the light of the foregoing, the answer to the questions must be that

- as regards species covered by Appendix I to CITES, Regulation No 3626/82 must be interpreted as not precluding legislation of a Member State which lays down a general prohibition in its territory of all commercial use of captive born and bred specimens;

- as regards species covered by Annex A to Regulation No 338/97, that regulation must be interpreted as not precluding legislation of a Member State which lays down a general prohibition in its territory of all commercial use of captive born and bred specimens.

*Species covered by Annex II to CITES or Annex B to Regulation No 338/97*

42 It should be noted, first, that apart from the case referred to in Article 6(2) of Regulation No 3626/82 in which specimens of species included in Appendix II to CITES have been introduced in violation of Article 5 of that regulation, Regulation No 3626/82 does not prohibit the commercial use of those specimens.

43 As to Article 8(5) of Regulation No 338/97, that paragraph provides that the prohibition of all commercial use laid down in Article 8(1) of that regulation is to apply also to specimens of the species listed in Annex B, except where it is proved to the satisfaction of the competent authority of the Member State concerned that such specimens were acquired and, if they originated outside the Community, were introduced into it in accordance with the legislation in force for the conservation of wild fauna and flora.

44 The commercial use of specimens of the species listed in Annex B to Regulation No 338/97 is thus authorised where the conditions laid down in Article 8(5) of that regulation are complied with.

45 It should be noted, second, that with respect to the species to which Regulation No 3626/82 or No 338/97 applies, those regulations do not preclude stricter measures which may be taken or maintained by the Member States in compliance with the provisions of

*the Treaty. The introduction or maintenance of such measures is provided for, as regards Regulation No 3626/82, in Article 15 thereof, and, as regards Regulation No 338/97, which was adopted on the basis of Article 130s(1) of the EC Treaty (now, after amendment, Article 175(1) EC), in Article 130t of the EC Treaty (now Article 176 EC), which provides that the protective measures adopted pursuant to Article 130s are not to prevent any Member State from maintaining or introducing more stringent protective measures which must be compatible with the Treaty.*

*46 So, if the French Republic did adopt or maintain stricter measures than those laid down by Regulation No 3626/82 or No 338/97, it is possible that the referring court may need to consider the compatibility of the prohibition of commercial use of the species at issue as prescribed by the French legislation, in particular the Guyane decree, with Articles 30 and 36 of the Treaty. That would be the case in so far as that legislation applied to situations linked to the importation of goods in intra-Community trade (see, inter alia, Case 298/87 Smanor [1988] ECR 4489, paragraphs 7 and 8, and Case C-448/98 Guimont [2000] ECR I-10663, paragraph 21).*

*47 On the question whether Mr Tridon may rely before the national court on an alleged barrier to imports of protected species of birds brought about by the French legislation, it must be borne in mind that it is for the national courts alone, within the system of cooperation between them and the Court established by Article 234 EC, to assess the relevance of the questions they refer to the Court, in the light of the facts of the cases before them (see, inter alia, Smanor, paragraph 9, and Guimont, paragraph 22).*

*48 Consequently, in so far as the national legislation at issue in the main proceedings is stricter than the rules laid down by Regulation No 3626/82 or No 338/97, it must be examined whether, in so far as it may apply to imported products, it constitutes a measure having equivalent effect to a quantitative restriction contrary to Article 30 of the Treaty.*

*49 A prohibition of the commercial use of specimens of species in Appendix II to CITES or Annex B to Regulation No 338/97 such as that laid down by the French legislation, in particular the Guyane decree, constitutes a stricter measure within the meaning of Article 15 of Regulation No 3626/82 or a more stringent measure within the meaning of Article 130t of the Treaty as the case may be. Moreover, where such a measure is applied to specimens from another Member State, it is liable to restrict intra-Community trade, contrary to Article 30 of the Treaty.*

*50 Such a restriction may, however, be justified on grounds of the protection of endangered species, such as those set out in Article 15 of Regulation No 3626/82, with respect to the application of Appendix II to CITES, or referred to in Article 36 of the Treaty, with respect to the application of Annex B to Regulation No 338/97.*

*51 The French Government submits that the object of the legislation at issue in the main proceedings is to ensure the conservation of animal species, and hence the protection of*

*the life and health of those species. That follows from the wording of Article L.211-1 of the Code rural, in application of which the Guyane decree was adopted.*

*52 It is not in doubt that legislation such as that at issue in the main proceedings which prohibits the commercial use of specimens of the species in Appendix II to CITES or Annex B to Regulation No 338/97 serves to protect those species, as referred to in Article 15 of Regulation No 3626/82 or Article 36 of the Treaty.*

*53 Such legislation, adopted in a field in which secondary Community law does not preclude a Member State from taking measures stricter than those provided for by that law, and liable to have a restrictive effect on imports of products, is compatible with the Treaty only to the extent that it is necessary for effectively achieving the objective of the protection of the health and life of animals. A national rule cannot therefore benefit from the derogation provided for in Article 36 of the Treaty if the health and life of animals can be protected just as effectively by measures which are less restrictive of intra-Community trade (see, to that effect, Case C-473/98 Toolex [2000] ECR I-5681, paragraphs 33 and 40).*

*54 According to the French Government, the protection of captive born and bred specimens of the species in Appendix II to CITES or Annex B to Regulation No 338/97 is necessary because the breeding of those species for commercial purposes could have marked negative effects on the conservation in the natural state of the species concerned. Such breeding would enable a real market to be created. To meet the demand created by such a market, there would be a great temptation to collect birds or eggs in their natural habitat, especially as the reproduction of numerous species in captivity calls for special installations and expertise which takes a long time to acquire. Liberalisation of trade in captive born and bred specimens of species whose individual capture is prohibited would thus harm the objectives of protection of those species.*

*55 Moreover, as the genetic heritage of captive-bred animals is less varied than that of animals occurring in the natural environment, there is a real need to avert the significant risks of consanguinity appearing in populations kept in captivity. Genetic diversity can be obtained only by taking specimens from the natural environment. Furthermore, trade in captive born and bred specimens would inevitably entail deliberate or accidental releases into the wild, thus creating in certain cases a genetic risk for the conservation of wild specimens of the same or related species.*

*56 The French Government submits, finally, that no less restrictive measure is sufficiently reliable to take the place of the prohibition of trade in captive born and bred specimens. No system of controls would be capable of effectively discouraging fraudulent practices of passing off eggs or birds taken in the wild as eggs laid or birds born and bred in captivity.*

*57 At the hearing, the Commission submitted essentially that the absolute prohibition of trade in specimens of species in Appendix II to CITES or Annex B to Regulation No 338/97, particularly with respect to captive born and bred specimens, goes beyond what*

*is necessary to ensure the effective protection of those species. Indeed, several resolutions of the conference of parties to CITES encourage the breeding and trading of captive born animals, in order to make it possible to limit the collection of animals in the wild and develop populations intended, in certain cases, to be reintroduced into the wild. According to the Commission, protection of the species in question could be accomplished by measures less stringent than an absolute prohibition of trade, such as marking of birds by means of rings or microchip transponders, or blood analyses to establish the ancestry of the animal, as provided for by Regulation No 939/97.*

*58 It is clear that the assessment to be made of the proportionality of the prohibition of trade at issue in the main proceedings, in particular whether the objective sought could be achieved by measures having less effect on intra-Community trade, cannot be performed in the present case without additional information, and that such an assessment requires a specific analysis on the basis of scientific studies and of the factual circumstances of the main proceedings, it being for the national court to make that analysis.*

*59 It may be observed that the fact that subsequent Community legislation, in particular Regulation No 939/97, introduced, with a view to conservation of the species in question, measures which are less restrictive than the French legislation at issue in the main proceedings does not in itself justify the conclusion that that legislation is disproportionate. Such legislation can be regarded as disproportionate to the aim pursued only if it appears that the aim may be achieved just as effectively by measures less restrictive of intra-Community trade.*

*60 In the light of the foregoing, the answer to the questions referred must be that*

*- as regards species covered by Appendix II to CITES, Regulation No 3626/82 does not prohibit the commercial use of specimens of those species, apart from the case referred to in Article 6(2) where the specimens have been introduced contrary to Article 5 of that regulation;*

*- as regards species covered by Annex B to Regulation No 338/97, that regulation does not prohibit the commercial use of specimens of those species, provided that the conditions laid down in Article 8(5) of that regulation are met.*

*Those regulations preclude legislation of a Member State imposing a general prohibition in its territory of all commercial use of captive born and bred specimens of those species, in so far as it applies to specimens imported from other Member States, if it is apparent that the objective of protection of the latter, as referred to in Article 15 of Regulation No 3626/82 or Article 36 of the Treaty, may be achieved just as effectively by measures which are less restrictive of intra-Community trade.*

## ***Decision on costs***

*Costs*

61 *The costs incurred by the French Government and by the Commission, which have submitted observations to the Court, are not recoverable. Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national court, the decision on costs is a matter for that court.*

## ***Operative part***

*On those grounds,*

*THE COURT (Sixth Chamber),*

*in answer to the questions referred to it by the Tribunal de grande instance de Grenoble by judgment of 15 November 1999, hereby rules:*

*1. - As regards species covered by Appendix I to the Convention on international trade in endangered species of wild fauna and flora, concluded in Washington on 3 March 1973, Council Regulation (EEC) No 3626/82 of 3 December 1982 on the implementation in the Community of the Convention on international trade in endangered species of wild fauna and flora must be interpreted as not precluding legislation of a Member State which lays down a general prohibition in its territory of all commercial use of captive born and bred specimens.*

*- As regards species covered by Annex A to Council Regulation (EC) No 338/97 of 9 December 1996 on the protection of species of wild fauna and flora by regulating trade therein, that regulation must be interpreted as not precluding legislation of a Member State which lays down a general prohibition in its territory of all commercial use of captive born and bred specimens.*

*2. - As regards species covered by Appendix II to the Convention, Regulation No 3626/82 does not prohibit the commercial use of specimens of those species, apart from the case referred to in Article 6(2) where the specimens have been introduced contrary to Article 5 of that regulation.*

*- As regards species covered by Annex B to Regulation No 338/97, that regulation does not prohibit the commercial use of specimens of those species, provided that the conditions laid down in Article 8(5) of that regulation are met.*

*Those regulations preclude legislation of a Member State imposing a general prohibition in its territory of all commercial use of captive born and bred specimens of those species, in so far as it applies to specimens imported from other Member States, if it is apparent that the objective of protection of the latter, as referred to in Article 15 of Regulation No 3626/82 or Article 36 of the EC Treaty (now, after amendment, Article 30 EC), may be achieved just as effectively by measures which are less restrictive of intra-Community trade.*