

Solution to the case study

Issues to address when dealing with the case

A. First of all, the relevant obligations of the Birds Directive should be identified:

- Destruction of nests is prohibited under Art. 5 (b)
- Hunting of rooks comes under Art. 7; rooks are listed in Annex IIB and therefore can be hunted in some Member States; however, during the rearing season hunting is prohibited
- The use of poison for hunting is prohibited under Art. 8 and Annex IV(a)

- But the Birds Directive probably does not apply to the parakeet. This bird is not considered a European bird, but an invasive species. There may be national rules on animal welfare that could be applicable. You may also remember that there is EU law on invasive species, but at the moment doesn't provide for specific measures with regard to the parakeet.

B. Then we can look into Art. 9.

- The provision allows to derogate from these obligations, however the mayor does not identify a specific justification. Can public health and safety be relied on? Are noise and bird droppings sufficiently severe?
- Is there no other solution? The NGO mentions several:
 - o Tolerating the colony
 - Eventually limiting access to garbage
 - Employing a peregrine falcon to scare the rooks away
 - o Waiting
 - Until next spring
 - At least until the end of the rearing season
- To appreciate the viability of the suggestions (and also of the measures planned by the mayor) expert advice would appear necessary.
- According to the jurisprudence the burden of proof for a derogation lies on the authorities that grant the derogation; therefore, it would appear that the mayor needs to show that the suggestions of the NGO do not work to exclude them.

- Part of the problem with toleration would be the effectiveness of the proposed measures.
- As regards waiting, the problems would certainly persist for some time.
- Are other solutions satisfactory?
 - What's the relevance of increased costs?
 - What about the effectiveness of the measures?
 - Is imminent action necessary? This links into the justification that is relied on.
 - What is the impact on the objectives of the Directive? The rook is very common. Therefore, the conservation interest is extremely limited. However poisoned bait would also endanger other species and perhaps even humans. For hunting within residential areas similar considerations apply to a lesser degree. Having the fire brigade destroy the nests appears least problematic, but we must still decide on the timeframe.

C. Overtime topics

- The question of competence could open up a very simple way to decide the case: It is quite likely that the competence to allow measures against a rook colony lies with specialised environmental authorities and not with the administration of a town. Incidentally, such authorities will probably have access to the necessary expertise to appreciate existing alternatives.
- As regards the standing of the NGO, Art. 9(3) of the Aarhus Convention and the recent case *Protect Natur-, Arten- und Landschaftsschutz Umweltorganisation* (C-664/15, EU:C:2017:987) could be of interest. Under Art. 9(4) injunctive relief should be available. Access to justice shouldn't be prohibitively expensive. Therefore, the issue of a security could be very sensitive. However, I would expect that in order to seriously consider a security in the present case the mayor would have to demonstrate that there was a real risk of damage that justifies the security.