

By a letter dated 28 August 2015, received on 1 September 2015, the Conseil d'Etat informed me that "the decision to be made on this case [reference cited] may be based on a ground which does not appear in the pleadings and which, since it involves a question of public policy, must be raised by the court of its own motion, alleging that the petitioner cannot demonstrate an interest giving him standing to request annulment of the contested Order." Therefore the Conseil d'Etat invited me to submit my observations on this argument within a week.

In this statement, I present my comments on the ground at issue.

The interest giving me standing to request annulment of the Ministerial Order of 30 June 2015 establishing the list of species of animals classified as pests, the periods stipulated for their destruction and the methods of destruction to be used is based, first, on the actual terms of Article 7 of the Charter for the Environment and, secondly, on my activities, undertaken personally and in various associations over many decades, in studying and defending the natural environment.

1. The terms of Article 7 of the Charter for the Environment

The actual terms of Article 7 of the Charter for the Environment create an interest giving me standing to request annulment of the Ministerial Order of 30 June 2015, since the Article is worded as follows: "Everyone has the right, [...] to participate in public decision-making likely to affect the environment".

The recognition and assertion of this right for every natural and legal person entails an interest giving anyone who has participated in the decision-making process legal standing to bring proceedings against any decision of a public authority. Consequently, I have argued on this basis because, as indicated in my original petition of 10 August 2015, on 3 June 2015 I took part in the online public consultation which was arranged from 29 May to 21 June 2015 via the website of the ministry responsible for environmental matters [Species classified as 'pests' – Département Saône-et-Loire, by Patrick JANIN, submitted at 8:44 on 3 June 2015 – http://www.consultations-publiques.developpement-durable.gouv.fr/projet-d-arrete-pris-pour-l-application-de-1-al023.html?id_rubrique=2].

For the same reason, I did not believe it was necessary to develop this point explicitly: the fact that this right is recognized for everyone convinced me that I was able to bring proceedings as an individual against the Ministerial Order of 30 June 2015.

In this respect, I further took into account both the following arguments:

a) The UNECE Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters, signed on 25 June 1998, ('the Aarhus Convention') provides, in Article 9 ("Access to justice"), in particular in paragraphs 1 and 2, that everyone shall have the right to "a review procedure before a court of law or another independent and impartial body established by law".

So, although it does not have the effect of converting action on grounds of *ultra vires* into *actio*

popularis, the Aarhus Convention seeks to guarantee the best possible conditions for citizens to have the right of access to justice in environmental matters. In that regard, the Convention accords with the reputedly liberal precedents set by the Conseil d'Etat concerning recognition of an interest giving legal standing to challenge an administrative decision.

b) There is a legal logic linking an interest in a decision being taken, manifested through participation in the process of making the decision, to an interest giving standing to challenge that decision once it has been taken. It is the same interest in the same thing.

As to my other argument:

2. My activities and my responsibilities in studying and defending the natural environment

I have had a personal interest in wild life and its preservation for many years. As a result, I took up ornithology and joined various scientific and nature protection associations, in some cases as a founder member.

A brief list of my activities as a naturalist and of my local, regional and national nature protection responsibilities is submitted here.

- I am a founder member of the Nature Protection Board for the Saône-et-Loire Département, an association established in 1974;
- I am a founder member of the Saône-et-Loire Association for the Study of Birds and Mammals ('the AOMSL'), established in 1977. I was President of the AOMSL from 1998 to 2001, and its administrator for many years; I represented it at the Département Council for Hunting and Wild Life and the Great Cormorant Monitoring Committee. I still play a regular part in its activities (cf. documents annexed);
- during the 1990s, I was administrator of France Nature Environnement (FNE), the national federation of nature protection associations;
- from June 2010 to June 2013, I was administrator of the National Society for Nature Protection ('the SNPN');
- I have published ornithological Notes in various scientific journals and publications since the 1970s, at the local (*Terre Vive*, bulletin of the Mâcon Natural History Society), regional (*Le Bièvre*, journal of the Rhône-Alpes Ornithological Centre) and national levels (*L'Oiseau et la Revue Française d'Ornithologie*, official journal of the Ornithological Society of France):

JANIN G. and P. JANIN, 1973 'Note sur les nichées de Mésange charbonnière (*Parus major*) et de Mésange bleue (*Parus caeruleus*) [Note on brood great tits and blue tits]', *Terre Vive*, No. 23: 3-5.

JANIN G. and P. JANIN, 1980 'Nidification probable de la Barge à queue noire *Limosa i. limosa* (L.) dans la vallée de la Saône [Probable nesting of the black-tailed godwit in the Saône Valley]', *Le Bièvre*, 2: 189-190.

JANIN P., 1985 'Données récentes sur les nouveaux sites de nidification de la Barge à queue noire *Limosa limosa* (L.) dans la vallée de la Saône [Recent data on new black-tailed godwit nesting sites in the Saône Valley]', *L'Oiseau et R.F.O.*, 55: 149- 151.

JANIN P., 1986 'La Guifette leucoptère *Chlidonias leucopterus* (Temminck, 1815). Nouvelle observation au confluent Saône-Seille [The white-winged tern. New observation at the confluence of the Saône and the Seille]', *Terre Vive*, No. 64: 15.

JANIN P., 1986 'Observations ornithologiques au confluent Saône-Seille. La Truchère - Sermoyer [Ornithological observations at the confluence of the Saône and the Seille - La

Truchère to Sermoyer]’, *Terre Vive*, No. 62: 2-6.

JANIN P., 1987 ‘Observations ornithologiques dans la prairie de Saint-Benigne (Ain) (hameau de Chamerande) [Ornithological observations in the Saint-Benigne (Ain) grassland – hamlet of Chamerande]’, *Terre Vive*, No. 66: 8-9.

JANIN P., 1989 ‘La présence du Faucon pèlerin *Falco peregrinus* en val de Saône [The presence of the peregrine falcon in the Saône Valley]’, *Terre Vive*, No. 75: 2.

JANIN P., 1989 ‘Les oiseaux du confluent Saône-Seille dans l’hiver 1988-1989 [Birds at the confluence of the Saône and the Seille, Winter 1988-89]’, *Terre Vive*, No. 74: 13-16.

- I collaborate regularly with the Bird Protection League (‘the LPO’);
- my most recent contributions to nature protection publications include:

‘Déclarer les oiseaux migrateurs inappropriables par l’homme [Prohibiting human predation of migratory birds]’, *Le Courrier de la Nature*, (bimonthly publication of the SNPN), No. 271, November-December 2012, pp 42-44;

‘La chasse des oiseaux migrateurs, une histoire de privilèges [Hunting migratory birds: a history of privileges]’, *L’Oiseau Magazine*, the LPO’s official journal, No. 110, Spring 2013, pp 24-27.

I am submitting 5 documents as factual evidence of my activities, illustrating their different aspects (Annexes 3 to 7, listed in an appendix to this statement; Annexes 1 and 2 were submitted with my petition of 10 August 2015). These local, regional and national activities and responsibilities confer an interest giving me standing to challenge the Ministerial Order of 30 June 2015.

Furthermore, my personal situation with regard to this Order is comparable to that of Sieur Abisset, who, in his capacity as a Rambler and Camper, was deemed by the Conseil d’Etat to have an interest allowing him to challenge a municipal order regulating camping (CE Sect., 14 February 1958, *Abisset*, Rec. p. 98). Equally, a naturalist and nature conservationist ‘has an interest’ in a decision authorizing the destruction of wildlife species which he studies in order to understand and protect them. Or, to put this another way, I belong to an ‘interest group’ directly ‘affronted’ by the Ministerial Order of 30 June 2015. Indeed, the Tribunal administratif de Dijon (Dijon Administrative Court), in a case with the same subject matter, agreed with this point of view, upholding my action against an order of the *Préfet* drawing up a list of animal species classified as pests (TA Dijon, 19 December 1989, *Janin*, Rec. Lebon tables).

Lyon, 4 September 2015

Patrick JANIN

Action on grounds of ultra vires against the Ministerial Order of 30 June 2015 establishing the list of species of animals classified as pests, the periods stipulated for their destruction and the methods of destruction to be used and its annex, submitted by Mr Patrick JANIN

LIST OF ANNEXES

- Annex 3: ‘La protection et la préservation des espèces depuis un siècle [A century of protecting and preserving species]’, *Bourgogne Nature*, 2014, No. 20, pp 134-142 (Papers from a symposium ‘100 years of upheaval in nature’, 10th Bourgogne Nature Meeting, Dijon, 15 and 16 November 2013).
- Annex 4: L’Association ornithologique et mammalogique de Saône-et-Loire. Ses origines, ses activités [The Saône-et-Loire Association for the Study of Birds and Mammals: origins and activities]. In *Les Oiseaux de Saône-et-Loire. Inventaire & synthèse des connaissances [Birds of Saône-et-Loire. Inventory and summary of knowledge.]*, 2012, Bourgogne Nature, Special Issue No. 10, 376 p. (pp 4-5).
- Annex 5: Editorial and ‘Doctor Paul Poty, Ornithologist’, in *AOMSL Infos*, Newsletter of the Saône-et-Loire Association for the Study of Birds and Mammals, Volume 12, No. 2, July-December 2012, pp 1 and 12-13.
- Annex 6: Email exchange with the Prefect of Saône-et-Loire concerning the destruction of badgers in anticipation of the detection of bovine tuberculosis.
- Annex 7: Reply of 7 July 2014 from the Prefect of Saône-et-Loire concerning the destruction of species classified as pests.

04-09-2015