JUDGMENT OF THE COURT (Fifth Chamber)
14 January 1988 *

In Case 55/86

Asociación provincial de Armadores de buques de pesca de Gran Sol de Pontevedra (Arposol), Vigo (Pontevedra, Spain), represented by J. L. Meseguer Sanchez, of the Madrid Bar, with an address for service in Luxembourg at the Chambers of A. May, 31 Grand-Rue,

applicant,

v

Council of the European Communities, represented by its Agent, Y. Crétien, with an address for service in Luxembourg at the office of J. Käser, European Investment Bank, 100 boulevard Konrad-Adenauer,

defendant,

supported by

Commission of the European Communities, represented by its Legal Adviser R. C. Fischer, acting as Agent, with an address for service in Luxembourg at the office of G. Kremlis, a member of the Commission's Legal Department, Jean Monnet Building, Kirchberg,

intervener,

APPLICATION for the annulment of Council Regulation (EEC) No 3781/85 of 31 December 1985 laying down the measures to be taken in respect of operators who do not comply with certain provisions relating to fishing contained in the Act of Accession of Spain and Portugal (Official Journal 1985, L 363, p. 26),

* Language of the Case: Spanish.

THE COURT (Fifth Chamber),

composed of: G. Bosco, President of Chamber, J. C. Moitinho de Almeida, U. Everling, Y. Galmot and R. Joliet, Judges,

Advocate General: J. Mischo
Registrar: B. Pastor, Administrator

having regard to the Report for the Hearing and further to the hearing on 6 October 1987,

having heard the Opinion of the Advocate General delivered at the sitting on 28 October 1987,

gives the following

Judgment

1 By an application lodged at the Court Registry on 26 February 1986, the Asociación provincial de Armadores de buques de pesca de Gran Sol de Pontevedra (hereinafter referred to as Arposol) brought an action under the second paragraph of Article 173 of the EEC Treaty for the annulment of Council Regulation (EEC) No 3781/85 of 31 December 1985 laying down the measures to be taken in respect of operators who do not comply with certain provisions relating to fishing contained in the Act of Accession of Spain and Portugal (Official Journal 1985, L 363, p. 26).

2 Arposol is an association which was formed to represent and defend the interests of 46 Spanish fishing businesses whose vessels engage in non-specialized fishing in the waters of the Member States of the Community of Ten.

3 Under Article 158 of the 'Act of Accession of the Kingdom of Spain and the Portuguese Republic to the European Economic Community and to the European Atomic Energy Community' of 12 June 1985 (hereinafter referred to as 'the Act of Accession') (Official Journal 1985, L 302, p. 9) only 300 Spanish fishing vessels

engaged in non-specialized fishing are authorized to fish in the waters of the States of the Community of Ten. Those vessels are named in the 'basic list' which is contained in Annex IX to the Act of Accession. All the members of Arposol appear on that list. Article 158 (2) states that only 150 of those vessels may fish at the same time provided that they appear on a periodical list adopted by the Commission. Under Article 163 the Spanish authorities must submit to the Commission drafts of the periodical lists.

4 Articles 160, 164, 165, 349, 351 and 352 of the Act of Accession provide for comparable systems of basic lists and periodical lists as regards access of specialized Spanish fishing vessels to the waters of the Community of Ten, access of Portuguese vessels to Spanish waters and to the waters of the States of the Community of Ten and finally access of vessels of the States of the Community of Ten to Spanish and Portuguese waters.

5 Council Regulation (EEC) No 3781/85 sets out measures intended to ensure compliance with the rules on access to waters and resources laid down in Articles 163, 164, 165, 349, 351 and 352 of the Act of Accession by fishing vessels flying the flag of a Member State or registered in a Member State.

6 Article 2 (1) of Regulation No 3781/85 provides that the competent authorities of Member States must without delay notify the Commission and the flag Member State or the Member State of registration of any infringement of the abovementioned provisions of the Act of Accession, giving the name and identificiation marks of the vessels concerned, the name of the skipper, the owner, and where appropriate, the charterer, the circumstances of the infringement and any penal administrative or other measures taken, and any court decision relating to such infringement. Under Article 2 (2), on the basis of a judicial decision notified or in any other case of recorded infringement of the abovementioned rules, the flag Member State or the Member State of registration may no longer enter the vessel

concerned on the draft periodical lists which it submits to the Commission. Article 3 of the regulation provides that a vessel may not be entered on draft periodical lists for a period which varies according to whether or not it is a first infringement and to whether a vessel engaging in non-specialized fishing or specialized fishing is involved. The periods vary from two to 18 months.

7 Reference is made to the Report for the Hearing for a more thorough account of the facts, the proceedings, the relevant legal provisions and the submissions and arguments of the parties.

8 In its defence, which was lodged at the Court Registry on 13 May 1986, the Council raised an objection of inadmissibility under Article 91 (1) of the Rules of Procedure of the Court of Justice. In support of its objection, it submitted first of all that the contested regulation was not of direct and individual concern to the applicant within the meaning of the second paragraph of Article 173 of the Treaty since that regulation was general in scope and of a purely legislative character. Secondly, the Council submitted that the application was inadmissible because an act affecting the general interests of a category of businesses could not be of individual concern to an association representing that category. Finally, the Council takes the view that the proper way of challenging Regulation No 3781/85 would be to bring proceedings in the national courts against measures applying the regulation.

9 For its part, the applicant takes the view that in reality the contested regulation is addressed only to a limited number of persons, including its members, and that the regulation is therefore of direct and individual concern to it. It goes on to stress that in staff cases the Court has heard applications brought by associations in the name of their members. Finally, it takes the view that an action under Article 173 of the Treaty is the proper procedure for challenging a Community measure.

10 Under the second paragraph of Article 173 of the EEC Treaty, a natural or legal person may institute proceedings against a decision adopted in the form of a regulation or a decision addressed to another person only if that decision is of direct and individual concern to the former.

11 In the instant case it must be stressed that before a State may impose the penalty of declining to enter a name on a list, all the conditions provided for in Article 2 of Regulation No 3781/85 must be complied with; in particular, another Member State must have notified the flag State of an infringement recorded judicially or administratively. Furthermore, that penalty becomes final only after approval by the Commission of the periodical lists on which the name of the penalized vessel does not appear.

12 The vessel-owners who are members of Arposol can therefore be affected only if the State in which they are registered refuses, under Article 2 of the contested regulation, to enter their names on the drafts of periodical lists which it submits to the Commission and if those draft lists are approved by the Commission.

13 Consequently, it must be held that Regulation No 3781/85 is not of direct concern to the applicant since its members will in fact be affected only by a national decision which will only be taken if several conditions are complied with, and provided that decision is confirmed by the Commission.

14 In view of the foregoing the action must be dismissed as inadmissible, and it is not necessary to examine the other submissions of inadmissibility.

Costs

15 Under Article 69 (2) of the Rules of Procedure the unsuccessful party is to be ordered to pay the costs if they have been asked for in the successful party's pleadings. Since the applicant has failed in its submissions it must be ordered to pay the costs.

On those grounds,

THE COURT (Fifth Chamber)

hereby

(1) Dismisses the application as inadmissible.

(2) Orders the applicant to pay the costs.

Bosco Moitinho de Almeida

Everling Galmot Joliet

Delivered in open court in Luxembourg on 14 January 1988.

P. Heim
Registrar

G. Bosco
President of the Fifth Chamber