OPINION OF ADVOCATE GENERAL STIX-HACKL

delivered on 11 October 2001 [1]

I — Introduction

1. In the wake of Case C-333/99 concerning fishing years 1988 and 1990, [2] the present action for failure to fulfil Treaty obligations concerns the conduct of the French authorities in connection with the management of fishing quotas for 1991 to 1994 (Case C-418/00) and for 1995 and 1996 (Case C-419/00). The Commission complains essentially that the French authorities did not promptly and effectively prohibit fishing as soon as quotas were exhausted, with the result that during those years the fishing quotas were exceeded.

2. By order of 18 January 2001 the Court joined the two cases for the purposes of the written procedure and the judgment in accordance with Article 43 of the Rules of Procedure.

3. In the light of the judgment delivered by the Court in Case C-333/99, I will confine myself here to inquire whether the Commission has substantiated the infringements of Community law complained of and as to the extent to which the amendment of the Community rules applicable to the 1995 and 1996 fishing years may have a bearing.

II — Legal context

4. The Community system for the conservation and management of fishery resources is embodied in a number of regulations. Its overall purpose is to ensure the protection of fishing grounds, the conservation of the biological resources of the sea and their balanced exploitation on a lasting basis and in appropriate economic and social conditions. [3]

1 — Original language: German.

2 — *Commission* v *France* [2001] ECR I-1025.

3 — See Article 1 of Council Regulation (EEC) No 170/83 of 25 January 1983 establishing a Community system for the conservation and management of fishery resources (OJ 1983 L 24, p.1). See also Article 2 of Council Regulation (EEC) No 3760/92 of 20 December 1992 establishing a Community system for fisheries and aquaculture (OJ 1992 L 389, p. 1), which replaced the aforementioned Regulation on 1 January 1993.

5. To attain these objectives conservation and control measures need to be taken. [4]

6. These measures include the inspection of fishing vessels and the monitoring of catches. They are provided for in Article 5(2) of Regulation No 170/83 in conjunction with Article 1(1) and (2) and Article 2(2) of Regulation No 2241/87. [5]

7. Article 5(2) of Regulation No 170/83 provides *inter alia:*

'2. Member States shall determine, in accordance with the applicable Community provisions, the detailed rules for the utilisation of the quotas allocated to them....'

8. Regulation No 170/83 was replaced by Regulation No 3760/92 [6] on 1 January 1993. Article 9(2) of the latter regulation establishes what is clearly a comparable obligation:

'2. Member States shall inform the Commission each year of the criteria they have adopted for distribution and of the detailed rules for the use [of] the fishing availabilities allocated to them, in accordance with Community law and the common fisheries policy.'

9. Title I of Regulation No 2241/87 [7] reads 'Inspection and control of fishing vessels and their activities'. Article 1(1) thereof specifies the content of the obligation arising from Article 5(2) of Regulation No 170/83:

'1. In order to ensure compliance with all the Regulations in force concerning conservation and control measures, each Member State shall, within its territory and within maritime waters subject to its sovereignty or jurisdiction, monitor fishing activity and related activities. It shall inspect fishing vessels and all activities whose inspection would enable verification of the implementation of this Regulation, including the activities of landing, selling and storing fish and recording landings and sales.'

4 — See Article 2 of Regulation No 170/83 and Article 4 of Regulation No 3760/92.

5 — Council Regulation (EEC) No 2241/87 of 23 July 1987 establishing certain control measures for fishing activities (OJ 1987 L 207, p. 1).

6 — Cited in footnote 3.

7 — Cited in footnote 5.

10. Article 2 of Regulation No 2241/87 provides:

'1. The inspection and monitoring referred to in Article 1 shall be carried out by each Member State on its own account by an inspectorate appointed by it.

In carrying out the task thus conferred on them, Member States shall ensure that the provisions and measures referred to in Article 1 are complied with. Moreover, their action shall be carried out in such a way as to avoid undue interference with normal fishing activities....

2. The persons responsible for the fishing vessels inspected shall cooperate in facilitating inspections carried out in accordance with paragraph 1.'

11. Regulation No 2241/87 was replaced by Regulation No 2847/93 [8] on 1 January 1994. Article 2 of Title I of the latter regulation, 'Inspection and monitoring of fishing vessels and their activities', reads:

'1. In order to ensure compliance with all the rules in force concerning conservation and control measures, each Member State shall, within its territory and within maritime waters subject to its sovereignty or jurisdiction, monitor fishing activity and related activities. It shall inspect fishing vessels and investigate all activities thus enabling verification of the implementation of this Regulation, including the activities of landing, selling, transporting and storing fish and recording landings and sales.

2. Fishing vessels, which may exercise activities, flying the flag of third country and sailing in maritime waters subject to the sovereignty or jurisdiction of a Member State shall be subject to a system of communication of movements and of catches held on board.

Member States shall notify the Commission of the measures taken to ensure compliance with these procedures.

3. Each Member State shall monitor, outside the Community fishery zone, the

8 — Council Regulation (EEC) No 2847/93 of 12 October 1993 establishing a control system applicable to the common fisheries policy (OJ 1993 L 261, p.1).

activities of its vessels in cases where such control is required to ensure compliance with Community rules applicable in those waters.

4. In order to ensure that inspection is as effective and economical as possible, Member States shall coordinate their control activities. To that end, they may set up joint inspection programmes to allow the inspection of Community vessels in the waters referred to in paragraphs 1 and 3. They shall take measures to permit their competent authorities and the Commission to be regularly informed on a reciprocal basis of the experience gained.'

12. Suspension of fishing activity was governed by Article 11 of Regulation No 2241/87 and then by Article 21 of Regulation No 2847/93. The first two paragraphs of Article 11 of Regulation No 2241/87, which appear in Title III, 'Prohibition of fishing activities', provide:

'1. All catches of a stock or group of stocks subject to quota made by fishing vessels flying the flag of a Member State or registered in a Member State shall be charged against the quota applicable to that State for the stock or group of stocks in question, irrespective of the place of landing.

2. Each Member State shall determine the date from which the catches of a stock or group of stocks subject to quota made by the fishing vessels flying its flag or registered in that Member State shall be deemed to have exhausted the quota applicable to it for that stock or group of stocks. As from that date, it shall provisionally prohibit [fishing] for that stock or group of stocks by such vessels as well as the retention on board, the transhipment and the landing of fish taken after that date and shall decide on a date up to which transhipments and landings or final notifications of catches are permitted. The Commission shall forthwith be notified of this measure and shall then inform the other Member States.'

13. The first two paragraphs of Article 21 in Title IV, 'Regulation and suspension of fishing activities', of Regulation No 2847/93 read:

'1. All catches of a stock or group of stocks subject to quota made by Community fishing vessels shall be charged against the quota applicable to the flag Member State for the stock or group of stocks in question, irrespective of the place of landing.

2. Each Member State shall determine the date from which the catches of a stock or

group of stocks subject to quota made by the fishing vessels flying its flag or registered in that Member State shall be deemed to have exhausted the quota applicable to it for that stock or group of stocks. As from that date, it shall provisionally prohibit fishing for that stock or group of stocks by such vessels as well as the retention on board, the transshipment and the landing of fish taken after that date and shall decide on a date up to which transshipments and landings or final declarations of catches are permitted. The Commission shall be notified forthwith of this measure and shall then inform the other Member States.'

14. Finally, the obligations of the competent authorities in the Member States in respect of criminal and administrative action are set out in Article 1(2) of Regulation No 2241/87 and subsequently in Article 31 of Regulation No 2847/93.

15. Article 1(2) of Regulation No 2241/87 states:

'2. If the competent authorities of a Member State observe, as a result of monitoring or inspection carried out by them under paragraph 1, that the relevant rules concerning conservation and control measures are not being complied with, they shall take penal or administrative action against the master of such a vessel or any other person responsible.'

16. Article 31 of Regulation No 2847/93 for its part provides:

'1. Member States shall ensure that the appropriate measures be taken, including of administrative action or criminal proceedings in conformity with their national law, against the natural or legal persons responsible where common fisheries policy [has] not been respected, in particular following a monitoring or inspection carried out pursuant to this Regulation.

2. The proceedings initiated pursuant to paragraph 1 shall be capable, in accordance with the relevant provisions of national law, of effectively depriving those responsible of the economic benefit of the infringements or of producing results proportionate to the seriousness of such infringements, effectively discouraging further offences of the same kind.

3. The sanctions arising from the proceedings mentioned in paragraph 2 may include depending on the gravity of the offence:

— fines,

— seizure of prohibited fishing gear and catches,

— sequestration of the vessel,

— temporary immobilization of the vessel,

— suspension of the licence,

— withdrawal of the licence.

4. ...'

III — The facts, the procedure and the claims of the parties

17. The Commission initiated two infringement procedures against the French Republic for failure to fulfil Treaty obligations, one concerning the 1991 to 1994 fishing years and the other the 1995 and 1996 fishing years.

A — *The 1991 to 1994 fishing years*

18. By letter of 16 January 1996 the Commission brought it to the French Government's attention that the French fishing quotas for 1991 to 1994 for various stocks had been exceeded. It complained in particular that the French authorities had failed to fulfil their control obligations and called upon them to communicate the data on catches and landings on which they had based their decision temporarily to prohibit fishing, together with any further information concerning proceedings instituted against persons responsible for overfishing (hereinafter called 'those responsible').

19. By letter of 16 April 1996 the French authorities acknowledged overfishing of the stocks referred to by the Commission. They indicated further that they were unable to trace the records of the proceedings that had been instituted.

20. In a letter of formal notice of 27 March 1998 the Commission maintained that the French Republic had failed to fulfil its obligations concerning supervision of the management of stocks by in particular failing to impose a temporary ban on fishing at times when the catches made by vessels flying the French flag were deemed to have exhausted the corresponding quotas. The Commission also concluded, as it had not received adequate information on this point, that the French authorities had not instituted penal or administrative proceedings under Articles 2 and 31 of Regulation No 2847/93.

21. In their reply of 7 August 1998 the French authorities disputed the alleged infringements and argued that they had taken all necessary measures as soon as it became clear from the statistics that a fishing quota had been, or was about to be, exhausted.

22. As this letter did not in the Commission's view dispel the suspicion of a failure to fulfil obligations, it sent the French Government a reasoned opinion on 30 September 1999. In its reply of 7 December 1999 the French Government did not dispute the breaches of fishing quotas found by the Commission and acknowledged that the national provisions in force at the time had not allowed it to suspend fishing in good time; it did however emphasise that as from 1998 an emergency procedure had been in force allowing the timely imposition, by means of ministerial decrees, of temporary bans on fishing. With regard to the alleged failure to institute penal or administrative proceedings against those responsible, the French authorities stated that they had opted for a collective quota management scheme, which placed the producers' associations that bore responsibility for the overfishing at an economic and administrative disadvantage.

B — *The 1995 and 1996 fishing years*

23. By letters of 3 February and 11 November 1997 the Commission brought it to the French Government's attention that the French fishing quotas for 1995 and 1996 for various stocks had been exceeded and that a temporary prohibition of fishing had not been imposed at an appropriate time. It called upon the French authorities to provide it with the data on catches and landings on which they had based their decision to suspend fishing temporarily, together with information concerning penal or administrative proceedings instituted against those responsible.

24. By letters of 3 April 1997 and 26 January 1998 the French authorities pointed to errors in the figures presented by the Commission, informing it also that they had not succeeded in locating the records of the penal or administrative proceedings that had been instituted. They

maintained further that the ministerial decrees provisionally prohibiting fishing had been issued as soon as it became clear from the catch statistics that the fishing quotas concerned had been exceeded.

25. As the measures referred to had not, in the Commission's view, been capable of preventing overfishing in 1995 and 1996, it sent the French Republic a letter of formal notice on 4 March 1999. The tables drawn up by the Commission showed overfishing of 11 stocks in 1995 and 1996. The Commission further stressed that the French authorities had failed to fulfil their obligations concerning the management of stocks by failing in particular to impose a temporary ban on fishing at times when the catches made by vessels flying the French flag were deemed to have exhausted the corresponding quotas and by not instituting penal or administrative proceedings against those responsible.

26. In their reply of 27 April 1999 the French Government denied the infringements claimed by the Commission, with regard in particular to mackerel in 1996. It emphasised that although it had taken all requisite measures as soon as it appeared from the statistics that a fishing quota had been, or was about to be, exhausted, certain instances of overfishing were attributable to overseas landings by vessels flying the French flag of which the French authorities had been informed late and to the continuation of fishing in the interval between the adoption and the implementation of the suspension order.

27. As this letter did not in the Commission's view dispel the suspicion of a failure to fulfil obligations, the Commission sent the French Government a reasoned opinion on 30 September 1999. Although the French Government, in its reply of 7 December 1999, did not dispute the breaches of fishing quotas instanced by the Commission — with the exception of the mackerel quotas — and acknowledged that the national provisions in force at the time had not allowed it to suspend fishing in good time, it did however emphasise that as from 1998 ministerial decrees imposing temporary bans on fishing had been adopted using an emergency procedure. With regard to the alleged failure to institute penal or administrative proceedings against those responsible, the French Government stated that it had opted for a collective quota management scheme, which placed the producers' associations that bore responsibility for the overfishing at an economic and administrative disadvantage.

C — *Claims of the parties*

28. Both applications were lodged at the Court Registry on 13 November 2000.

Case C-418/00

29. The Commission claims that the Court should:

(1) declare that

— by failing to determine appropriate detailed rules for the utilisation of the quotas allocated to it for the fishing years 1991, 1992, 1993 and 1994;

— by failing to ensure compliance with the Community provisions on the conservation of stocks through sufficient monitoring of fishing catches, appropriate inspection of landings and registration of catches;

— by not provisionally prohibiting fishing by vessels flying the French flag or registered in France when the catches taken had been deemed to have exhausted the corresponding quota and by finally prohibiting fishing only when the quota had been largely exceeded, in the 1991, 1992, 1993 and 1994 fishing years;

— by failing to take penal or administrative proceedings against any master of a vessel or other persons responsible for fishing after the prohibition thereof, as regards the 1991, 1992, 1993 and 1994 fishing years,

the French Republic has failed to fulfil its obligations under Article 5(2) of Regulation (EEC) No 170/83, [9] Articles 1 and 11(1) and (2) of Regulation (EEC) No 2241/87, [10] Articles 2, 21(1) and (2) and 31 of Regulation (EEC) No 2847/93 [11] and Article 9(2) of Regulation (EEC) No 3760/92; [12]

(2) order the French Republic to pay the costs.

9 — Council Regulation (EEC) No 170/83 of 25 January 1983 establishing a Community system for the conservation and management of fishery resources (OJ 1983 L 24, p. 1).

10 — Cited in footnote 5.

11 — Cited in footnote 8.

12 — Council Regulation (EEC) No 3760/92 of 20 December 1992 establishing a Community system for fisheries and aquaculture (OJ 1992 L 389, p. 1).

Case C-419/00

30. The Commission claims that the Court should:

(1) declare that

— by failing to determine appropriate detailed rules for the utilisation of the quotas allocated to it for the fishing years 1995 and 1996;

— by failing to ensure compliance with the Community provisions on the conservation of stocks through sufficient monitoring of fishing catches, appropriate inspection of the landings and registration of catches;

— by not provisionally prohibiting fishing by vessels flying the French flag or registered in France when the catches taken had been deemed to have exhausted the corresponding quota and by finally prohibiting fishing only when the quota had been largely exceeded, in the 1995 and 1996 fishing years;

— by failing to take penal or administrative proceedings against any master of a vessel or other persons responsible for fishing after the prohibition thereof, as regards the 1995 and 1996 fishing years,

the French Republic has failed to fulfil its obligations under Article 9(2) of Regulation (EEC) No 3760/92 [13] and Articles 2, 21 and 31 of Regulation (EEC) No 2847/93 [14] in conjunction with Regulations (EEC) Nos 3362/94 [15] and 3074/95; [16]

(2) order the French Republic to pay the costs.

31. In its defence covering both cases the French Republic refrained from making any formal application. It simply asked

13 — Cited in footnote 12.

14 — Cited in footnote 8.

15 — Regulation (EEC) No 3362/94 of 20 December 1994 fixing, for certain fish stocks and groups of fish stocks, the total allowable catches for 1995 and certain conditions under which they may be fished (OJ 1994 L 363, p. 1).

16 — Regulation (EEC) No 3074/95 of 22 December 1995 fixing, for certain fish stocks and groups of fish stocks, the total allowable catches for 1996 and certain conditions under which they may be fished (OJ 1995 L 330, p. 1).

the Court to 'examine the subject-matter and the merits of the claims in the light of the common fisheries policy'.

IV — Legal assessment

32. In its reply the Commission requests the Court to disregard the French Republic's defence on the ground that it failed to meet the formal requirements of Article 40(1) of the Rules of Procedure.

33. This issue has already arisen in Case C-333/99, [17] when the Court did not deem it necessary to take a position on the matter.

34. In the present case it would seem inappropriate to disregard the French Republic's defence — regardless of the legal basis — having regard to the protection of the rights of the defence. In Case C-333/99 Advocate General Alber rightly observed that an intention to apply for the action to be dismissed was to be inferred from the very existence of a defence. It is therefore proposed that the Court interpret the defence in this sense.

A — *Admissibility of the applications*

1. Arguments of the parties

35. In its combined defence the French Republic questions the admissibility of both applications, contending that they clearly seek to secure a condemnation of France in principle, thereby failing to take due account of the efforts made by that Member State.

2. *Analysis*

36. The Court has already adjudicated on this contention in Case C-333/99. [18]

37. In paragraph 23 of its judgment the Court recalls as follows its consistent case-law on the admissibility of actions for failure to fulfil Treaty obligations:

17 — See the Opinion of Advocate General Alber in Case C-333/99 (cited in footnote 2), point 26.

18 — In that case the time that elapsed between the alleged breach of obligation and the legal proceedings did however prompt additional doubts as to admissibility.

'In the exercise of its powers under Articles 211 EC and 226 EC, the Commission does not have to show that there is a specific interest in bringing the action since its function is, in the general interest of the Community, to ensure that Member States give effect to the Treaty and to obtain a declaration of any failure to fulfil the obligations deriving therefrom, with a view to bringing it to an end (Case 167/73 *Commission* v *France* [1974] ECR 359, paragraph 15, Case C-431/92 *Commission* v *Germany* [1995] ECR I-2189, paragraph 21, and Case C-365/97 *Commission* v *Italy* [1999] ECR I-7773, paragraph 59).'

38. This line of decisions is sufficient to establish the admissibility of both applications.

B — *The merits of the applications*

1. Failure to establish appropriate arrangements for the utilisation of fishing quotas

Arguments of the parties

39. In both cases the Commission claims that the Court should declare that the French Republic has failed to fulfil Treaty obligations by *inter alia* failing to establish appropriate arrangements for the utilisation of the fishing quotas allocated to it for the period concerned. [19]

40. In the applications this issue is not however addressed separately but in conjunction with an alleged infringement of Article 5(2) of Regulation No 170/83 and Article 9(2) of Regulation No 3760/92 and the associated implementing provisions.

41. The same approach was adopted in Case C-333/99. [20]

42. In its reasoned opinion the Commission argues that the French authorities, in breach of their obligations under Article 5(2) of Regulation No 170/83 (Case C-418/00), Article 9(2) of Regulation No 3760/92 (Cases C-418/00 and C-419/00) and Article 21 of Regulation No 2847/93 (Case C-419/00), had clearly failed to establish appropriate arrangements by type of catch for the utilisation of the fishing quotas. The Commission took the view that special utilisation arrangements should have been established for those quotas that were exhausted in the last months of each of the years 1991 to 1996 as such arrangements could have

19 — See point 29 et seq. above.

20 — See paragraphs 28 and 38 of the judgment (cited in footnote 2).

made for more effective monitoring of the rate of take-up of quotas and hence allowed fishing activity to be prohibited in good time.

Assessment

43. It is proposed to examine this claim in conjunction with the claim of failure to take control measures. [21]

2. Failure to take control measures

Arguments of the parties

44. The Commission alleges an infringement of Article 5(2) of Regulation No 170/83 in conjunction with Articles 1(1) and 11 of Regulation No 2241/87 (in Case C-418/00), Article 9(2) of Regulation No 3760/92 (in both Cases) and Articles 2 and 21 of Regulation No 2847/93 (in Case C-419/00).

45. Firstly, the French authorities had not in the Commission's opinion taken sufficiently diversified and effective measures to control the utilisation of their fishing quotas. [22] Secondly, they had not adequately monitored fishing and associated activities. Lastly, they had not carried out appropriate inspection of fishing vessels and of the landing, selling and storing of fish. The Commission considers that effective control measures would have enabled the fishing quotas to be observed and fishing to be suspended in good time.

46. The Commission observes in particular that the breaches of quotas apparent from the tables attached to both letters of formal notice attest to the French authorities' failure to take in good time the control measures that were necessary to prevent fishing in excess of the quotas allocated to them for the species referred to therein. Citing Case 262/87, [23] the Commission maintains that it is incumbent on a Member State, where it encounters practical difficulties in introducing effective control arrangements, to take appropriate measures to overcome those difficulties.

47. In its defence the French Government observes first that, despite improvements in its domestic management of fishing quotas,

21 — See paragraph 2 below.

22 — See point 42 above.

23 — *Netherlands* v *Commission* [1989] ECR 225.

there was a continuing problem with French landings overseas. As some time elapsed before the French authorities were apprised of such landings, quotas could be exceeded as a result.

48. The Commission states in response that the national authorities have access to an 'instrument' providing direct information concerning catches landed overseas by vessels flying the French flag. Under paragraph 4.2.2 of Annex IV to Regulation (EEC) No 2807/83 [24] masters of vessels are required to supply the original of the log-book and the first copy of the landing declaration to the French authorities within 48 hours of completion of landing. The French Government had not however provided any information concerning checks carried out in that connection.

49. With regard to the 1996 fishing year the French Government disputes only the Commission's claim that the mackerel quota had been exceeded. It refers in this connection to the flexible arrangements established in Regulation No 3074/95 for the transfer of quota entitlements for mackerel fishing between the Eastern and Western zones. To summarise, part of the Western TAC (that part amounting to 65 000 tonnes) could in the last quarter-year be fished in ICES zones IIa (EC zone), IIIa, IIIbcd and IV, which count towards the Eastern stocks.

50. According to these rules French fishermen would be allowed to fish up to 2 770 tonnes of mackerel in the North Sea over and above the national quota in the Eastern zones. It follows that the difference between the actual total catch and the 1 270 tonne quota was to be counted against the flexible fishing entitlement of 2 770 tonnes and did not therefore represent a breach of quota.

51. The Commission observes, however, on this point that despite the rules on flexibility the overall quota had been exceeded. And yet it had not been informed of any measures taken against those responsible.

52. The French Government further disputes any breach of herring quotas in zones Vb, VIa N and VIb. The Commission states, for its part, that it was relying on the figures supplied by the French authorities in accordance with Article 15(1) of Regulation No 2847/93. It could not take account of figures that had not been supplied by the French authorities until a number of years later.

24 — Commission Regulation (EEC) No 2807/83 of 22 September 1983 laying down detailed rules for recording information on Member States' catches of fish.

53. The French Government emphasises finally that it had made every effort to reduce the extent to which quotas were exceeded, which was why between 1988 and 1999 the trend had been towards a clear reduction in quota overruns.

Assessment

54. It should first be noted that the breaches of quotas complained of by the Commission are essentially undisputed, as in Case C-333/99. [25] This assessment is not in any way altered by France's assertions concerning mackerel catches in the 1996 fishing year, three further quota violations being claimed by the Commission for the 1996 fishing year. The French Government has not at all events substantiated its contention that the quantities in excess of quota had been fished in areas covered by the flexibility measures. The Commission is also right in asserting with regard to herring catches that it is not required to take account of figures that were not supplied until the proceedings were already underway, since the Commission must be notified of the quantities fished within a specified period. [26]

55. Nor is it disputed that in the case of a number of stocks landings continued even after the national measure imposing a ban on fishing activity had been taken.

56. The recurrence of quota violations during the period concerned is also essentially undisputed. For the 1991 to 1994 fishing years the Commission alleges two to four quota overruns per year and for the following two years as much as four and seven overruns. The French Republic confines itself to drawing attention to its efforts and to what it sees as a trend towards an improvement in its management of fishery resources. The Court has already observed on this point, in its judgment in Case C-333/99, [27] that '[a]lthough those efforts led to a reduction in the extent to which quotas were exceeded, they cannot excuse the failures that occurred'.

57. In so far as the French Government relies in this connection on the difficulty of incorporating overseas landings in its statistics, this too is incapable of invalidating the complaint. Apart from the fact that France's submission concerning the reasons for the quota violations is not substantiated, the Commission rightly emphasises that Community legislation has addressed this issue, laying down special obligations to supply information in the case of overseas landings. Even if the repeated breaches of quota could be attributed to landings

25 — Judgment cited in footnote 2.

26 — Article 15(1) of Regulation No 2847/93.

27 — Cited in footnote 2, paragraph 36.

overseas, the French Republic was required to monitor fulfilment of this obligation to supply information. The repetition of the violations indicates, however, that it did not do so. The Court has moreover consistently held that in an action for infringement of a Treaty obligation the cause of the infringement can be of no consequence. [28]

58. The new Community provisions have not substantially modified Member States' obligations in respect of monitoring and control.

59. Clearly therefore the overfishing was possible only because the French authorities failed to comply with their monitoring obligations. [29]

60. It is to be concluded from the foregoing that, by failing to determine the appropriate detailed rules for the utilisation of the quotas allocated to it for the fishing years 1991 to 1996 and by failing to ensure compliance with the Community rules on the conservation of stocks through sufficient monitoring of fishing catches, appropriate inspection of landings and registration of catches, the French Republic has failed to fulfil its obligations under Article 5(2) of Regulation No 170/83, Articles 1(1) and (2) and 2(2) of Regulation No 2241/87, and under Article 9(2) of Regulation No 3760/92 and Article 2 of Regulation No 2847/93.

3. Belated suspension of fishing activity

Arguments of the parties

61. Citing the judgment in Case C-52/95 [30] the Commission considers France to have infringed Article 11(2) of Regulation No 2241/87. Under that provision, each Member State is required to determine, on the basis of the available information on catches, the expected date of exhaustion of the quota and take in good time whatever measures are required to enable fishing to be provisionally prohibited as from that date. In the Commission's view this analysis is applicable to the successor provision in Article 21(2) of Regulation No 2847/93 in view of its similar wording.

62. The Commission points out that the French authorities were particularly tardy

28 — See the judgment cited in footnote 2, paragraph 36, and the judgment, cited therein, in Case C-71/97 *Commission* v *Spain* [1998] ECR I-5991, paragraph 15.

29 — See also the judgment in Case C-333/99 cited in footnote 2, paragraph 35.

30 — *Commission* v *France* [1995] ECR I-4443.

in ordering the suspension of fishing activity since in a number of instances suspension orders were not issued until two or three months after the established quotas had been exhausted.

63. The French Government maintains that the figures advanced by the national authorities are based on the information contained in the monthly catch reports submitted to the Commission to enable it to impose bans on fishing. It adds that the catch data for a given month are available no earlier than the 10th day of the following month.

64. The French Government argues further that it did not wait until the fishing quotas were exhausted to issue prohibitions on fishing. French law did however require 15 days to elapse between the date on which a prohibition decision was issued and its entry into force by publication in the *Journal officiel de la République Française* (French official journal). The quota violations were attributable to the continuation of fishing during those periods. When it became clear that this interval was too long an emergency procedure was introduced shortening it to six days.

65. The Commission states in response that a Member State is required, when determining the effective date of suspension, to take account of the lapse of time between the issue of the prohibition on catches and the actual entry into force of the prohibition by virtue of publication. It concludes that by not temporarily prohibiting fishing activity the French Republic failed to comply with its obligations under Article 21(2) of Regulation No 2847/93.

Assessment

66. In its judgment in Case C-333/99 the Court drew attention to its previous case-law on the importance of timely prohibition of fishing activity. [31]

67. The Commission complains in essence that the French Republic either failed to provisionally prohibit fishing activity or else did so too late. The data adduced by the Commission have not in any way been disputed. It can be concluded therefore that in the fishing years at issue, temporary bans on fishing activity were either not imposed or imposed too late, in the instances cited by the Commission.

68. Here again it should be emphasised that the new Community provisions have not substantially modified the legal situation in this respect.

31 — Cited in footnote 2, paragraphs 39 and 45.

69. Concerning the technical difficulties or times to publication of ministerial decrees invoked by the French Republic, it is likewise sufficient to refer to the consistent case-law of the Court already cited. [32]

70. It must therefore be concluded that, by not provisionally prohibiting, in the fishing years 1991 to 1994 and 1995 and 1996, fishing by vessels flying the French flag or registered in France when the catches taken had been deemed to have exhausted the corresponding quota and by finally prohibiting fishing in certain cases when the quota had been largely exceeded, the French Republic has failed to fulfil its obligations under Article 11(2) of Regulation No 2241/87 and Article 21(2) of Regulation No 2847/93.

4. Failure to institute penal or administrative proceedings

Submissions of the parties

71. Again citing the judgment in Case C-52/95, [33] the Commission recalls that in the event of failure to comply with the provisions concerning conservation and supervision the competent authorities in a Member State are required, under Article 1(2) of Regulation No 2241/87 and Article 2 of Regulation No 2847/93, to institute penal or administrative proceedings against those responsible. The Commission contends that Article 31 of Regulation No 2847/93 does not in any way modify that requirement.

72. The Commission refers in particular, in this connection, to Article 31(2) of Regulation No 2847/93. [34]

73. Holding that the French Government's contention that it was unable to find the records of the proceedings instituted against the producers' associations was not relevant and noting the lack of evidence that such proceedings had been instituted, the Commission concludes that the French authorities did not institute the necessary proceedings.

74. The French Government would like to draw a distinction between sanctions — of an administrative nature — imposed on producers' associations and sanctions — of a penal nature — imposed on fisher-

32 — See point 61 and footnote 30 above.

33 — Cited in footnote 30.

34 — See point 16 above.

men. It argues that penalties imposed on the producers' associations responsible for managing the national quotas are of an economic nature in so far as, where the sub-quota allocated to a producers' association has been exhausted, the quantities fished in excess of that figure are taken into account the following year in calculating the scale used to divide the national quota among the producers' organisations.

75. The Commission considers these measures to be insufficient inasmuch as the French Government cannot disown its obligations under Community law in respect of action against individual fishermen by delegating quota administration to producers' associations and declaring them to be responsible for any quota violations that might occur. Moreover, the collective scheme established with the producers' associations cannot replace effective sanctions within the meaning of Article 31 of Regulation No 2847/93.

76. The French Government acknowledges that these measures are insufficient, particularly where fishing in excess of a sub-quota causes the national quota to be exceeded. It had therefore drafted a decree detailing the sanctions that would apply to individual producers' associations responsible for breaches of quotas. The Commission points out that this draft had not been brought to its attention, as required by the second paragraph of Article 38 of Regulation No 2847/93.

77. Concerning the penal sanctions to be imposed on fishermen the French Government maintains that the increases in catch figures subsequent to the suspension of fishing activity were not to be attributed to the illegal continuation of fishing activity but rather to statistical corrections to catches taken prior to the suspension.

78. It adds that sanctions of a penal nature presuppose that the competent minister has issued a decree which has been published in the *Journal officiel de la République française* suspending fishing for a specified species in a specified zone and that the offence has been confirmed, generally on the high sea, by a sworn agent.

79. Referring to paragraph 52 of the judgment in *Commission* v *France*,[35] the Commission observes that an offence can be

35 — Cited in footnote 2.

ascertained in port, for example when catches are landed or transshipped.

Analysis

80. In Case C-333/99 the Court inferred the existence of an infringement of Article 5(2) of Regulation No 170/83 and Article 1(2) of Regulation No 2241/87 from the obligation under Article 1(2) of Regulation No 2241/87 to take penal or administrative action against those responsible, whereas the French Government had argued that it was not until 1997 that it had introduced, in accordance with Regulation (EC) No 847/96, [36] a system of administrative penalties for fishing in excess of quota. [37]

81. France's submission on this point in Case C-333/99 cannot be left out of account in assessing the validity of its reasoning in the present cases.

82. It must be found that for the 1991 to 1994 fishing years the failure to take penal action is essentially undisputed.

83. The arguments advanced in this respect by France concerning the conditions governing the institution of penal proceedings under domestic law are not relevant. In its judgment in *Commission* v *France* the Court held in this respect that '[i]t is settled case-law that a Member State cannot plead provisions, practices or situations in its internal legal system to justify non-compliance with obligations and time-limits arising from rules of Community law...'. [38]

84. As regards the administrative sanctions, the collective system of quota management does not seem capable of meeting the requirements of Community law concerning the imposition of penalties for quota violations. The system confines itself to deducting the quantity by which a particular producers' association has overfished from its future sub-quota. This does nothing to induce the producers' association responsible for the instance of overfishing to stay within its sub-quota; the overfishing has no immediate adverse consequences for it. Nor does the system prevent a recurrence since the deduction can be repeated any number of times. If the aggregate deduction were to exhaust the

36 — Council Regulation of 6 May 1996 introducing additional conditions for year-to-year management of TACs and quotas (OJ 1996 L 115, p. 3).

37 — Case C-333/99 (cited in footnote 2), paragraph 49 et seq.

38 — Cited in footnote 2, paragraph 54.

sub-quota even before the commencement of fishing activity in a given fishing year, the system does not guarantee that the producers' association concerned will be prevented from exercising that activity.

85. The French Government did moreover expressly acknowledge in Case C-333/99 that it did not introduce a system of administrative penalties until 1997.

86. With regard to the 1995 and 1996 fishing years, it should be noted as a general point that Article 31 of Regulation No 2847/93 has rendered Member States' obligations more stringent in respect of the proceedings to be instituted as these must henceforth be capable of 'effectively depriving those responsible of the economic benefit of the infringements or of producing results proportionate to the seriousness of such infringements, effectively discouraging further offences of the same kind'.

87. The Commission must therefore be regarded as right in holding that the French system was particularly unsatisfactory during this period. The collective quota management system is not so much a system for imposing penalties as a scheme for exploiting quotas. [39]

88. From all this, it is to be concluded that, by failing to take penal or administrative proceedings against any master of a vessel or other persons responsible for fishing after the prohibition thereof, as regards the 1991 to 1996 fishing years, the French Republic has failed to fulfil its obligations under Article 5(2) of Regulation No 170/83 in conjunction with Article 1(2) of Regulation No 2241/87 and Article 31 of Regulation No 2847/93.

V — Costs

89. Under Article 69(2) of the Rules of Procedure, the unsuccessful party is required to pay the costs. The French Republic having failed in its pleas and the Commission having applied for the costs to be paid by the French Republic, the latter should be ordered to pay the costs.

39 — See also point 75 above.

VI — Conclusion

90. In the light of the foregoing considerations, I therefore propose that the Court should:

in Case C-418/00

(1) declare that:

— by failing to determine the necessary detailed rules for the utilisation of the quotas allocated to it for the 1991 to 1994 fishing years and by failing, in those years, to ensure compliance with the Community rules on the conservation of species through adequate monitoring of fishing activities and through appropriate inspection of the fishing fleet, landings and the registration of catches,

— by not provisionally prohibiting fishing by vessels flying the French flag or registered in France when the catches taken had been deemed to have exhausted the corresponding quota and, possibly, by finally suspending fishing after the quota had been largely exceeded, as regards the 1991 to 1994 fishing years,

— by failing to take penal or administrative proceedings against any master of a vessel or other persons responsible for fishing after the prohibition thereof, as regards the 1991 to 1994 fishing years,

the French Republic has failed to fulfil its obligations under (i) Article 5(2) of Regulation (EEC) No 170/83 of 25 January 1983 establishing a Community system for the conservation and management of fishery resources in conjunction with Article 1(1) and (2) of Regulation (EEC) No 2241/87 of 23 July 1987 establishing certain control measures for fishing activities and Article 9(2) of Regulation (EEC) No 3760/92 of 20 December 1992 establishing a Community system for fisheries and aquaculture and Article 2 of Regulation (EEC) No 2847/93 of 12 October 1993 establishing a control system applicable to the common fisheries policy and under (ii) Article 11(1) and (2) of Regulation No 2241/87 and Article 21(1) and (2) of Regulation No 2847/93 and under (iii) Article 5(2) of Regulation No 170/83 in conjunction with Article 1(2) of Regulation No 2241/87 and Article 31 of Regulation No 2847/93;

(2) order the French Republic to pay the costs;

in Case C-419/00

(1) declare that:

— by failing to determine the necessary detailed rules for the utilisation of the quotas allocated to it for the 1995 and 1996 fishing years and by failing, in those years, to ensure compliance with the Community rules on the conservation of species through adequate monitoring of fishing activities and through appropriate inspection of the fishing fleet, landings and the registration of catches,

— by not provisionally prohibiting fishing by vessels flying the French flag or registered in France when the catches taken had been deemed to have

exhausted the corresponding quota and, possibly, by finally suspending fishing after the quota had been largely exceeded, as regards the 1995 and 1996 fishing years,

— by failing to take penal or administrative proceedings against any master of a vessel or other persons responsible for fishing after the prohibition thereof, as regards the 1995 and 1996 fishing years,

the French Republic has failed to fulfil its obligations under (i) Article 9(2) of Regulation No 3760/92 and Article 2 of Regulation No 2847/93 and under (ii) Article 21(1) and (2) of Regulation No 2847/93 and under (iii) Article 31 of Regulation No 2847/93;

(2) order the French Republic to pay the costs.