# JUDGMENT OF THE COURT
31 January 1991 *

In Case C-244/89,

**Commission of the European Communities**, represented by R. C. Fischer, Legal Adviser, and P. Hetsch, a member of the Commission's Legal Department, acting as Agents, with an address for service in Luxembourg at the office of G. Berardis, a member of the Commission's legal department, Wagner Centre, Kirchberg,

applicant,

v

**French Republic**, represented by E. Belliard, Deputy Director of the Legal Affairs Directorate at the Ministry of Foreign Affairs, acting as Agent, and by M. Giacomini, Foreign Affairs Secretary in the same Ministry, acting as Deputy Agent, with an address for service in Luxembourg at the French Embassy, 9, boulevard Prince-Henri,

defendant,

APPLICATION for a declaration that, by failing to ensure observance of the quotas allocated to it for the year 1986 for catches of 'other species (as by-catches)' in Norwegian waters and of redfish in Faeroese waters, the French Republic has failed to fulfil, *inter alia*, its obligations under Article 5(2) of Council Regulation (EEC) No 170/83 of 25 January 1983 establishing a Community system for the conservation and management of fishery resources (Official Journal L 24, p. 1) and Article 10(2) of Council Regulation (EEC) No 2057/82 of 29 June 1982 establishing certain control measures for fishing activities by vessels of the Member States (Official Journal L 220, p. 1), read in conjunction with Article 1 of Council Regulation (EEC) No 3730/85 of 20 December 1985 allocating certain catch quotas between Member States for vessels fishing in the Norwegian economic zone and the fishery zone around Jan Mayen (Official Journal L 361, p. 66) and Article 1 of Council Regulation (EEC) No 3732/85 of 20 December

* Language of the case: French.

1985 allocating catch quotas between Member States for vessels fishing in Faeroese waters (Official Journal L 361, p. 76),

THE COURT

composed of O. Due, President, G. F. Mancini, T. F. O'Higgins and J. C. Moitinho de Almeida (Presidents of Chambers), C. N. Kakouris, F. A. Schockweiler, F. Grévisse, M. Zuleeg and P. J. G. Kapteyn, Judges,

Advocate General: F. G. Jacobs
Registrar: J. A. Pompe, Deputy Registrar

having regard to the Report for the Hearing,

after hearing oral argument presented by the parties at the sitting on 20 November 1990,

after hearing the Opinion of the Advocate General delivered at the sitting on 10 January 1991,

gives the following

**Judgment**

1 By application lodged at the Court Registry on 2 August 1989, the Commission of the European Communities brought an action under Article 169 of the EEC Treaty for a declaration that, by failing to ensure observance of the quotas allocated to it for the year 1986 for catches of 'other species (as by-catches)' in Norwegian waters and of redfish in Faeroese waters, the French Republic had failed to fulfil, *inter alia*, its obligations under Article 5(2) of Council Regulation (EEC) No 170/83 of 25 January 1983 establishing a Community system for the conservation and management of fishery resources (Official Journal L 24, p. 1) and Article 10(2) of Council Regulation (EEC) No 2057/82 of 29 June 1982 establishing certain control measures for fishing activities by vessels of the Member States (Official Journal L 220, p. 1), read in conjunction with Article 1 of Council

Regulation (EEC) No 3730/85 of 20 December 1985 allocating certain catch quotas between Member States for vessels fishing in the Norwegian economic zone and the fishery zone around Jan Mayen (Official Journal 1985 No L 361, p. 66) and Article 1 of Council Regulation (EEC) No 3732/85 of 20 December 1985 allocating catch quotas between Member States for vessels fishing in Faeroese waters (Official Journal L 361, p. 76).

2 Regulation No 3730/85, whose period of validity was extended to 31 December 1986 by Council Regulation (EEC) No 114/86 of 20 January 1986 (Official Journal L 17, p. 4), provided that, for 1986, catches under the Agreement on mutual fishing rights in 1986 between the Community and Norway, by vessels flying the flag of a Member State in the waters falling within the Norwegian economic zone north of 62° 00'N as well as within the fishery zone around Jan Mayen were to be limited to the quota set out in Annex 1, the quota for France for 'other species (as by-catches)' being 65 tonnes.

3 In accordance with the procedure provided for by the Agreement on fisheries between the European Economic Community, of the one part, and the Government of Denmark and the Home Government of the Faeroe Islands, of the other, annexed to Council Regulation (EEC) No 2211/80 of 27 June 1980 (Official Journal L 226, p. 11), an arrangement on reciprocal fishing rights for 1986 was concluded between the Community and the Faroe Islands. Regulation No 3732/85 provided that, for 1986, catches under that arrangement by vessels flying the flag of a Member State in the waters falling within the fisheries jurisdiction of the Faroe Islands were to be limited to the quotas set out in the Annex thereto, the redfish quota for France being 440 tonnes.

4 The annual table of landings transmitted by the French Republic to the Commission on 29 January 1987, which is annexed to the reply, shows that the quotas allocated to France for 1986 were exhausted in September 1986 in respect of by-catches in Norwegian waters and in May 1986 in respect of redfish in Faeroese waters.

5 In the case of by-catches in Norwegian waters, France took a total in 1986 of 105 tonnes, exceeding its quota by 40 tonnes.

6 It is not contested that the French Republic did not at any time take any measures other than that of providing the Commission with information on catches notified by its fishermen, with the result that it was only by virtue of Regulation (EEC) No 3465/86 (Official Journal L 319, p. 29), which entered into force on 14 November 1986, that the Commission was able, pursuant to Article 10(3) of Regulation No 2057/82, to prohibit the taking of by-catches in Norwegian waters north of 62° N by vessels flying the flag of France.

7 As regards redfish in Faeroese waters, by a telex message of 12 May 1986 the French authorities informed the Commission that the French quota had been exhausted and requested it to close fishing for that species in that sector. Following an exchange of quotas between France and the United Kingdom pursuant to Article 5(1) of Regulation No 170/83, which was notified to the Commission by a telex message of 2 June 1986, France's catch quota for redfish in Faeroese waters was raised to 510 tonnes. That increased quota, which was virtually exhausted by the end of September 1986 (506 tonnes), was exceeded in November 1986, no catch being made in October. For 1986, the total catches of redfish declared by France in Faeroese waters rose to 617 tonnes, exceeding the quota by 107 tonnes.

8 The French Republic took no measure provisionally to prohibit its vessels from fishing for redfish in that sector, for which reason the Commission imposed such a prohibition by Regulation (EEC) No 1601/86 (Official Journal L 140, p. 22), which entered into force on 27 May 1986, having regard to the information communicated to it by the French authorities by the telex message of 12 May 1986 and acting pursuant to Article 10(3) of Regulation No 2057/82.

9 The Commission inferred from the breaches of the quota that the French Republic had failed, for 1986, to take the measures necessary to ensure observance of the quotas allocated to it for by-catches in Norwegian waters and for redfish in Faeroese waters.

10 In support of its application, the Commission maintains, essentially, that the breaches of quota are the result of the French Republic's failure to fulfil the obli-

gation imposed on the Member States by Article 10(2) of Regulation No 2057/82 to take steps in good time to prohibit fishing provisionally.

11 The Commission also claims that those breaches of quota are the result of the French Republic's failure to take, in accordance with Article 5(2) of Regulation No 170/83, the measures necessary to determine the detailed rules for utilization of the fishing quotas allocated to it.

12 Reference is made to the Report for the Hearing for a more detailed account of the facts, the course of the procedure and the pleas in law and arguments of the parties, which are mentioned or discussed hereinafter only in so far as is necessary for the reasoning of the Court.

**The late closing of fishing**

13 The Commission accuses the French Republic of failing to fulfil its obligations under Article 10(2) of Regulation No 2057/82 by not provisionally prohibiting fishing for the stocks of fish concerned as soon as exhaustion of the quotas appeared imminent.

14 In determining whether the Commission's argument is well- founded, it must be observed first of all that Article 10(2) of Regulation No 2057/82 provides that: '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 transshipment 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'.

15 Article 10 of Regulation No 2057/82 is not expressly mentioned among the provisions to be complied with in the management of the catch quotas divided among the Member States for vessels fishing in the Norwegian economic zone and the fishery zone around Jan Mayen and in Faeroese waters. Article 2 of Regulation No 3730/85 and Article 2 of Regulation No 3732/85 merely provide that Member States and the masters of vessels flying the flag of a Member State must conform, as far as fishing in the waters referred to are concerned, with Articles 3 to 9 of Regulation No 2057/82.

16 As the Court held in its judgment in Case C-62/89 (*Commission* v *France* [1990] ECR I-925), even though Regulations Nos 3730/85 and 3732/85 do not refer expressly to Article 10 of Regulation No 2057/82, the Member States must none the less comply with that provision, the applicability of which to this case is not contested by the French Republic, since it is a general rule essential to the effectiveness of any system for the conservation and management of fishery resources based on the division in the form of quotas allocated to the Member States of the catch volume available to the Community. Article 10 of Regulation No 2057/82 is therefore applicable in this case.

17 As regards, more particularly, the argument put forward by the Commission, it must be borne in mind that, in Case C-62/89 cited above, the Court has already held that it follows from Article 10(2) of Regulation No 2057/82 that the Member States are required to adopt in good time all the measures necessary to prevent the quotas at issue from being exceeded for the purpose of conserving fishery resources (paragraph 17).

18 The French Republic puts forward four arguments in order to account for its failure to adopt the required measures.

19 In the first place, it refers to practical difficulties which prevented it from foreseeing the imminent exhaustion of the quotas in question. It contends, first, that the waters concerned in the present proceedings are very distant, so that infor-

mation on catches was likely to be out of date when received, and draws attention to the seasonal nature of the fisheries in question. In the case of quotas for by-catches in Norwegian waters, those difficulties were aggravated by the fact that the French quota was very low, whereas the vessels fishing in those waters were of very large capacity. Moreover, the French Republic contends that Commission Regulation (EEC) No 2807/83 of 22 September 1983 laying down detailed rules for recording Member States' catches of fish (Official Journal L 276, p. 1), which provides for a Community logbook, was not applicable until 1 April 1986 and the introduction of a data-processing system for the information entered in the logbooks, required a period of adjustment.

20 That argument cannot be accepted. The Court has consistently held (see, for example, the judgment in Case C-62/89, cited above, paragraph 23) that a Member State cannot rely on practical difficulties in order to justify its failure to adopt appropriate supervisory measures. On the contrary, it is for the Member States responsible for implementing Community regulations in the context of the common organization of the market in fishery products to overcome those difficulties by adopting appropriate measures.

21 It must be emphasized, as the Advocate General stated in paragraph 12 of his Opinion, that the control measures laid down in Regulation No 2057/82, in particular Articles 6 and 9, which provide for the verification and recording of all landings, if properly observed and enforced, should have provided the French authorities with enough information to enable them to anticipate the exhaustion of the quotas and act accordingly. More over, if in its view those measures were inadequate, it was open to the French Republic under Article 14 of Regulation No 2057/82 to adopt additional measures going beyond the minimum requirements laid down in that regulation. The Commission was thus correct to point out that the French Republic could have required the skippers of vessels to report catches by radio or to introduce a licensing system under which vessels would be authorized in advance to catch a certain quantity of fish subject to the quotas.

22 As regards the alleged need for a period of adjustment to set up a system for the compilation and processing of information from logbooks, it must be borne in mind, as the Court has already held in its judgment in Case C-62/89 (cited above, paragraph 25), that Regulation No 2807/83, which entered into force on 1 April 1985, merely prescribed a standard form of logbook. On the other hand, the obligation to keep such a logbook indicating the quantities of each species caught and the date and location of such catches was already laid down by Article 3 of Regulation No 2057/82, which entered into force on 1 January 1983. In those circumstances, it was not unreasonable to expect that the French Republic would, by 1986, have established a system enabling it to make efficient use of the information provided by the logbooks.

23 The French Republic's second argument is that, in the present case, it has not been established for certain whether or to what extent the two quotas in question were exceeded. The French Republic draws attention, in the first place, to the lack of any Community harmonization of the conversion factors applied by the Member States to landed catches, comprising cleaned fish, in order to calculate the live weight of the catches. The French Republic also contends that certain waters in which redfish were caught are the subject of disputes as to jurisdiction between the United Kingdom and the Faeroe Islands.

24 With regard to the alleged uncertainty arising from the application of the conversion factor, it should be observed, as the Court emphasized in response to the same argument in its judgment in Case C-62/89, cited above (paragraph 28), that the French authorities themselves use that factor to arrive at the catch figures transmitted to the Commission. In those circumstances, the French Republic is not justified in contesting the reliability of that method of calculation. Moreover, even if there is a degree of uncertainty, it is limited and certainly cannot explain breaches of quota as great as those found to exist in the present case, namely 21% in respect of the enlarged quota for redfish and 60% in the case of the quota for by-catches.

25 With regard to the alleged dispute as to jurisdiction between the United Kingdom and the Faeroe Islands, it must be borne in mind that the Court has already held

(Case C-62/89, cited above, paragraph 30) that, under Article 2(b) of the Agreement on fisheries between the European Economic Community and the Government of Denmark and the Home Government of the Faeroe Islands, the Faroese authorities are to determine annually 'allotments for (Community) fishing vessels . . . and the areas within which these allotments may be fished'. The list of allotments and fishing areas is transmitted to the Commission and serves as a basis for the division of quotas between the Member States. In the absence of any reservation in the fisheries agreement with regard to a jurisdictional dispute between the Faeroe Islands and the United Kingdom or any challenge to the areas indicated by the Faeroese authorities on the part of the Member State allegedly concerned, the French Republic has not successfully challenged the fact that all the catches relied on by the Commission in the context of these proceedings were taken in the area under the fisheries jurisdiction of the Faeroe Islands. In those circumstances, the French Republic cannot rely on that argument to justify its failure to observe the quota in this case.

26 Thirdly, the French Republic observes that in any event the total quota allocated to the Community for the stocks in question in Norwegian and Faeroese waters was not exhausted in 1986, with the result that the fact that France exceeded its quotas did not injure the other Member States or undermine the conservational aims of the Community legislation or the agreements entered into by the Community with the non-member countries concerned.

27 It need merely be pointed out, as the Court has already held in its judgment in Case C-62/89 cited above (paragraph 32), that the total Community catch in the waters concerned in 1986, the quantity of which became known only after the end of the year in question, cannot affect a Member State's obligation to adopt in good time the measures necessary to prevent the exhaustion of the national quota allocated to it.

28 Finally, by its fourth argument, the French Republic challenges the criteria applied by the Commission in assessing the management and monitoring of quotas by the Member States. The French Republic contends, in the first place, that, when

deciding whether or not to initiate proceedings under Article 169 of the Treaty for the exceeding of quotas, the Commission must not take account of the quantities overfished by comparison with the total quota, but is under an obligation to take account of the absolute value of the quantities in excess of quota, namely the tonnage represented by them. Thus, the Commission should compare the margin by which the quotas concerned were exceeded with that relating to the other quotas, which it regarded as insignificant and in respect of which it therefore took no action; it should also take account of the capacities of the vessels using the quotas. Secondly, the French Republic contends that, when deciding whether the period between the date of exhaustion of the quotas and the date of closing of fishing represented a serious delay, the Commission must take account of the time-limits laid down by the Community legislation, which requires the skippers of vessels to transmit the information contained in their logbooks to the national authorities at least every 15 days and, in any event, within 48 hours after landing, and which allows the Member States a period of 15 days in which to forward their monthly catch declaration to the Commission.

29 As regards the first point, it must be observed, as the Commission has rightly emphasized, that an assessment of the gravity of a breach of quota by reference to its absolute value, in other words the tonnage involved, is irrelevant since the quotas allocated to the Member States vary considerably in terms of quantity. On the other hand, an assessment based on the percentage represented by the quantity caught in excess of quota makes it possible to determine whether or not the quotas have been efficiently managed and monitored. As the Commission also pointed out, the fact that the French vessels operating in the waters in question were of large capacity was a factor which required the French authorities to be all the more vigilant but not one which in any way diminished their obligation to ensure the observance of quotas.

30 As regards the second point, it must be stated that the Commission rightly pointed out that a Member State cannot rely on the minimum requirements of Community legislation in order to escape its responsibilities concerning the observance of the fishing quotas allocated to it. As regards the period of 15 days for notification of catches, it must be observed that the Member States are empowered to require such information to be communicated more rapidly, for example by radio. Morever, the period of 15 days for the notification of monthly catch figures to the Commission cannot in any case serve as an excuse for the French Republic's

failure to discharge its obligation to take the measures necessary provisionally to prohibit any fishing activity as soon as exhaustion of the quota appears imminent.

31 Since no argument put forward by the French Republic in response to the allegation made by the Commission can be upheld, it must be stated that, by not ensuring compliance with the quotas allocated to it for 1986 for by-catches in Norwegian waters and for redfish in Faeroese waters, the French Republic has failed to fulfil its obligations under Article 10(2) of Regulation No 2057/82, read in conjunction with Article 1 of Regulations Nos 3730/85 and 3732/85.

**The secondary head of claim**

32 In its application, the Commission also claims that the French Republic failed to fulfil its obligations under Article 5(2) of Regulation No 170/83, pursuant to which Member States are to 'determine, in accordance with the applicable Community provisions, the detailed rules for the utilization of the quotas allocated to them'.

33 In response to a written question put by the Court, requesting the Commission to indicate specific evidence proving that the French Republic infringed Article 5(2) of Regulation No 170/83, the Commission states, in the first place, that that provision is of general scope, covering all the detailed arrangements necessary to ensure that quotas are used in conformity with the relevant Community rules, with the result that any overfishing attributable to a Member State constitutes an infringement of Article 5(2). It goes on to state that, since the provisions of Regulation No 2057/82, including Article 10(2), although adopted prior to Regulation No 170/83, merely define more precisely the general obligation contained in Article 5(2), any infringement of Article 10(2) of Regulation No 2057/82 *ipso facto* constitutes an infringement of Article 5(2) of Regulation No 170/83. Finally, the Commission claims that the late closing of fishing was due to the fact that the French Republic did not take the necessary measures, besides those required by Regulation No 2057/82, to obtain information on catches enabling it to anticipate

the exceeding of quotas and that, consequently, that inadequate quota management must also be regarded as an infringement of Article 5(2).

34 Those arguments cannot be upheld. A general provision can be applied independently only in situations for which no more specific rules are laid down by Community law. It follows that, where a provision of a general nature such as Article 5(2) of Regulation No 170/83 has been implemented by a specific rule, such as, in this case, Article 10(2) of Regulation No 2057/82, and the Court has found that a Member State has failed to fulfil that specific obligation, it is no longer necessary to consider whether that State has also infringed the general provision on which that obligation is based.

35 Moreover, the Court has consistently held (see, for example, the judgment in Case C-62/89, *Commission* v *France*, cited above, paragraph 37) that, in proceedings brought under Article 169 of the Treaty, the Commission is required to prove the allegation that the obligation has not been fulfilled. Consequently, it is incumbent upon the Commission to produce the factual and legal evidence necessary to enable the Court to establish that the obligation in question has not been fulfilled. In the present case, it must be stated that the Commission did not put forward the above arguments until it replied to a written question put by the Court.

36 In those circumstances, the secondary head of claim of the Commission must be dismissed.

## Costs

37 Pursuant to Article 69(2) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs. Since the French Republic has essentially failed in its pleas, it must be ordered to pay the costs.

On those grounds,

THE COURT

hereby:

**(1) Declares that, by failing to ensure observance of the quotas allocated to it for the year 1986 for catches of 'other species (as by-catches)' in Norwegian waters and of redfish in Faeroese waters, the French Republic has failed to fulfil its obligations under Article 10(2) of Council Regulation No 2057/82 of 29 June 1982 establishing certain control measures for fishing activities by vessels of the Member States, read in conjunction with Article 1 of Council Regulation (EEC) No 3730/85 of 20 December 1985 allocating certain catch quotas between Member States for vessels fishing in the Norwegian economic zone and the fishery zone around Jan Mayen and Article 1 of Council Regulation (EEC) No 3732/85 of 20 December 1985 allocating catch quotas between Member States for vessels fishing in Faeroese waters;**

**(2) Dismisses the remainder of the application;**

**(3) Orders the French Republic to pay the costs.**

Due Mancini O'Higgins Moitinho de Almeida

Kakouris Schockweiler Grévisse Zuleeg Kapteyn

Delivered in open court in Luxembourg on 31 January 1991.

J.-G. Giraud
Registrar

O. Due
President