JUDGMENT OF THE COURT

11 June 1991 *

In Case C-64/88,

Commission of the European Communities, represented by R. C. Fisher, Legal Advisor, and P. Hetsch, a member of its Legal Service acting as Agents, with an address of service in Luxembourg at the office of G. Berardis, a member of its Legal Service, Wagner Centre, Kirchberg,

applicant,

v

French Republic, represented by E. Belliard and M. Giacomini, acting as Agents, with an address for service in Luxembourg at the French Embassy, 9, Boulevard Prince-Henri,

defendant,

APPLICATION for a declaration that the French Republic has failed to fulfil its obligations under Article 1 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 1982 L 220, p. 1) and under Article 1 of Council Regulation (EEC) No 2241/87 of 23 July 1987 establishing certain control measures for fishing activities (Official Journal 1987 L 207, p. 1) with regard to monitoring the application of certain technical Community measures for the conservation of fishery resources, laid down by Council Regulations (EEC) Nos 171/83 of 25 January 1983 (Official Journal 1983 L 24, p. 14) and 3094/86 of 7 October 1986 (Official Journal 1986 L 288, p. 1),

* Language of the case: French.

THE COURT,

composed of: O. Due, President, G. F. Mancini, T. F. O'Higgins and G. C. Rodríguez Iglesias (Presidents of Chambers), Sir Gordon Slynn, R. Joliet and F. A. Schockweiler, Judges,

Advocate General: C. O. Lenz,
Registrar: J. A. Pompe, Deputy Registrar,

having regard to the Report for the Hearing,

after hearing argument from the parties at the hearing on 24 January 1991 at which the French Republic was represented by G. de Bergues, acting as Agent,

after hearing the Opinion of the Advocate General at the sitting on 27 February 1991,

gives the following

Judgment

1 By application lodged at the Court Registry on 29 February 1988, the Commission of the European Communities brought an action under Article 169 of the EEC Treaty for a declaration that, by failing to undertake control activities ensuring compliance with the technical conservation measures laid down in Council Regulation (EEC) No 171/83 of 25 January 1983 (Official Journal 1983 L 24, p. 14) and Council Regulation (EEC) No 3094/86 of 7 October 1986 (Official Journal 1986 L 288, p. 1) the French Republic has failed to fulfil its obligations under Article 1 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 1982 L 220, p. 1) and thus Regulation (EEC) No 2241/87 of 23 July 1987 establishing certain control measures for fishing activities (Official Journal 1987 L 207, p. 1).

2 By Regulation No 2057/82 ('the first control regulation'), the Council established certain control measures for fishing activities by vessels of the Member States. That regulation was repealed and replaced by Regulation No 2241/87 ('the second control regulation').

3 Article 1 of both regulations imposes two obligations on the Member States. The first, which is of a preventive nature, requires each Member State, within ports situated in its territory and within maritime waters subject its sovereignty or jurisdiction, to inspect fishing vessels flying the flag of, or registered in, a Member State. The second obligation, which is of a punitive nature, requires Member States to take penal or administrative action against the skipper of a vessel infringing the technical measures of conservation of fishing resources.

4 Those technical measures which concern, in particular, the mesh size of nets, attachments to nets, by-catches and the minimum size of fish, were first defined by Regulation No 171/83 ('the first conservation measures regulation') and then by Regulation No 3094/86 ('the second conservation measures regulation') which replaced the former with effect from 1 January 1987.

5 In the Commission's view, the French Government did not, from 1984 to 1987, comply with its obligations to inspect and take action in order to ensure the application of the conservation measures in question.

6 Reference is made to the Report for the Hearing for a fuller account of the facts of the case, the procedure and the arguments of the parties, which are mentioned or discussed hereinafter only in so far as is necessary for the reasoning of the Court.

7 In order to demonstrate the failure to fulfil obligations, the Commission relied in particular on task reports drawn up by the officials which it authorized to assist, from 1984 to 1987, the inspection operations organized by the French authorities. In its reply, it stated that it held those reports at the disposal of the Court whilst stressing that it was essential to preserve the confidential nature of certain information contained therein in order to ensure the effectiveness of future action by its inspectors and to protect the rights of third parties mentioned therein.

8 At the end of the written procedure, the Court requested the Commission to produce to it a document from which references to names were removed and which would show, according to the technical conservation measures in question, the evidence establishing that the French Government had not fully complied with its obligations in the smaller controls during the period in question.

9 The Commission produced a summary of those task reports which mentions neither the name of the persons concerned nor the dates and places of the inspections. A table annexed to the summary shows that it relates to 73 inspections carried out in 26 ports.

10 In its observations the French Government maintained that that document could not be used as evidence of any failure to fulfil obligations. In the absence of particulars of the dates and places of inspection it was unable to check the facts found by the Commission's inspectors and the conclusions they draw from them.

11 The French Government's argument cannot be accepted. On the one hand, it is apparent from its rejoinder that it agreed to the production of reports containing nothing that would enable its agents to be identified. On the other hand, since Article 12(4) of the two control regulations provides that the Community inspections are to be part of the national inspections, the French Government has reports drawn up by its own departments in respect of the inspections in question. It is thus able to challenge the correctness of the findings of the Commission's inspectors and in particular to show that its agents carried out inspections in relation to the conservation measures in question.

The obligation to inspect

(a) *The minimum mesh size*

12 Articles 2, 3 and 4 of the first and Article 2 of the second conservation measures regulation provide, in substance, that fishermen may not use nets having meshes of a smaller size than those laid down in those regulations.

13 In that respect the French Government admitted in the course of the pre-litigation procedure to certain deficiencies in relation to controls. It is apparent from a letter which the Secretary of State responsible for maritime affairs sent to the Commission on 28 May 1985 that inspection of nets carried out by the national authorities was based until 1985 on standards which were less strict than the Community rules in force.

14 The reports of the Commission's inspectors also disclosed deficiencies in controls in 1986 and 1987. First, the national authorities did not have the gauges provided for by the Community rules to measure the nets or used gauges which did not conform to those rules. Secondly, they applied national standards which are less strict than those laid down by the Community rules.

15 It must therefore be held that the controls in relation to mesh size were inadequate.

(b) *Attachments to nets*

16 Article 7 of the first conservation measures regulation provides that no device may be used by means of which the mesh in any part of a fishing net is obstructed or otherwise effectively diminished.

17 In that respect it is sufficient to point out that various reports of the Commission's inspectors concerning inspections which they carried out in 1984 and 1985 show

that the national authorities refrained from taking any measures whatsoever when trawlers were equipped with nets containing devices prohibited by the Community rules. The controls must also be found to be inadequate in that respect.

(c) *By-catches*

18 Articles 8 to 10 of the first and Article 2 of the second conservation measures regulation prohibit fishermen from marketing catches with less than the requisite minimum size unless they represent only a limited percentage of their catch.

19 It is apparent from the reports of the Commission's inspectors in 1985 and 1987 that the national authorities did not always confiscate excessive by-catches (of hake of less than the requisite size) taken when fishing for Norway lobsters. It follows that the French Government has also failed to fulfil its control obligations in relation to by-catches.

(d) *Minimum size*

20 Article 11 of the first and Article 5 of the second conservation measures regulation in substance provide that fish of less than the minimum size may not be sold.

21 The French Government by implication admitted during the pre-litigation procedure that until 1985 it did not observe the Community rules on the matter. It is apparent from the aforementioned letter of 28 May 1985 that the Secretary of State had given instructions that only hake patently 'undersized' (15 to 25 cm) should be seized whereas Annex V to the first conservation measures regulation fixed the minimum size for such catches at 30 cm.

22 It also emerges from the inspectors' reports that in 1986 and 1987 the national authorities applied standards which were less strict in relation to sole and hake than those laid down at Community level. The controls must also be held to be inadequate as regards minimum size.

23 It follows from all those findings that from 1984 to 1987 the French Government did not carry out controls ensuring compliance with the technical measures of conservation in question.

The obligation to take action

24 Since infringements which the national authorities could have found to exist were not recorded and since the offenders were thus not charged, the French Government also failed to fulfil its obligation to take action as required by the control regulations.

Costs

25 Under Article 69(2) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs. Since the defendant has failed in its pleas, it must be ordered to pay the costs.

On those grounds,

THE COURT,

hereby:

(1) Declares that, by failing to carry out between 1984 and 1987 controls ensuring compliance with technical Community measures for the conservation of fishery resources, laid down by Council Regulation (EEC) No 171/83 of 25 January 1983 and by Regulation (EEC) No 3094/86 of 7 October 1986, the French Republic has failed to fulfil its obligations under Article 1 of Council Regu-

lation (EEC) No 2057/82 of 29 June 1982 establishing certain control measures for fishing activities by vessels of the Member States and under Article 1 of Council Regulation (EEC) No 2241/87 of 23 July 1987 establishing certain control measures for fishing activities;

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

Due Mancini O'Higgins

Rodríguez Iglesías Slynn Joliet Schockweiler

Delivered in open court in Luxembourg on 11 June 1991.

J.-G. Giraud
Registrar

O. Due
President