OPINION OF ADVOCATE GENERAL LA PERGOLA

delivered on 12 October 1995 *

1. By order of 6 October 1994 the Kriminal-og Skifteret, Frederikshavn, referred the following questions to the Court of Justice for a preliminary ruling:

'1. Is Article 2 of Commission Regulation (EEC) No 1382/87 of 20 May 1987 establishing detailed rules concerning the inspection of fishing vessels to be interpreted as meaning that the inspection pennant or inspection symbol described in Annex I to that regulation must be displayed by or be painted on the boarding boat (inflatable boat) or is it sufficient that the parent vessel *Nordjylland* displayed that pennant or had that symbol painted on it?

If the answer is that the boarding boat did *not* have to bear the pennant or have the symbol painted on it, no further preliminary ruling is sought. If that is not the case:

2. Has any failure to comply with the requirements in Article 2 any legal significance regarding the question whether the skipper of a vessel (see Article 3) is under an obligation to comply with orders from the authority carrying out the inspection and if so, what is its significance?'

2. The facts of the case are briefly as follows. Finn Ohrt, the skipper of the fishing vessel *Actinia*, was sailing in the north Kattegat when he was approached by an inflatable boarding boat from the Danish inspection vessel *Nordjylland* which was carrying out a fishery inspection. Mr Ohrt did not change course and paid no attention to signals transmitted both by radio and signalling lamp ordering him to stop immediately.

Following that episode, criminal proceedings were brought against Mr Ohrt for infringement of Article 6(3) of Decree No 975 of the Ministry of Fisheries of 10 December 1992, implementing Article 3(1) of Commission

* Original language: Italian.

Regulation (EEC) No 1382/87 [1] of 20 May 1987 (hereinafter 'the Regulation') concerning the inspection of fishing vessels. The latter provision states, 'The skipper of a vessel to be inspected may be required by a representative of the competent authority to stop, manoeuvre or carry out other actions in order to facilitate boarding.'

It appears from the order for reference that the inflatable dinghy which approached the *Actinia* did not bear the identification symbol provided for by Article 2 of the Regulation, according to which 'Any vessel in inspection shall fly, so as to be clearly visible, a pennant or symbol as shown in Annex I.' That pennant was carried only by the main vessel, the *Nordjylland*. However, that vessel was several nautical miles away from, and thus not visible to, the *Actinia*. The national court therefore asks this Court whether the obligation to display the pennant also applies to the boat carrying out the inspection or only to the main vessel, and, if so, whether the failure to display that symbol has any repercussions regarding compliance with an order to stop or any other order given to fishing vessels under Article 3 of the Regulation.

3. As far as the first question is concerned — namely, whether the pennant must also be displayed by the boarding craft — the Commission considers that it should be answered in the negative.

It argues, essentially, that a boarding craft operates not independently but as an adjunct to the main vessel, so that the latter is the only 'inspection vessel' under an obligation to fly the pennant in accordance with Article 2 of the regulation.

I do not think that argument can be upheld. The Commission overlooks the fact that the essential purpose of the Community provision at issue is to ensure that vessels engaged in fishing inspections are immediately recognizable. The prescribed symbol must be displayed so that it is 'clearly visible': the underlying reason for the provision is therefore to lay down uniform rules concerning outward appearance to facilitate the identification of vessels engaged in fishing inspections.

It is not true that the boarding craft, for the present purposes, must be regarded as not operating independently from the main vessel, with the result, mentioned earlier, that the obligation to fly the pennant applies only to the latter. There may be an operational relationship between the two vessels, in that

1 — OJ 1987 L 132, p. 11. It should be noted that the national provision implementing Article 3(1) of the regulation in question is Article 137 of the abovementioned decree of the Ministry of Fisheries, not Article 6(3) as indicated in the order for reference. However, that error does not cause any problems.

the boarding craft carries out the same work as the vessel from which it came. But as soon as it is put into the sea and moves off, the boarding craft is independently engaged in the same activity as the main vessel, which in this case is the carrying out of inspections. That does not exclude — on the contrary, it requires — the application to the boarding craft of the identification rules laid down in general terms by the Community regulation for all vessels engaged in fishing inspections. It need hardly be added that the smallness of the dinghy certainly does not prevent its being described as an 'inspection vessel'. According to a long-established tradition of maritime law, a craft can be described as a vessel regardless of its dimensions. [2]

If a boarding craft is covered by the term inspection vessel, as I think it should be, it necessarily follows that it is required to display the prescribed identification symbol in the same way as the vessel which launches it. If that were not the case, the clear purpose of Article 2 would be frustrated. That provision must be read in close conjunction with Article 3(1) of the Regulation, according to which the competent authority of the Member State may require the skipper of a fishing vessel to stop, manoeuvre or carry out other actions necessary to facilitate boarding. There is no doubt that the orders given by that authority, and the corresponding obligations of the skipper of the fishing vessel, are dependent on the proper signalling rules, which apply to any inspection activity. A signal announcing the inspection must therefore be given in the prescribed manner, whatever the means by which it is carried out. It is of no importance, for the purposes of the applicable Community provision, whether the craft concerned is a dinghy or the main vessel.

4. The national court then asks — and this is the second preliminary question — whether the failure to display the identification pennant in any way affects the obligation to comply with orders to stop or undertake any other manoeuvre or action in connection with the inspection of fishing vessels. More specifically, the Court is asked to consider whether the skipper of a fishing vessel may, to justify failure to comply with orders given to him under Article 3 of the Regulation, rely on the fact that the inspection authority did not identify itself as such by means of the prescribed identification symbols.

The Commission and the Danish Government submit that the failure to display the identification symbol is not sufficient to negate the obligation of the skipper of a fishing vessel to comply with orders from the inspecting authority. In their view, it is

2 — In ancient times, it was said that '*navigii appellatione etiam rates continentur*' (D. 43, 12, 1, 14); following that Justinianian tenet, writers of the sixteenth century (Stracca), the seventeenth century (Stypmannus) and the eighteenth century (Casaregis) stated that '*sub vocabulo navis omnia navigiorum genera comprehenduntur*'. Similarly, Valin, in *Nouveau Commentaire sur l'Ordonnance de la Marine*, I, La Rochelle, 1776, 601, considered that 'sous ces noms de navires ou autres bâtiments de mer sont comprises même les chaloupes'.

necessary to establish in each specific case whether or not the skipper was aware of the status of the giver of the orders. In that connection, they say, failure to display the pennant is not of decisive importance. It is only one of the factors to be taken into account by the court in deciding whether the skipper was so aware in a given case.

In this case, they contend, it is apparent from the order for reference that Finn Ohrt was well aware of the fact that the boarding craft had come from an inspection vessel. He therefore knowingly disregarded his obligation under Article 3 and cannot therefore, in order to justify his conduct, complain of failure of the vessel actually used for the inspection to observe the identification requirements laid down by Article 2. The Commission goes on to say, *ad abundiantam*, that Finn Ohrt had not even observed the requirement of tuning to VHF channel 16, thereby preventing the *Nordjylland* from giving him instructions by radio. Such conduct in itself, according to the Commission, constitutes a breach of the obligation to cooperate in an inspection, as required in general terms by Article 2 of Council Regulation (EEC) No 2241/87 of 23 July 1987. [3]

5. What is to be made of those arguments? First, whether or not Mr Ohrt was aware of the status of the boarding craft is merely a question of fact, to be taken into account where necessary in the proceedings before the national court — but in my opinion it is not such as to affect the interpretation to be given by this Court.

As regards the alleged obligation to tune to VHF channel 16, no such duty appears to be imposed on the skippers of fishing vessels by Community law. [4] Nor can it be said that that duty is a corollary of the obligation to cooperate with the authorities carrying out the inspection laid down by Article 2 of Regulation No 2241/87. The question of interpretation raised by the Danish court is concerned solely with the provisions of Regulation No 1382/87. For the application of those provisions, there is still an obligation to cooperate with the authorities in so far as it is provided that the skipper of the vessel is to comply with orders given for the purposes of an inspection: it is clear, however, that that obligation arises under the Community regulation only if the person concerned is able to recognize — or in any event is aware of — the status of the inspection authority.

3 — OJ 1987 L 207, p. 1.

4 — Nor can it be concluded that such a duty can be inferred from the monitoring provisions which the national authorities are entitled to adopt under Article 15 of Regulation No 2241/87, as the Commission contends in its observations. That alleged obligation, in fact, clearly has no connection with the provisions of that article, which deals with the various possibilities available to a Member State regarding imposition of the obligation to obtain a licence in order to fish or the requirement that fishermen retain documentation concerning inspections already carried out in other Member States.

Quite apart from the clarifications just given, the position of the Commission and the Danish Government — despite being, as I shall show, essentially correct — is not fully explained. It is based essentially on the premise that the skipper of a fishing vessel is required to obey the orders in question whenever, notwithstanding the failure to display an identification symbol, he is aware of the status of the giver of the orders. If that is the case, an essential point remains to be clarified, to ensure that the answer to be given is properly framed. It is necessary to establish in general whether, under the regulation, awareness of the purpose of a vessel used for inspections can be ruled out merely because the competent authority fails to display the prescribed identification symbol or whether, on the contrary, such awareness can be acquired by the persons concerned in some other way. In this case, only if that is considered to be the case will it be appropriate to recognize that the Danish authorities are entitled to show that, even in the absence of the prescribed signal, Finn Ohrt had nevertheless become aware of their status.

6. The answer to the question can only be arrived at by a detailed interpretative examination of Article 2. That provision, as has been seen, is intended to make the status of the vessel recognizable by everyone. Once that status has been advertised by proper display of the pennant, no one can pretend to be unaware of it: the identifiability of that status in such circumstances is regarded by the Community legislature as conferring knowledge for legal purposes. In other words, when the conditions laid down by Article 2 of the regulation are satisfied, a fishing vessel cannot in any event evade the obligations associated with the inspection.

What, however, is the legal position when the inspecting authority has not previously identified itself in the manner prescribed by the regulation? In such a case, there are, in the abstract, two possible interpretations.

(a) One view is that the display of the pennant is a sufficient, but not a necessary, means of proving the status of the inspecting authority. A person's awareness of that status can therefore come from another source. Failure to display the pennant would at most raise a presumption of unawareness of that status. However, that presumption could be rebutted by evidence from the competent authorities to show that the person concerned was in fact aware of their status (rebuttable presumption).

(b) On the other hand, it might be concluded that the means laid down by Article 2 of the regulation constitute a necessary and sufficient means — in other words the only means allowed by law — of identifying inspection vessels. In that case, failure to observe those requirements would prevent the competent authorities from contending that

the person concerned was aware of their status. There would thus be a presumption of unawareness of that status that could not be overturned by evidence to the contrary (irrebuttable presumption).

7. I am of the opinion that, of the two views just outlined, the one in paragraph (a) is most in conformity with the *ratio legis* of Article 2 of the regulation. That provision merely indicates standardized means of identifying vessels engaged in inspection activities. Compliance with the requirements laid down in it, as we have seen, gives rise to an absolute presumption of awareness of the inspection authority's status as such. That is why that status, if identifiable in the manner laid down by the Regulation, is deemed to have been recognized for all legal purposes. That does not mean, however, that when a boarding dinghy does not display the prescribed pennant, and cannot therefore at first sight be recognized for what it is, it ceases, in the eyes of Community law, to serve the inspection function for which it is intended and is definitively stripped of the authority which it must assert vis-à-vis the fishing vessel to be inspected. What is in fact important is that the skipper of the fishing vessel should in some way be aware of the status of those carrying out the inspection. If the pennant is duly displayed, that awareness, as I said earlier, is presumed. Otherwise, it will have to be proved by the competent authority. It is for the national court to say what evidence may be produced for that purpose. The Community regulation at issue does not impose on skippers any obligation to recognize inspection vessels which do not display the requisite pennant; and that is why actual knowledge of the function of the boarding dinghy must be made apparent by the inspection authorities, except of course in a case where, because the pennant is displayed, that function is presumed. It is only that awareness which justifies the imposition of obligations on fishing vessels as regards manoeuvres and other action, in accordance with orders given to them for the purposes of the inspection by the competent authorities, with whom those in charge of the fishing vessel are required to cooperate. In conclusion, the Community provisions under review are to be construed as meaning that all vessels used for inspection activities must display the prescribed symbol but, on the other hand, skippers of fishing vessels may not disregard orders given to them by the authorities on board inspection vessels of whose status they have become aware by any means.

8. In view of the foregoing, I suggest that the Court reply as follows to the questions referred to it by the Kriminal-og Skifteret, Frederikshavn:

A boarding dinghy, when undertaking an inspection, is to be regarded as 'engaged in inspection' within the meaning of Article 2 of Commission Regulation (EEC)

No 1382/87 of 20 May 1987 and is therefore required to display the conventional identification symbol prescribed by that provision.

The skipper of a fishing vessel is not required to comply with an order to stop or any other order given to him under Article 3 of the Regulation by an inspection vessel if he was not aware of the status of the giver of the order. He is so aware if the inspecting authority displays the prescribed identification symbol provided for by Article 2. Otherwise, there is a rebuttable presumption of unawareness of that status: it is deemed not to have been recognized unless the competent authorities prove that the person concerned, despite the failure to display the inspection symbol, was in fact aware of that status.