JUDGMENT OF THE COURT
14 November 1989 *

In Case 6/88

Kingdom of Spain, represented by Javier Conde de Saro, Director-General for Community Legal and Institutional Coordination, and Rosario Silva de Lapuerta, Abogado del Estado, acting as Agents, with an address for service in Luxembourg at the Spanish Embassy, 6 boulevard Emmanuel-Servais,

applicant,

v

Commission of the European Communities, represented by its Legal Advisers R. C. Fischer and F. J. Santaolalla, acting as Agents, with an address for service in Luxembourg at the office of Georgios Kremlis, a member of its Legal Department, Wagner Centre, Kirchberg,

defendant,

and in Case 7/88

French Republic, represented by J.-P. Puissochet, Director of Legal Affairs in the Ministry of Foreign Affairs, acting as Agent, with an address for service in Luxembourg at the French Embassy, 9 boulevard Prince-Henri,

applicant,

v

Commission of the European Communities, represented by its Legal Adviser R. C. Fischer and by P. Hetsch, a member of its Legal Department, acting as Agents, with an address for service in Luxembourg at the office of Georgios Kremlis, a member of its Legal Department, Wagner Centre, Kirchberg,

defendant,

* Languages of the case: Spanish and French.

APPLICATION for the annulment of Commission Regulation (EEC) No 3151/87 of 22 October 1987 concerning the catch declarations of vessels flying the flag of a Member State and operating in the fishing zone of certain developing countries (Official Journal 1987, L 300, p. 15),

THE COURT

composed of O. Due, President, Sir Gordon Slynn, C. N. Kakouris and M. Zuleeg (Presidents of Chambers), T. Koopmans, R. Joliet, J. C. Moitinho de Almeida, F. Grévisse and M. Díez de Velasco, Judges,

Advocate General: G. Tesauro
Registrar: J.-G. Giraud

having regard to the Report for the Hearing and further to the hearing on 13 April 1989,

after hearing the Opinion of the Advocate General delivered at the sitting on 16 May 1989,

gives the following

Judgment

1 By applications lodged at the Court Registry on 11 January 1988, the Kingdom of Spain and the French Republic each brought an action under the first paragraph of Article 173 of the EEC Treaty for the annulment of Commission Regulation (EEC) No 3151/87 of 22 October 1987 concerning the catch declarations of vessels flying the flag of a Member State and operating in the fishing zone of certain developing countries (Official Journal 1987, L 300, p. 15).

2 The Commission adopted the contested regulation on the basis 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). Articles 5 to 9 of the latter

regulation lay down, for each stock or group of stocks subject to a total allowable catch (TAC) or quota, provisions relating in particular to:

(i) the keeping on board fishing vessels of a log-book in which skippers must record the catches taken;

(ii) the submission of a landing declaration at the time of landing after each voyage;

(iii) the provision of information to the Member State concerned on each transhipment of fish;

(iv) the recording by the Member States of landings.

3 Pursuant to Article 10 of Regulation No 2241/87, 'in accordance with the procedure laid down in Article 14, additional stocks or groups of stocks may be made subject to Articles 5 to 9'. According to Article 14 of the regulation, detailed rules for implementing Articles 5 to 9 *inter alia* are to be adopted in accordance with the 'management-committee procedure' provided for in Article 14 of Council Regulation No 170/83 of 25 January 1983 establishing a Community system for the conservation and management of fishery resources (Official Journal 1983, L 24, p. 1).

4 The Commission states in the first recital in the preamble to the contested regulation that the Community applies fisheries agreements with certain developing countries based on the principle of financial compensation for the fishing rights obtained. According to the second recital 'it is essential to the proper management of such fisheries agreements, which require the Community to grant substantial financial compensation in return for fishing rights and to provide the non-member countries concerned with certain information on the catches taken, that the Commission be informed of the outcome of the activities of vessels flying the flag of a Member State in waters falling within the jurisdiction of a partner country; ... therefore, rules should be laid down for the recording and notification of catch data'.

5 By means of the provisions of the contested regulation, based on Article 10 of Regulation No 2241/87, the Commission extended the application of Articles 5 to

9 of the latter regulation to stocks not subject to TACs or quotas caught by Community vessels fishing in maritime waters under the sovereignty or jurisdiction of developing countries on the basis of an agreement between the Community and one of the countries mentioned. The contested regulation also provides that the Member States must regularly notify the Commission of the quantities landed and of other information received concerning catches.

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

7 The applicants essentially make three submissions, alleging a lack of power on the part of the Commission, a manifest error of appraisal and an inadequate statement of reasons. It is appropriate to begin by examining the first submission.

8 The Spanish Government considers that Article 10 of Regulation No 2241/87 does not grant the Commission power to lay down measures for the monitoring of catches taken in non-Community waters. The scope of that regulation, which is concerned exclusively with control measures applicable to fishing in Community waters, may, in its view, be extended only by means of a Council regulation.

9 The French Government claims that Article 10 of Regulation No 2241/87 relates to Articles 5 to 9 of the same regulation, which concern stocks or groups of stocks subject to a TAC or quota. Therefore, those provisions can refer only to zones for which such TACs or quotas exist, and the developing countries referred to in Regulation No 3151/87 have no such zones. Regulation No 3151/87 cannot therefore be regarded as a means of implementing Articles 5 to 9 of Regulation No 2241/87 within the meaning of Article 14 of the latter.

10 The Commission contends in the first place that the application of the Community provisions on the conservation and management of fishery resources and conse-

quently of the rules for monitoring fishing activities is not limited to Community waters but extends to all the fishing activities of fishermen and vessels of the Member States, wherever they operate. The Commission cites by way of example the regulations fixing the annual TACs and Regulation No 3984/87 fixing catch possibilities for 1988 for certain fish stocks and groups of fish stocks in the regulatory area as defined in the NAFO (North-West Atlantic Fisheries Organization) Convention (Official Journal 1987, L 375, p. 63).

11 The Commission then contests the view that the scope of Article 10 of Regulation No 2241/87 is limited to waters already subject to TACs or quotas. It refers to the 11th recital in the preamble to Regulation No 2241/87, according to which additional stocks are those stocks which are not subject to total allowable catches or quotas. According to the Commission, that definition contains no territorial limitation. It therefore extends to all stocks or groups of stocks not subject to TACs or quotas, wherever they are caught.

12 Finally, the Commission considers that the extension of the control measures to catches taken by Community vessels in the waters of the non-member countries concerned is in conformity with the purpose of Regulation No 170/83, which 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. Those objectives are the same as those underlying the conclusion by the Community of fisheries agreements with developing countries. Even though those agreements reflect conservation methods different from those adopted in the Community, they are intended, in the Commission's view, to restrict fishing since they are based on the wishes of the non-member country concerned and the obligation of the Community to foster rational exploitation and conservation of the fishery resources of that State by means of greater cooperation.

13 It must first be stated that by virtue of Article 10 of Regulation No 2241/87, which is the legal basis for Regulation No 3151/87, the Commission is empowered to lay down, in accordance with the management-committee procedure, detailed implementing rules making additional stocks or groups of stocks subject to the catch-monitoring system provided for by Regulation No 2241/87.

14 In order to determine whether the Commission was competent to adopt the contested regulation on the basis of that provision, regard must first be had to the fact that, as the Court has held (see judgment of 17 December 1970 in Case 25/70 *Einfuhr- und Vorratsstelle für Getreide und Futtermittel* v *Köster* [1970] ECR 1161, paragraph 16), provisions conferring executive authority must be interpreted in the light of the scheme and objectives both of those provisions and of the rules as a whole.

15 In the present case it must be borne in mind that Regulation No 2241/87, which contains the enabling provision in question, is itself a regulation for the implementation of a basic Council regulation. The Court has consistently held (see in particular judgment of 16 June 1987 in Case 46/86 *Romkes* v *Officier van Justitie* [1987] ECR 2671) that an implementing regulation such as Regulation No 2241/87 must respect the basic elements laid down in the basic regulation, in this case Council Regulation No 170/83 of 25 January 1983 establishing a Community system for the conservation and management of fishery resources, cited above. The powers of the Commission referred to in Article 10 of Regulation No 2241/87 are therefore to be seen in the light of the objectives and scope of Regulation No 170/83.

16 Regulation No 170/83 is intended to establish a Community system for the conservation and management of fishery resources, to ensure their balanced exploitation. According to Article 2 of that regulation, conservation measures are to be formulated in the light of the available scientific advice and may include, in particular, for each species or group of species, the establishment of fishing zones and the restriction of fishing effort, in particular by limits on catches.

17 The first paragraph of Article 3 of Regulation No 170/83 provides that where, in the case of one species or a group of related species, it becomes necessary to limit the catch, the total allowable catch for each stock or group of stocks, the shares available to the Community, as well as, where applicable, the total catch allocated to non-member countries, and the specific conditions for taking those catches, are to be fixed for each year. The second paragraph of Article 3 states that the shares thus available are to be increased by the total of Community catches outside the waters under the jurisdiction or sovereignty of the Member States.

18 Finally, pursuant to Article 4(1) of Regulation No 170/83, the volume of the catches available to the Community is to be distributed among the Member States in a manner which assures each Member State relative stability of fishing activities for each of the stocks considered.

19 It is in accordance with those provisions that the catch-monitoring system provided for by Regulation No 2241/87 may be extended to additional stocks or groups of stocks. It is therefore necessary to decide first whether the Commission, in using the powers of implementation conferred on it by Article 10 of Regulation No 2241/87 for the management of fisheries agreements between the Community and certain developing countries, remained within the confines of Council Regulations Nos 170/83 and 2241/87.

20 Certain fisheries agreements, notably those concluded with Norway and Sweden, (Official Journal 1980, L 226, pp. 1 and 48), are implemented by means of Regulation No 170/83 and, therefore, Regulation No 2241/87. Those agreements provide that the parties are to consult annually concerning reciprocal fishing rights and the management of common biological resources. Following such consultations, the delegations make recommendations to their respective authorities on the fixing of catch quotas for the vessels of the other party to the agreement. The catch quotas for Community vessels in the fishing zones of the abovementioned countries are then shared among the Community Member States in accordance with Articles 3 and 4 of Regulation No 170/83 (see, most recently, Council Regulations Nos 4196/88 and 4198/88 of 21 December 1988 (Official Journal 1988, L 369, pp. 45 and 54)). It is also apparent from the preamble to the latter regulations that the activities of Community vessels are subject to the pertinent control measures laid down by Regulation No 2241/87.

21 However, with respect to the management of fisheries agreements with developing countries, it must be observed that, as indicated in the contested regulation, they are based on the principle of financial compensation for the fishing rights obtained. The terms and conditions of such financial compensation are laid down in the protocols to the agreements. They provide *inter alia* that the fishing licences granted under the agreement are to be limited to a specific number of vessels. If the authorities of a coastal State decide, in view of a change in the state of fish stocks, to take conservation measures which have an effect on the activities of the Community vessels, consultations must be held between the parties in order to

amend the agreement. That amendment may consist, in particular, in a reduction of the financial compensation to be paid by the Community proportionate to any substantial reduction in fishing rights.

22 It follows that the implementation of certain fisheries agreements, such as those concluded with Sweden and Norway, fall within the Community system of conservation and management of fishery resources established by Council Regulation No 170/83, while the fisheries agreements concluded with the abovementioned developing countries are governed by other criteria. Thus, the system for monitoring catches established by Regulation No 2241/87 pursues, within the framework of the agreements with the Nordic countries, an objective of conservation of fishery resources, whereas in the case of the agreements with developing countries, the system established by the contested regulation essentially pursues a financial objective.

23 It should be noted, secondly, that the catch-monitoring system, closely linked as it is with the Community system for the conservation and management of fishery resources, does not apply to those zones for which no catch limitation has been imposed by a Community regulation or an agreement concluded by the Community with non-member countries. The zones covered by the contested regulation in this case are not subject to the Community system of TACs or quotas and consequently do not fall within the scope of the Community system for the conservation and management of fishery resources.

24 It must therefore be concluded, having regard to the objective and the scheme of Regulations Nos 170/83 and 2241/87, that the Commission had no powers to extend, on the basis of Article 10 of Regulation No 2241/87, the application of certain provisions of Articles 5 to 9 of that regulation to stocks not subject to TACs or quotas caught by Community vessels in the maritime waters under the sovereignty or jurisdiction of developing countries under an agreement between the Community and one of those countries.

25 Accordingly, the submission as to the Commission's lack of powers must be upheld and Commission Regulation No 3151/87 must be declared void in its entirety, without it being necessary to consider the other submissions.

Costs

26 Under Article 69(2) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs if they are asked for in the successful party's pleadings. In Case 7/88 the French Government has not asked for the Commission to be ordered to pay the costs. Since the Commission has been unsuccessful, it must be ordered to pay the costs in Case 6/88 and the parties must be ordered to bear their own costs in Case 7/88.

On those grounds,

THE COURT

hereby:

(1) Declares void Commission Regulation (EEC) No 3151/87 of 22 October 1987 concerning the catch declarations of vessels flying the flag of a Member State and operating in the fishing zone of certain developing countries;

(2) Orders the Commission to pay the costs in Case 6/88;

(3) Orders the parties to bear their own costs in Case 7/88.

Due Slynn Kakouris Zuleeg

Koopmans Joliet Moitinho de Almeida Grévisse Díez de Velasco

Delivered in open court in Luxembourg on 14 November 1989.

J.-G. Giraud
Registrar

O. Due
President