JUDGMENT OF THE COURT (Sixth Chamber)
21 October 1999 *

In Case C-97/98,

REFERENCE to the Court under Article 177 of the EC Treaty (now Article 234 EC) by the Pargas Tingsrätt, Finland, for a preliminary ruling in the proceedings pending before that court between

Peter Jägerskiöld

and

Torolf Gustafsson

on the interpretation of the rules of the EC Treaty on the free movement of goods and the freedom to provide services,

THE COURT (Sixth Chamber),

composed of: R. Schintgen (Rapporteur), President of the Second Chamber, acting as President of the Sixth Chamber, G. Hirsch and H. Ragnemalm Judges,

* Language of the case: Swedish.

Advocate General: N. Fennelly,
Registrar: H.A. Rühl, Principal Administrator,

after considering the written observations submitted on behalf of:

— Peter Jägerskiöld, by R. Kurki-Suonio, Lawyer, Helsinki,

— the Finnish Government, by H. Rotkirch, Ambassador, Head of the Legal Affairs Department at the Ministry of Foreign Affairs, and T. Pynnä, Legal Adviser at the same Ministry, acting as Agents,

— the Commission of the European Communities, by A. Rosas, Principal Legal Adviser, and L. Ström, of its Legal Service, acting as Agents,

having regard to the Report for the Hearing,

after hearing the oral observations of Peter Jägerskiöld, represented by R. Kurki-Suonio and M. Wallgren, Advocates, of Torolf Gustafsson, represented by B. Zetter, Vicehäradshövding, of the Finnish Government, represented by H. Rotkirch, and of the Commission, represented by A. Rosas, at the hearing on 28 April 1999,

after hearing the Opinion of the Advocate General at the sitting on 17 June 1999,

gives the following

Judgment

1 By order of 25 March 1998, received at the Court on 6 April 1998, the Pargas Tingsrätt (District Court, Pargas) referred to the Court for a preliminary ruling under Article 177 of the EC Treaty (now Article 234 EC) seven questions on the interpretation of the rules of the EC Treaty on the free movement of goods and the freedom to provide services.

2 The questions have been raised in proceedings between Peter Jägerskiöld, the owner of waters situated in the commune of Kimito in Finland and Torolf Gustafsson, a Finnish national, concerning the latter's right to fish with a spinning rod in the waters belonging to Mr Jägerskiöld without his permission but upon payment of a fee to the Finnish State.

Finnish law

3 In Finland, the Lagen om Fiske (Law on Fishing) of 16 April 1982 provides, in Article 5:

'The right to engage in fishing and to decide thereon shall belong to the owner of the waters unless this right has been transferred to another person or other provisions are laid down in this Law ...'.

4 Article 8(1) of the Law on Fishing, as amended by Law No 1045 of 12 December 1996 (hereinafter 'Law No 1045/96'), provides:

'In addition to the provisions laid down in Article 6(1) and Article 7(1) in relation to fishing in public waters, any person shall have the right to angle and to jig and to engage in lure fishing with a rod, reel and bait, troll fishing, with a weight or a paravane, even in other waters, with the exception of rapids and races in salmon-bearing and whitefish-bearing waters and in those waters in which fishing is forbidden under other provisions. For angling, jigging or lure-fishing competitions or other similar events, permission from the fishing right owner shall also be obtained'.

5 According to the order for reference, the purpose of the amendment made to that provision by Law No 1045/96 was to grant a general fishing right, without the permission of the fishing rights owner, even in respect of private waters, in return for payment of a fee set by Article 88 of the Law on Fishing which is payable to the State. However, the Law on Fishing does not stop owners of waters from themselves transferring fishing rights over their waters at prices which they are at liberty to fix.

6 Under Article 88(2) of the Law on Fishing, as amended by Law No 1045/96, any person fishing with a lure, within the meaning of Article 8(1), must pay a fee in each department in which they fish in this way. The fee is FIM 150 a year or FIM 35 for a period of seven days. However, no fee is payable by persons aged less than 18 years or more than 65 years or for lure fishing in public waters.

7 Under Article 89a of the Law on Fishing, as amended by Law No 1045/96, the proceeds of fees from fishing licences is distributed annually among the owners of

fishing waters, after deduction of the State's collection and distribution costs. The proceeds are distributed according to the burden borne by the individual fishing waters.

8 According to the preparatory parliamentary documents, in particular a report drawn up by the Agricultural and Forestry Commission, the main reason for the amendment made to the Law on Fishing by Law No 1045/96 was the recreational interest of leisure anglers. According to the report, the amendment of the Law on Fishing was also intended to ensure greater use of fishing resources and to promote angling tourism.

The main proceedings

9 On 29 May 1997, Mr Gustafsson fished with a spinning rod in waters belonging to Mr Jägerskiöld in the commune of Kimito In Finland. Two days earlier, on 27 May 1997, he had paid the fishing licence fee provided for in Article 88 of the Law on Fishing, which, according to Article 8(1) of that Law, allowed him to practice that type of fishing even in private waters.

10 Mr Jägerskiöld brought an action before the national court for a declaration that Mr Gustafsson may not, without his permission, fish with a rod in the waters belonging to him, notwithstanding the fact that Mr Jägerskiöld had paid the fishing licence fee provided for by the Law on Fishing. In support of his action, Mr Jägerskiöld argued that the amendment made to the Law on Fishing by Law No 1045/96, on which the right to fish with a rod was based, was contrary to the rules of the Treaty concerning the free movement of goods or to those relating to the freedom to provide services.

11 In support of his case, Mr Jägerskiöld put forward a number of arguments on which the Tingsrätt, in its order for reference, made the following comments.

12 First of all, the Tingsrätt notes that Article 222 of the EC Treaty (now Article 295 EC), which provides that the Treaty 'shall in no way prejudice the rules in Member States governing the system of property ownership', does not preclude application of the latter, in so far as it is clear from the preparatory documents that the amendment made to the Law on Fishing by Law No 1045/96 does not alter the system of property ownership in force in Finland. It goes on to observe that, in so far as, according to the report of the Agricultural and Forestry Commission, the amendment is merely a new way of handling the income which ownership rights generate, it involves the distribution and setting of prices for benefits of use, which is usually the object of an assessment in relation to the rules concerning the free movement of goods.

13 Secondly, the Tingsrätt points out that, as is clear from Article 5 of the Law on Fishing, fishing rights, including the right to fish by spinning rod, can independently be the subject of a transfer, so that this right should normally fulfil the definition which the Court gave of 'goods' in its judgment of 10 December 1968 in Case 7/68 *Commission* v *Italy* [1968] ECR 423. It observes, however, that fishing rights and derived rights constitute a specific legal institution in relation to which the Court has not hitherto taken a position.

14 In the event that the case concerns goods, within the meaning of the Treaty, the Tingsrätt points out, thirdly, that the fact that the fishing rights can be exercised only in Finland would not appear to exclude the application of the ruling in Case 8/74 *Dassonville* [1974] ECR 837. In this regard, it considers that the fishing rights concerned are no different from industrial property rights which are also nationally limited and which govern practice within the boundaries of the Member State concerned. In this analogy, fishing rights can be compared to a licence.

15 The Tingsrätt points out, fourthly, that, should the amendment made to the Law on Fishing by Law No 1045/96 be regarded as constituting an obstacle to the free movement of goods, it should be investigated whether it may be justified by the recreational interest of leisure anglers. In this regard, it points out that, through this amendment and the introduction of a fee payable to the State granting a licence to fish throughout a county, the Finnish legislature wished to resolve the problem of insufficient information about the issue of fishing licences in certain regions, which meant that only the local population had this information. Secondly, water ownership in some parts of the country is so fragmented that several fishing permits are needed in order to fish in a wider area.

16 Fifthly, the Tingsrätt considers that, even if the legislative amendment has not established any monopoly since owners of fishing waters continue to have the theoretical right to permit fishing at rates which they freely set, the Republic of Finland clearly has a monopoly on the distribution and setting of prices for fishing permits. The amendment was intended, in particular, to improve the use of fish resources and since under Article 38 of the EC Treaty (now, after amendment, Article 32 EC) fish are an agricultural product, it must be examined whether, as Article 37(4) of the EC Treaty (now, after amendment, Article 31(3) EC) requires, the interests of fishing-water owners, many of whom are farmers, were sufficiently taken into consideration when it was adopted.

17 As regards application of the provisions of the Treaty relating to the freedom to provide services, which the plaintiff in the main proceedings alternatively claims should be applied in the event that the provisions relating to goods are not applicable, the Tingsrätt merely states that it is not aware of any rulings on this question.

18 In those circumstances, and although Mr Gustafsson had not given any views on the question of any conflict between the Finnish legislation and Community law,

the Tingsrätt decided to stay proceedings and to refer the following questions to the Court for a preliminary ruling:

'1. Are fishing rights or spinning licences "goods" in accordance with the judgment in Case 7/68 *Commission* v *Italy* [1968] ECR 423?

2. Does the amendment in Finland of the Law on Fishing 1045/1996 constitute an obstacle to the free movement of goods according to the criteria laid down in Case 8/74 *Dassonville* [1974] ECR 837?

3. Does a leisure angler's recreational interest constitute a permissible ground under Article 36 of the European Community's basic treaty?

4. Does the present case involve agricultural products within the meaning of Article 37(4) of the Treaty of Rome?

5. Does the aforementioned legal rule have direct legal effect in accordance with the judgment in Case 6/64 *Costa* v *ENEL*?

6. Has sufficient account been taken of farmers' interests?

7. Does such an amendment of the Law on Fishing 1045/1996 concerning spinning contravene or not contravene the rules governing the free movement of goods (or the free provision of services) laid down in the European Community's basic treaty?'

Admissibility

19 In the first instance, the Commission contests the admissibility of the questions referred for a preliminary ruling. It states that the order for reference does not set out the defendant's view about the proceedings and contains no indication to suggest that Mr Jägerskiöld's claim is contested by Mr Gustafsson. In those circumstances, it considers that it is doubtful whether there is a genuine dispute between the two parties to the main proceedings.

20 The Commission also observes that the order for reference contains neither a description of the factual and legal background to the dispute sufficient to enable the Court to give helpful answers to the national court nor the precise reasons which led that court to enquire about the interpretation of Community law and consider it necessary to refer questions to the Court.

21 According to established case-law (see, in particular, Case C-415/93 *Bosman* [1995] ECR I-4921, paragraphs 59 to 61 and Case C-60/98 *Butterfly Music* [1999] ECR I-3939, paragraph 13), it is solely for the national court hearing the case, which must assume responsibility for the subsequent judicial decision, to determine, with regard to the particular aspects of the case, both the need for a preliminary ruling in order to enable it to deliver judgment and the relevance of the questions which it refers to the Court. The Court may refuse a request made by such a court only where it is quite obvious that the interpretation of Community law sought bears no relation to the actual facts or purpose of the main proceedings or where the problem is hypothetical and the Court does not have before it the factual or legal material necessary to give a useful answer to the questions submitted.

22 However, that is not so in the present case.

23 First of all, it is quite clear from the order for reference that the national court is hearing a case in which it is asked by Mr Jägerskiöld to declare that Mr Gustafsson is not entitled to fish with a spinning rod in waters belonging to Mr Jägerskiöld without the latter's consent, notwithstanding the fact that Mr Gustafsson has paid the fishing licence fee provided for by the Law on Fishing.

24 In those circumstances, the fact that the defendant did not give his views before the national court on the question of a possible conflict between the applicable Finnish legislation and Community law is not in itself sufficient evidence that the defendant does not contest the claims made against him by Mr Jägerskiöld.

25 Similarly, the fact raised at the hearing that Mr Gustafsson also owns fishing waters and in that capacity has an interest in ascertaining whether in the future he may offer fishing facilities to other persons there, in particular to tourists, is not such as to call in question the real nature of the proceedings against him, in his capacity as an angler who has paid the fee prescribed by the applicable Finnish legislation to the owner of other fishing waters who is seeking to refuse him the right to fish there.

26 The Court also finds that the information provided in the order for reference with regard to the factual and legislative background to the questions contains all the material needed to enable it to give useful answers and to enable the governments of the Member States and the other interested parties to submit observations in accordance with Article 20 of the EC Statute of the Court of Justice.

27 Finally, it is clear from paragraphs 12 to 17 above that the order for reference also contains a precise account of the national court's reasons for choosing the Community provisions concerned for its request for interpretation and of the link which it makes between those provisions and the applicable national legislation.

28 In this regard, it must be pointed out that it is clear from the order for reference that the seventh question refers to the Community provisions on the freedom to provide services only by way of alternative, in the event that fishing rights or fishing permits do not constitute 'goods', and that the reasons which led the national court to ask the Court of Justice about the compatibility of the Finnish legislation in question with the Community provisions on the free movement of goods are also valid in relation to those concerning the freedom to provide services.

29 The questions referred for a preliminary ruling must therefore be examined.

The first question

30 Before this question is answered, it must be reiterated that, in its judgment in Case 7/68 *Commission* v *Italy*, cited above, which is expressly referred to by the national court, the Court defined goods, for the purposes of Article 9 of the EC Treaty (now, after amendment, Article 23 EC), which forms the first article of the third part of Title I of the EC Treaty, entitled 'Free movement of goods', as products which can be valued in money and which are capable, as such, of forming the subject of commercial transactions.

31 Mr Jägerskiöld contends that fishing rights and fishing permits derived from them constitute 'goods' within the meaning of that judgment, in so far as they can be valued in money terms and may be transferred to other persons, as is expressly provided for by Article 5 of the Law on Fishing.

32 However, in *Commission* v *Italy* the Court was asked whether articles of artistic, historic, archaeological or ethnographic interest escaped the application of the Treaty provisions relating to the customs union on the ground that they could not be assimilated to 'consumer goods or articles of general use' and did not constitute 'ordinary merchandise'. As is clear from the actual definition given by the Court, the status of 'products' of the goods in question was not therefore contested, so that this definition cannot in itself serve to define fishing rights or permits as goods within the meaning of the Treaty provisions relating to the free movement of goods.

33 It must also be observed that anything which can be valued in money and which is capable, as such, of forming the subject of commercial transactions does not necessarily fall within the scope of application of those Treaty provisions.

34 As is clear from Council Directive 88/361/EEC of 24 June 1988 for the implementation of Article 67 of the Treaty (OJ 1988 L 178, p. 5), of which the nomenclature of movements of capital annexed to it remains valid even after the entry into force of Article 73b et seq. of the EC Treaty (now Article 56 EC et seq.) (see, to this effect, the judgment in Case C-222/97 *Trummer and Mayer* [1999] ECR I-1661, paragraph 21), the Treaty provisions on the free movement of capital cover, in particular, operations relating to shares, bonds and other securities which, like fishing rights or fishing permits, can be valued in money and may be the subject of market transactions.

35 Similarly, as is clear from the judgment in Case C-275/92 *Schindler* [1994] ECR I-1039, the organisation of lotteries does not constitute an activity relating to 'goods', even if such an activity is coupled with the distribution of advertising material and lottery tickets, but must be regarded as a provision of 'services' within the meaning of the Treaty. In that activity, the provisions of services in question are those provided by the lottery organiser in letting ticket buyers participate in the lottery against payment of the price of the lottery tickets.

36 The same applies to the grant of fishing rights and the issue of fishing permits. The activity consisting of making fishing waters available to third parties, for consideration and upon certain conditions, so that they can fish there constitutes a provision of services which is covered by Article 59 et seq. of the EC Treaty (now, after amendment, Article 49 EC et seq.) if it has a cross-frontier character. The fact that those rights or those permits are set down in documents which, as such, may be the subject of trade is not sufficient to bring them within the scope of the provisions of the Treaty relating to the free movement of goods.

37 That conclusion cannot be affected by a reference to intellectual property rights, which, according to Mr Jägerskiöld, are covered by those provisions despite their intangible nature.

38 First, as the Advocate General points out in paragraph 21 of his Opinion, although intellectual property rights may affect intra-Community trade in goods, they do not in themselves constitute such goods. Secondly, intellectual property rights may affect trade not only in goods but also in services (see, in particular, Joined Cases C-92/92 and C-326/92 *Phil Collins and Others* [1993] ECR I-5145, paragraph 22).

39 Consequently, the answer to be given to the first question must be that fishing rights or fishing permits do not constitute 'goods' within the meaning of the provisions of the Treaty relating to the free movement of goods but form a 'provision of a service' within the meaning of the Treaty provisions relating to the freedom to provide services.

Questions 2 to 6

40 It is clear from the order for reference that Questions 2 to 6 have been submitted in the event that fishing rights or fishing permits constitute 'goods' within the meaning of the Treaty provisions relating to the free movement of goods. Since that is not the case, there is no need to answer those questions.

The seventh question

41 For the same reason, it is not necessary to reply to the seventh question in so far as it concerns the provisions of the Treaty relating to the free movement of goods.

42 As regards the provisions of the Treaty relating to the freedom to provide services, it is sufficient to observe that these provisions are not applicable to activities which are confined in all respects within a single Member State (see, in particular, Case C-134/95 *USSL No 47 di Biella* [1997] ECR I-195, paragraph 19, and Case C-108/98 *RI.SAN.* [1999] ECR I-5214, paragraph 23).

43 It is clear from the case-file that the legal proceedings pending before the Tingsrätt are between two Finnish nationals, both established in Finland, concerning the right of one of them to fish in waters belonging to the other situated in Finland.

44 Such a situation does not present any link to one of the situations envisaged by Community law in the field of the free provision of services.

45 Consequently, the answer to be given to the seventh question must be that the provisions of the Treaty relating to the freedom to provide services are not applicable to a situation, such as that in the main proceedings, which is confined in all respects within a single Member State.

Costs

46 The costs incurred by the Finnish Government and by the Commission, which have submitted observations to the Court, are not recoverable. Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national court, the decision on costs is a matter for that court.

On those grounds,

THE COURT (Sixth Chamber),

in answer to the questions referred to it by the Pargas Tingsrätt by order of 25 March 1998, hereby rules:

1. **Fishing rights or fishing permits do not constitute 'goods' within the meaning of the provisions of the EC Treaty relating to the free movement of goods but form a 'provision of a service' within the meaning of the Treaty provisions relating to the freedom to provide services.**

2. **The provisions of the Treaty relating to the freedom to provide services are not applicable to a situation, such as that in the main proceedings, which is confined in all respects within a single Member State.**

Schintgen Hirsch Ragnemalm

Delivered in open court in Luxembourg on 21 October 1999.

R. Grass
Registrar

J.C. Moitinho de Almeida
President of the Sixth Chamber