JUDGMENT OF THE COURT (Fifth Chamber)

25 April 2002 *

In Joined Cases C-418/00 and C-419/00,

Commission of the European Communities, represented by T. van Rijn and B. Mongin, acting as Agents, with an address for service in Luxembourg,

applicant,

v

French Republic, represented by C. Vasak and G. de Bergues, acting as Agents, with an address for service in Luxembourg,

defendant,

* Language of the case: French.

APPLICATION for a declaration that:

— by failing to determine the appropriate detailed rules for the utilisation of the quotas allocated to it for the 1991 to 1994 fishing years (Case C-418/00) and the 1995 and 1996 fishing years (Case C-419/00),

— by failing to ensure compliance with the Community rules on the conservation of species through monitoring of fishing activities, and through appropriate inspection of landings and catch records,

— by not provisionally prohibiting fishing by vessels flying the French flag or registered in French territory when the catches landed were deemed to have exhausted the corresponding quota and by finally prohibiting fishing only when the corresponding quota had been considerably exceeded, in the 1991 to 1994 fishing years (Case C-418/00), and the 1995 and 1996 fishing years (Case C-419/00), and

— by failing to take penal or administrative action against any master of a vessel or other person responsible for fishing after a prohibition had been imposed, in the 1991 to 1994 fishing years (Case C-418/00), and the 1995 and 1996 fishing years (Case C-419/00),

the French Republic has failed to fulfil 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 (OJ 1983 L 24, p. 1), Articles 1 and 11(1) and (2) of Council Regulation (EEC)

No 2241/87 of 23 July 1987 establishing certain control measures for fishing activities (OJ 1987 L 207, p. 1), Article 9(2) of Council Regulation (EEC) No 3760/92 of 20 December 1992 establishing a Community system for fisheries and aquaculture (OJ 1992 L 389, p. 1) and Articles 2, 21(1) and (2) and 31 of Council Regulation (EEC) No 2847/93 of 12 October 1993 establishing a control system applicable to the common fisheries policy (OJ 1993 L 261, p. 1) (Case C-418/00), and under Article 9(2) of Regulation No 3760/92 and Articles 2, 21 and 31 of Regulation No 2847/93, in conjunction with Council Regulation (EC) No 3362/94 of 20 December 1994 fixing, for certain fish stocks and groups of fish stocks, the total allowable catches for 1995 and certain conditions under which they may be fished (OJ 1994 L 363, p. 1), and Council Regulation (EC) No 3074/95 of 22 December 1995 fixing, for certain fish stocks and groups of fish stocks, the total allowable catches for 1996 and certain conditions under which they may be fished (OJ 1995 L 330, p. 1) (Case C-419/00),

THE COURT (Fifth Chamber),

composed of: P. Jann, President of the Chamber, D.A.O. Edward (Rapporteur) and M. Wathelet, Judges,

Advocate General: C. Stix-Hackl,
Registrar: R. Grass,

having regard to the report of the Judge-Rapporteur,

after hearing the Opinion of the Advocate General at the sitting on 11 October 2001,

gives the following

Judgment

1 By two applications lodged at the Court Registry on 13 November 2000, the Commission of the European Communities brought two actions under Article 226 EC for a declaration that:

— by failing to determine the appropriate detailed rules for the utilisation of the quotas allocated to it for the 1991 to 1994 fishing years (Case C-418/00) and the 1995 and 1996 fishing years (Case C-419/00),

— by failing to ensure compliance with the Community rules on the conservation of species through monitoring of fishing activities, and through appropriate inspection of landings and catch records,

— by not provisionally prohibiting fishing by vessels flying the French flag or registered in French territory when the catches landed were deemed to have exhausted the corresponding quota and by finally prohibiting fishing only when the corresponding quota had been considerably exceeded, in the 1991 to 1994 fishing years (Case C-418/00), and the 1995 and 1996 fishing years (Case C-419/00), and

— by failing to take penal or administrative action against any master of a vessel or other person responsible for fishing after a prohibition had been imposed, in the 1991 to 1994 fishing years (Case C-418/00), and the 1995 and 1996 fishing years (Case C-419/00),

the French Republic has failed to fulfil 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 (OJ 1983 L 24, p. 1), Articles 1 and 11(1) and (2) of Council Regulation (EEC) No 2241/87 of 23 July 1987 establishing certain control measures for fishing activities (OJ 1987 L 207, p. 1), Article 9(2) of Council Regulation (EEC) No 3760/92 of 20 December 1992 establishing a Community system for fisheries and aquaculture (OJ 1992 L 389, p. 1) and Articles 2, 21(1) and (2) and 31 of Council Regulation (EEC) No 2847/93 of 12 October 1993 establishing a control system applicable to the common fisheries policy (OJ 1993 L 261, p. 1) (Case C-418/00), and under Article 9(2) of Regulation No 3760/92 and Articles 2, 21 and 31 of Regulation No 2847/93, in conjunction with Council Regulation (EC) No 3362/94 of 20 December 1994 fixing, for certain fish stocks and groups of fish stocks, the total allowable catches for 1995 and certain conditions under which they may be fished (OJ 1994 L 363, p. 1), and Council Regulation (EC) No 3074/95 of 22 December 1995 fixing, for certain fish stocks and groups of fish stocks, the total allowable catches for 1996 and certain conditions under which they may be fished (OJ 1995 L 330, p. 1) (Case C-419/00).

2 By order of the President of the Court of Justice of 18 January 2001, Cases C-418/00 and C-419/00 were joined for the purposes of the written and oral procedure and of the judgment, in accordance with Article 43 of the Rules of Procedure.

Community law

3 A set of Community regulations fixes, for certain fish stocks and groups of fish stocks, the total allowable catches and the conditions under which they may be fished. Where it becomes necessary to limit the catch of one particular species, the total allowable catch for each stock or group of stocks and the shares available to the Community are fixed each year. The volume of the catches available to the Community is distributed between the Member States in a manner which assures each Member State relative stability of fishing activities for each of the stocks considered.

4 Those regulations also provide for the institution of the measures necessary to achieve and ensure compliance with those objectives, such as inspection of fishing vessels, monitoring of catches, suspension of fishing and penal or administrative action against those responsible for exceeding quotas.

Provisions concerning the detailed rules for the utilisation of quotas and inspection of fishing vessels and monitoring of catches

5 Article 5(2) of Regulation No 170/83 provides:

'Member States shall determine, in accordance with the applicable Community provisions, the detailed rules for the utilisation of the quotas allocated to them....'

6 From 1 January 1993, that regulation was replaced by Regulation No 3760/92, Article 9(2) of which imposes a similar obligation on the Member States in the following terms:

'Member States shall inform the Commission each year of the criteria they have adopted for distribution and of the detailed rules for the use [of] the fishing availabilities allocated to them, in accordance with Community law and the common fisheries policy.'

7 Article 1(1) of Regulation No 2241/87, which is part of Title I, headed 'Inspection and control of fishing vessels and their activities', provides:

'In order to ensure compliance with all the regulations in force concerning conservation and control measures, each Member State shall, within its territory and within maritime waters subject to its sovereignty or jurisdiction, monitor fishing activity and related activities. It shall inspect fishing vessels and all activities whose inspection would enable verification of the implementation of this regulation, including the activities of landing, selling and storing fish and recording landings and sales.'

8 Under Article 2 of Regulation No 2241/87, which is also part of Title I:

'1. The inspection and monitoring referred to in Article 1 shall be carried out by each Member State on its own account by an inspectorate appointed by it.

In carrying out the task thus conferred on them, Member States shall ensure that the provisions and measures referred to in Article 1 are complied with. Moreover, their action shall be carried out in such a way as to avoid undue interference with normal fishing activities. They shall also ensure that there is no discrimination as regards the sector and vessels chosen for inspection.

2. The persons responsible for the fishing vessels inspected shall cooperate in facilitating inspections carried out in accordance with paragraph 1.'

9 From 1 January 1994, Regulation No 2241/87 was replaced by Regulation No 2847/93. Article 2 of that regulation, which appears in Title I, headed 'Inspection and monitoring of fishing vessels and their activities', provides:

'1. In order to ensure compliance with all the rules in force concerning conservation and control measures, each Member State shall, within its territory and within maritime waters subject to its sovereignty or jurisdiction, monitor fishing activity and related activities. It shall inspect fishing vessels and investigate all activities thus enabling verification of the implementation of this Regulation, including the activities of landing, selling, transporting and storing fish and recording landings and sales.

2. Fishing vessels, which may exercise activities, flying the flag of [a] third country and sailing in maritime waters subject to the sovereignty or jurisdiction of a Member State shall be subject to a system of communication of movements and of catches held on board.

Member States shall notify the Commission of the measures taken to ensure compliance with these procedures.

3. Each Member State shall monitor, outside the Community fishery zone, the activities of its vessels in cases where such control is required to ensure compliance with Community rules applicable in those waters.

4. In order to ensure that inspection is as effective and economical as possible, Member States shall coordinate their control activities. To that end, they may set up joint inspection programmes to allow the inspection of Community fishing vessels in the waters referred to in paragraphs 1 and 3. They shall take measures to permit their competent authorities and the Commission to be regularly informed on a reciprocal basis of the experience gained.'

Provisions concerning the suspension of fishing

10 Under Article 11(1) and (2) of Regulation No 2241/87, in Title III, headed 'Prohibition of fishing activities':

'1. All catches of a stock or group of stocks subject to quota made by fishing vessels flying the flag of a Member State or registered in a Member State shall be charged against the quota applicable to that State for the stock or group of stocks in question, irrespective of the place of landing.

2. 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 transshipments 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.'

11 From 1 January 1994, Article 11(1) and (2) of Regulation No 2241/87 was replaced by Article 21(1) and (2) of Regulation No 2847/93, which is part of Title IV, headed 'Regulation and suspension of fishing activities', and essentially has the same content.

Provisions concerning penal or administrative action against those responsible for exceeding quotas

12 Article 1(2) of Regulation No 2241/87 provides:

'If the competent authorities of a Member State observe, as a result of monitoring or inspection carried out by them under paragraph 1, that the relevant rules concerning conservation and control measures are not being complied with, they shall take penal or administrative action against the master of such a vessel or any other person responsible.'

13 From 1 January 1994, Article 1(2) of Regulation No 2241/87 was replaced by Article 31 of Regulation No 2847/93, which is part of Title VIII, headed 'Measures to be taken in the case of non-compliance with the rules in force', which provides:

'1. Member States shall ensure that the appropriate measures be taken, including... administrative action or criminal proceedings in conformity with their national law, against the natural or legal persons responsible where common fisheries policy have not been respected, in particular following a monitoring or inspection carried out pursuant to this Regulation.

2. The proceedings initiated pursuant to paragraph 1 shall be capable, in accordance with the relevant provisions of national law, of effectively depriving those responsible of the economic benefit of the infringements or of producing results proportionate to the seriousness of such infringements, effectively discouraging further offences of the same kind.

3. The sanctions arising from the proceedings mentioned in paragraph 2 may include depending on the gravity of the offence:

— fines,

— seizure of prohibited fishing gear and catches,

— sequestration of the vessel,

— temporary immobilisation of the vessel,

— suspension of the licence,

— withdrawal of the licence.

4. The provisions of this Article shall not prevent the Member State of landing or transshipment from transferring prosecution of an infringement to the competent authorities of the Member State of registration with the agreement of the latter and on condition that the transfer is more likely to achieve the result referred to in paragraph 2. The Commission shall be notified of any such transfer by the Member State of landing or transshipment.'

Facts and pre-litigation procedure

14 The Commission has initiated two separate infringement procedures against the French Republic concerning the 1991 to 1994 fishing years (Case C-418/00) and the 1995 and 1996 fishing years (Case C-419/00) respectively.

The 1991 to 1994 fishing years (Case C-418/00)

15 By letter of 16 January 1996, the Commission brought it to the attention of the French authorities that the fish stocks allocated to the French Republic for 1991

to 1994 had been overfished. Maintaining that the French authorities had failed to fulfil their monitoring obligations, the Commission asked them to provide it with the data on catches and landings on which they had based their decision provisionally to suspend fishing, together with any relevant information concerning action taken against those responsible for exceeding quotas.

16 By letter of 16 April 1996, the French authorities acknowledged overfishing of the stocks referred to by the Commission in its letter of 16 January 1996. They also stated that they were unable to find the records of the proceedings that had been instituted against those responsible for exceeding quotas.

17 In a letter of formal notice of 27 March 1998, in which it maintained that the French Republic had failed to fulfil its obligations concerning management and monitoring of fishing quotas, in particular by failing to impose a ban on fishing in good time when the catches landed by vessels flying the French flag or registered in French territory were deemed to have exhausted certain quotas, the Commission asked the French Republic to submit its observations. It also pointed out that it had not received adequate information on penalties imposed by the French authorities and concluded in the same letter that those authorities had not instituted the proceedings required under Articles 2 and 31 of Regulation No 2847/93.

18 In their reply of 7 August 1998 the French authorities disputed the alleged infringements and argued that they had taken all necessary measures as soon as it became clear from the available statistics that a fishing quota had been, or was about to be, exhausted.

19 As the Commission did not consider those explanations convincing it sent the French Republic a reasoned opinion by letter of 30 September 1999.

20 That Member State replied to the reasoned opinion by letter of 7 December 1999. In it the French authorities did not dispute that fishing quotas had been exceeded as the Commission claimed and acknowledged that the national provisions in force at the time had not enabled it to suspend fishing in good time. However, they pointed out that as from 1998 an emergency procedure had been in force enabling decrees suspending fishing to be issued in good time. As regards the failure to impose penalties on those responsible for exceeding quotas, the French authorities explained that they had opted for a collective quota management scheme, which imposed administrative and economic penalties on the producers' organisations responsible for exceeding the quotas.

The 1995 and 1996 fishing years (Case C-419/00)

21 By letters of 3 February and 11 November 1997, the Commission brought it to the attention of the French authorities that they had failed to fulfil their monitoring obligations in respect of the 1995 and 1996 fishing years, since the quotas allocated to the French Republic for those years had been exceeded and a temporary ban on fishing had not been imposed in time. The Commission also asked them to provide it with the data on catches and landings on which they had based their decision to suspend fishing provisionally, together with all relevant data concerning action taken against those responsible for exceeding the quotas.

22 By letters of 3 April 1997 and 26 January 1998 the French authorities pointed to errors in the figures presented by the Commission. They also pointed out that the decrees suspending fishing had been issued as soon as it became clear from the catch statistics that a quota had been filled or exceeded. They added that they were unable to find the records of the proceedings that had been instituted against those responsible for exceeding the quotas.

23 As it took the view that the measures had not been sufficient to prevent overfishing in 1995 and 1996, the Commission sent the French Republic a letter of formal notice on 4 March 1999, attaching tables showing overfishing by vessels flying the French flag or registered in French territory of 11 stocks during those years. It reiterated its allegation that the French authorities had failed to fulfil their obligations concerning the management and monitoring of fishing quotas, in particular by failing to impose a temporary ban on fishing in good time when the catches landed were deemed to have exhausted certain quotas and by not taking penal or administrative action against those responsible for exceeding the quotas.

24 In their reply of 27 April 1999, the French authorities disputed the alleged failures to fulfil their obligations, particularly as regards mackerel fishing in 1996. They contended that, for each of the stocks mentioned by the Commission, they had taken all the proper measures as soon as it became clear that a quota was exhausted or was about to be exhausted. They claimed that certain instances of overfishing were attributable to overseas landings by vessels flying the French flag or registered in French territory, while others were the result of the continuation of fishing in the interval between the adoption and the implementation of the decision suspending it.

25 As it took the view that these explanations were not satisfactory, the Commission sent the French Republic a reasoned opinion on 30 September 1999.

26 In their reply of 7 December 1999 to that opinion, the French authorities did not dispute that fishing quotas had been exceeded as the Commission claimed, except as regards mackerel, and acknowledged that the national provisions in force at the time had not allowed them to suspend fishing in good time. However, they pointed out that as from 1998 an emergency procedure had been in force enabling decrees suspending fishing to be issued in good time. As regards the

failure to impose penalties on those responsible for exceeding quotas, the French authorities stated that they had opted for a collective quota management scheme, which imposed administrative and economic penalties on the producers' organisations responsible for exceeding the quotas.

27 Having formed the view that the French Republic had failed to ensure compliance with the Community system for the conservation and management of fishery resources, the Commission brought the present actions for failure to fulfil obligations.

Admissibility of the actions

28 In its defence, which is common to both cases, the French Government calls into question the basis for the actions, pointing out that they appear to be intended to secure a declaration of principle censuring the French Republic, despite the continued efforts made by it.

29 The French Government raised the same objection in the action for failure to fulfil obligations relating to the fishing years 1988 and 1990 brought against it by the Commission. That objection was dismissed by the Court of Justice in its judgment in Case C-333/99 *Commission* v *France* [2001] ECR I-1025, paragraphs 23 to 25). In particular, when exercising its powers under Articles 211 EC and 226 EC, the Commission does not have to show that there is a specific interest in bringing the action since its function is, in the general interest of the Community, to ensure that Member States give effect to the EC Treaty and to obtain a declaration of any failure to fulfil the obligations deriving therefrom, with a view to bringing it to an end (Case 167/73 *Commission* v *France* [1974] ECR 359, paragraph 15; Case C-431/92 *Commission* v *Germany* [1995] ECR I-2189, paragraph 21; Case C-365/97 *Commission* v *Italy* [1999] ECR I-7773, paragraph 59; and Case C-333/99 *Commission* v *France*, cited above, paragraph 23).

30 The actions are therefore admissible.

Substance

31 The Commission has formulated four complaints against the French Republic:

— the lack of appropriate detailed rules for the utilisation of quotas, contrary to Article 5(2) of Regulation No 170/83 (Case C-418/00) and Article 9(2) of Regulation No 3760/92 (Case C-418/00 and Case C-419/00),

— failure to inspect the fishing fleet and monitor catches, contrary to Article 5(2) of Regulation No 170/83 (Case C-418/00), Article 1(1) of Regulation No 2241/87 (Case C-418/00), Article 9(2) of Regulation No 3760/92 (Case C-418/00 and Case C-419/00) and Article 2 of Regulation No 2847/93 (Case C-418/00 and Case C-419/00),

— the late suspension of fishing, contrary to Article 11(1) and (2) of Regulation No 2241/87 (Case C-418/00) and, as of 1 January 1994, to Article 21(1) and (2) of Regulation No 2847/93 (Case C-418/00 and Case C-419/00),

— the absence of penal or administrative sanctions, contrary to Article 1(2) of Regulation No 2241/87 (Case C-418/00) and, as of 1 January 1994, to Article 31 of Regulation No 2847/93 (Case C-418/00 and Case C-419/00).

32 It is appropriate to consider the first and second complaints together.

Arguments of the parties

The determination of appropriate detailed rules for the utilisation of quotas and the failure to inspect the fishing fleet or monitor catches

33 First, the Commission submits that the French authorities did not adopt appropriate and effective quota utilisation rules for managing the quotas for different types of fishing. It took the view that special rules would have been particularly useful for the management of quotas in the last months of each of the years 1991 to 1996, as such rules could have made for more subtle and effective monitoring of the pace at which quotas were filled and made it easier to adopt a fishing ban in good time.

34 Second, the Commission submits that the French Government did not monitor fishing activities adequately and did not check landings and catch records properly. It takes the view that if inspections had been properly carried out, measures to suspend fishing could have been taken in good time and fishing quotas complied with.

35 More specifically, the Commission argues that the quota violations apparent from the tables attached to its letters of formal notice of 27 March 1998 and 4 March 1999 attest to the French authorities' failure to take the necessary monitoring measures in time to prevent quotas being exceeded.

36 Whilst it accepted, to a great extent, that quotas had been exceeded as the Commission alleged, the French Government pointed out that, despite improvements in its management of quotas, there was a continuing problem with catches landed overseas by vessels flying the French flag or registered in French territory. The French authorities were informed of such landings only belatedly and quotas were exceeded as a result. However, the French Government contends that, from 1997 onwards, that problem had been resolved and that, in 1998, no quotas were exceeded.

37 As regards the 1996 fishing year in particular, the French Government does not accept that the mackerel quota was exceeded as the Commission alleges. It refers in this connection to the arrangements introduced in Regulation No 3074/95 for the transfer of mackerel catches between the Eastern and Western stocks. Essentially, part of the Western stock, amounting to 65 000 tonnes of mackerel relating to ICES zones Vb (EC), VI, VII, VIIIa, b, d, e, XII and XIV, could be fished during the last quarter in ICES zones IIa (EC), IIIa, IIIbcd and IV, which count towards the Eastern stocks.

38 Under those transfer arrangements vessels flying the French flag or registered in French territory were allowed to fish up to 2 770 tonnes of mackerel in the North Sea over and above the national quota of 1 270 tonnes allocated to the Eastern stock. The difference between the tonnage actually caught by those vessels and the quota was thus to be counted against that margin of 2 770 tonnes and did not therefore mean that the quota was exceeded.

39 The French Government also disputes any overfishing of herring in zones Vb, Via N and Vib in 1996. Dismissing the Commission's argument that it was relying on the figures supplied by the French authorities in accordance with Article 15(1) of

Regulation No 2847/93, it contends that the figures given by the Commission are wrong and do not reflect the tonnage declared by the vessels concerned.

Late suspension of fishing

40 The Commission argues that, between 1991 and 1996, decisions to suspend fishing were taken particularly late by the French authorities, that is to say, often two or three months after the appropriate date, and that, in some cases, those decisions were not taken at all.

41 The French Government contends further that it did not wait until the fishing quotas were exhausted before ordering the suspension of fishing. Those decisions were taken when the known level of catches was still below the quotas. However, it points out that there was a period of 15 days between the date of a decision to suspend fishing and its entry into force by publication in the official gazette (*Journal officiel de la République Française*). The quota violations were attributable to the continuation of fishing during those periods.

The failure to impose penal or administrative sanctions

42 Dismissing the French Government's contention that it was unable to find the records of the proceedings concerning the exceeding of quotas at issue and noting its failure to adduce detailed evidence of any steps taken to penalise producers' organisations, the Commission concludes that the French authorities did not institute the necessary proceedings.

43 The French Government makes a distinction between penal sanctions, imposed on fishermen, and administrative sanctions, imposed on producers' organisations.

44 As regards the former, the French Government contends that alterations to the level of catches after the suspension of fishing were not the result of continued fishing in breach of the ban but of corrections to the statistics relating to the catches landed before such suspension.

45 The French Government adds that overfishing can give rise to criminal proceedings only if it is in breach of a ministerial decree on suspension in respect of a particular species and fishing zone, published in the *Journal officiel de la République française*, and if it is confirmed by a qualified agent, such confirmation being generally only possible at sea.

46 As regards administrative sanctions, the French Government refers to its system of delegating national quota management to producers' associations and imposing economic penalties so that, where the quota allocated to one of the producers' organisations is exceeded, the amount by which that quota is exceeded is deducted when the apportionment of the national quota amongst the various organisations is calculated for the following year.

47 The French Government adds that it is currently drafting a decree which will impose appropriate penalties on the producers' organisations responsible for exceeding quotas.

Findings of the Court

Determination of appropriate detailed rules for utilisation of quotas and failure to inspect the fishing fleet or monitor catches

48 In support of its two actions the Commission has put forward detailed evidence of repeated overfishing over time. For instance, fishing quotas for anchovy were exceeded by about 100% in the 1991 fishing year, 50% in 1992 and 67% in 1994, while quotas for whiting were exceeded by about 10% in 1992, 15% in 1994 and 10% in 1995.

49 It follows from the scale of those figures and their repetition over time that the instances of overfishing could only have been the consequence of a lack of appropriate detailed rules for utilisation of fishing quotas and a failure to comply with monitoring obligations.

50 It is true that, due to the efforts of the French Government, the extent to which fishing quotas were exceeded has significantly reduced during the period under consideration. However, an improvement in the management of quotas cannot excuse the failures recorded (see Case C-333/99 *Commission* v *France*, cited above, paragraph 36).

51 In that regard, it is irrelevant whether the failure to fulfil obligations is the result of intention or negligence on the part of the Member State responsible, or of technical difficulties encountered by it. It is settled case-law 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 fishery products sector to overcome those difficulties by adopting appropriate measures (Case C-333/99 *Commission* v *France*, cited above, paragraphs 36 and 44).

52 The argument of the French Government concerning catches landed abroad cannot be accepted. Under paragraph 4.2.2 of Annex IV to Commission Regulation (EEC) No 2807/83 of 22 September 1983 laying down detailed rules for recording information on Member States' catches of fish (OJ 1983 L 276, p. 1), the master of a vessel must hand over to the competent authorities the original of the log-book and of the landing declaration within 48 hours of completion of the landing operations. Communication of those documents should have enabled the French authorities to be directly informed of catches landed abroad by vessels flying the French flag or registered in French territory. The fact that quotas were exceeded repeatedly suggests that the French Republic did not ensure that these obligations to supply information were fulfilled.

53 As regards the exceeding of mackerel quotas for the 1996 fishing year, it is true that, under Regulation No 3074/95, the French Government is authorised, in order to optimise use of those quotas, to transfer 2 770 tonnes of mackerel from zones IIa (except the Community zone), Vb (EC), VI, VII, VIIIa, b, d, e, XII and XIV to the adjoining zones. However, the arrangements for the transfer of mackerel catches, set out in the annex to that regulation, limit the possibilities for transfers of fishing to Community waters in the ICES IVa zone to the period from 1 October to 31 December 1996.

54 In fact, the Commission pointed out that the total quota of 1 270 tonnes for mackerel in zones IIa, IIIa, b, c, d and IV was exceeded during November 1996. The French Government has not shown that the 88 tonnes representing the difference between the tonnage caught and the quota were landed only in ICES zone IVa to the exclusion of the other zones which are the subject of the present action for failure to fulfil obligations.

55 As regards overfishing of herring in 1996, the Commission is not bound to take account of the new figures which were only sent to it after expiry of the period prescribed in Article 15(1) of Regulation No 2847/93.

56 It must therefore be held that, as regards the 1991 and 1996 fishing years, by failing to determine the appropriate detailed rules for the utilisation of the quotas allocated to it and by failing to ensure compliance with the Community rules on the conservation of species through monitoring of fishing activities and through appropriate inspection of landings and catch records, the French Republic has failed to fulfil its obligations under Article 5(2) of Regulation No 170/83, Article 1(1) of Regulation No 2241/87, Article 9(2) of Regulation No 3760/92 and Article 2 of Regulation No 2847/93.

Late suspension of fishing

57 It is imperative that the Member States fulfil the obligations incumbent on them under the Community rules for the conservation and management of fish stocks in order 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.

58 On those grounds, the Court has already held that Article 11(2) of Regulation No 2241/87 requires Member States to adopt binding measures to prohibit on a provisional basis all fishing activity even before quotas are exhausted (see Case C-52/95 *Commission* v *France* [1995] ECR I-4443, paragraphs 29 and 30). That interpretation is also valid for Article 21(2) of Regulation No 2847/93, the

wording of which is essentially the same as that of Article 11(2) of Regulation No 2241/87, which it replaces.

59 Furthermore, according to settled case-law, a Member State cannot plead provisions, practices or situations in its internal legal system to justify non-compliance with obligations and time-limits arising from rules of Community law (see Case C-52/91 *Commission* v *Netherlands* [1993] ECR I-3069, paragraph 36, and *Commission* v *France*, cited above, paragraph 54).

60 It follows that a Member State cannot rely on a delay due to the time taken to transmit data or to publish a decision to justify failure to implement appropriate measures to suspend fishing in good time. On the contrary, a Member State is bound to take account of such administrative delays when it sets the date for the suspension of fishing.

61 It must therefore be held that, by not provisionally prohibiting fishing by vessels flying the French flag or registered in French territory when the catches landed were deemed to have exhausted the corresponding quota, and by finally prohibiting fishing only when the quota had been considerably exceeded, the French Republic has failed to fulfil its obligations under Article 11(1) and (2) of Regulation No 2241/87, as regards the 1991 to 1993 fishing years, and under Article 21(1) and (2) of Regulation No 2847/93, as regards the 1994 to 1996 fishing years.

The absence of penal or administrative sanctions

62 The competent authorities of a Member State are required, under Article 1(2) of Regulation No 2241/87, to take penal or administrative action against those

responsible in cases of infringement of Community rules on the conservation and control of fishery resources. The same obligation is incumbent on the Member States, since 1 January 1994, under Article 31(1) of Regulation No 2847/93.

63 As regards the argument of the French Government relating to corrections of the statistics, suffice it to point out that a Member State cannot plead statistical inadequacies in its monitoring system to justify non-compliance with obligations arising from Community law.

64 As regards the argument of that government regarding the need to confirm infringements, most often at sea, in order to impose a penal sanction, the Court has already held that such infringements could easily be confirmed when catches are unloaded at port or during landing, sale or storage (*Commission* v *France*, cited above, paragraph 53).

65 As regards administrative sanctions, the measures taken during the 1995 and 1996 fishing years did not fulfil the requirements of Article 31(2) of Regulation No 2847/93. Contrary to the objectives of that article, the system used by the French authorities, which provides for a simple readjustment the following year for producers' organisations responsible for exceeding quotas, does not have an effect commensurate with the seriousness of the infringement. Moreover, since it does not immediately deprive those responsible for the infringement of the economic advantage they derived from it, this system does not serve as a genuine deterrent.

66 Moreover, the fact that the French Government is drafting a decree intended to impose appropriate penalties on the producers' organisations responsible for exceeding quotas is of no relevance in the context of these actions. According to settled case-law, the question whether a Member State has failed to fulfil its obligations must be determined by reference to the situation prevailing in the Member State at the end of the period laid down in the reasoned opinion and the Court cannot take account of any subsequent changes (see, in particular, Case C-147/00 *Commission* v *France* [2001] ECR I-2387, paragraph 26).

67 It must therefore be held that, by failing to take penal or administrative action against any master of a vessel or other person responsible for fishing after a prohibition had been imposed, the French Republic has failed to fulfil its obligations under Article 1(2) of Regulation No 2241/87, as regards the 1991 to 1993 fishing years, and under Article 31 of Regulation No 2847/93, as regards the 1994 to 1996 fishing years.

Costs

68 Under Article 69(2) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings. Since the Commission has applied for costs and the French Republic has been unsuccessful, the French Republic must be ordered to pay the costs.

On those grounds,

THE COURT (Fifth Chamber)

hereby:

1. Declares that, as regards the 1991 and 1996 fishing years, by failing to determine the appropriate detailed rules for the utilisation of the quotas allocated to it and by failing to ensure compliance with the Community rules on the conservation of species through monitoring of fishing activities and through appropriate inspection of landings and catch records, the French Republic has failed to fulfil 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, Article 1(1) of Council Regulation (EEC) No 2241/87 of 23 July 1987 establishing certain control measures for fishing activities, Article 9(2) of Council Regulation (EEC) No 3760/92 of 20 December 1992 establishing a Community system for fisheries and aquaculture and Article 2 of Council Regulation (EEC) No 2847/93 of 12 October 1993 establishing a control system applicable to the common fisheries policy;

By not provisionally prohibiting fishing by vessels flying the French flag or registered in French territory when the catches landed were deemed to have

exhausted the corresponding quota, and by finally prohibiting fishing only when the quota had been considerably exceeded, the French Republic has failed to fulfil its obligations under Article 11(1) and (2) of Regulation No 2241/87, as regards the 1991 to 1993 fishing years, and under Article 21(1) and (2) of Regulation No 2847/93, as regards the 1994 to 1996 fishing years;

By failing to take penal or administrative action against any master of a vessel or other person responsible for fishing after a prohibition had been imposed, the French Republic has failed to fulfil its obligations under Article 1(2) of Regulation No 2241/87, as regards the 1991 to 1993 fishing years, and under Article 31 of Regulation No 2847/93, as regards the 1994 to 1996 fishing years;

2. Orders the French Republic to pay the costs.

Jann Edward Wathelet

Delivered in open court in Luxembourg on 25 April 2002.

R. Grass P. Jann

Registrar President of the Fifth Chamber