OPINION OF MR ADVOCATE GENERAL JACOBS
delivered on 10 January 1991 *

My Lords,

1. In these proceedings under Article 169 of the EEC Treaty the Commission contends that the French Republic failed in 1986 to take the necessary measures to ensure that quotas for certain fish stocks were respected.

2. The principal Community regulations at issue in these proceedings are the same as those considered in Case C-62/89 *Commission* v *France* [1990] ECR I-925 and the relevant provisions are set out in the Report for the Hearing and Opinion in that case, as well as in the Report for the Hearing in these proceedings. For present purposes, it is sufficient to refer to two key provisions: first, Article 5(2) of Council Regulation No 170/83 establishing a Community system for the conservation and management of fishery resources (OJ 1983 L 24, p. 1) provides that Member States shall determine, in accordance with the applicable Community provisions, the detailed rules for the utilization of the quotas allocated to them. Secondly, Article 10(2) of Council Regulation No 2057/82 establishing certain control measures for fishing activities by vessels of the Member States (OJ 1982 L 220, p. 1) provides that:

'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 . . . '.

3. Council Regulation No 3730/85 (OJ 1985 L 361, p. 66) allocated certain catch quotas between Member States for vessels fishing in the Norwegian economic zone and the fishery zone around Jan Mayen. That regulation allocated to France for 1986 a catch quota of 65 tonnes for 'other species (as by-catches)'.

4. Council Regulation No 3732/85 (OJ 1985 L 361, p. 76) allocated catch quotas to Member States for vessels fishing in Faeroese waters. That regulation allocated to France for 1986 a catch quota of 440 tonnes for redfish.

* Original language: English.

5. The extent of overfishing in both cases is not in dispute. The quota for 'other species' in Norwegian waters was exhausted in September 1986 and French vessels went on to catch a total of 105 tonnes. The initial redfish quota in Faeroese waters was exhausted in May 1986 and by a telex of 12 May 1986, annexed to the application, the French authorities requested the Commission to close the fishery. At the beginning of June 1986 the quota was increased to 510 tonnes by means of an exchange of quota with another Member State under Article 5(1) of Regulation No 170/83. However, that increased quota was practically exhausted by the end of September (506 tonnes) and was finally exhausted in the course of November 1986. French vessels caught a total of 617 tonnes of redfish in Faeroese waters in 1986.

6. It is not disputed that France took no steps itself to prohibit fishing by its vessels against the two quotas once their exhaustion appeared imminent. Instead, it was left to the Commission, acting under Article 10(3) of Regulation No 2057/82, to take the necessary action. Commission Regulation No 1601/86 (OJ 1986 L 140, p. 22), which was adopted in response to the telex of 12 May 1986 and came into force on 27 May 1986, prohibited further fishing for redfish by French vessels in Faroese waters. Commission Regulation No 3465/86 (OJ 1986 L 319, p. 29), which came into force on 14 November 1986, ordered a halt to fishing for 'other species' in the relevant Norwegian waters.

7. In its application in these proceedings, the Commission seeks a declaration that, by failing to ensure respect for the quotas allocated to it for 1986 for catches of other species in Norwegian waters and redfish in Faeroese waters, France has failed to fulfil its obligations under Article 5(2) of Regulation No 170/83 and under Article 10(2) of Regulation No 2057/82, in conjunction with Article 1 of Regulation No 3730/85 and Article 1 of Regulation No 3732/85.

8. As in Case C-62/89 *Commission* v *France*, referred to above, the main emphasis of the Commission's action rests on the failure by France provisionally to halt fishing for the relevant stocks as soon as the exhaustion of the quotas appeared imminent, as is required by Article 10(2) of Regulation No 2057/82. At paragraph 17 of its judgment in Case C-62/89 the Court stated that it follows from that provision that Member States are required to take in good time all the measures necessary to anticipate the overfishing of the quotas in question.

9. France seeks to justify its failure to take action under Article 10(2) by reference to four essential arguments. Since three of these arguments have already been considered by the Court in Case C-62/89, referred to above, it is possible to deal with them shortly.

10. In the first place, France points to the practical difficulties involved in predicting the imminent exhaustion of the quotas. The relevant fisheries were very distant so that catch information, once it was received, was

liable to be already out of date. In the case of the quota for other species in Norwegian waters, these difficulties were aggravated by the fact that the relevant French quota was very small whereas the capacity of the vessels fishing in Norwegian waters was large. In addition, France states that Commission Regulation No 2807/83 (OJ 1983 L 276, p. 1), which provides for standardized logbooks to be used by skippers of vessels to record catches, did not apply until 1 April 1986, and that the establishment of a statistical system to process that information necessitated a period of adaptation.

11. As the Court pointed out in Case C-62/89 (at paragraph 23), a Member State may not rely on practical difficulties in order to justify its failure to adopt appropriate measures of control; on the contrary, it is for the Member States, who are responsible for the implementation of Community regulations in the framework of the common organization of the markets in the fisheries sector, to overcome these difficulties by taking the appropriate measures.

12. In that regard, the control measures laid down in Regulation No 2057/82, in particular Articles 6 and 9 which provide for the verification and recording of landings, if properly observed and enforced, should have provided the French authorities with enough information to enable them to anticipate the exhaustion of the quotas and act accordingly. If those measures were inadequate, then it was open to France under Article 14 of Regulation No 2057/82 to adopt additional, more far-reaching measures. In particular, as the Commission points out, France could have required skippers of vessels to report catches by radio, or could have introduced a licensing system under which the vessels were authorized in advance to catch a given quantity of the fish subject to the quotas.

13. As regards the need for a period of adaptation in order to establish a system to collect and process the information provided by logbooks, Regulation No 2807/83 (which came into effect on 1 April 1985 and not 1 April 1986), merely prescribed a standard form of logbook, whereas the obligation to keep a logbook was already laid down in Article 3 of Regulation No 2057/82 which came into effect on 1 January 1983. It is not unreasonable to expect that France would, by 1986, have established a system enabling it to use effectively the information provided by logbooks.

14. Moreover, France's own actions in relation to the redfish quota cast doubt on its assertion that practical difficulties stood in the way of effective collection of information. As the Commission points out, the table of landings sent by the French authorities to the Commission, annexed to the reply in these proceedings, indicates that at the end of April 1986 373 tonnes of the initial quota of 440 tonnes had already been caught: yet France was able, less than two weeks later, in its telex of 12 May 1986, to indicate to the Commission that the quota had been exhausted. This, as the Commission points out, shows that the

French authorities were, at least as regards the redfish quota, in a position to be informed rapidly as to the rate of exhaustion of the quota.

15. Secondly, France argues that there is uncertainty as to the extent to which the quotas were exceeded, or indeed as to whether they were exceeded at all. In this regard, France points to the lack of harmonization at the Community level of the conversion coefficient applied by Member States to quantities of gutted fish landed in order to calculate the live-weight tonnage of the fish. France also alleges that there is a dispute as to jurisdiction between the United Kingdom and the Faroese Islands as to certain of the waters in which the redfish catches were made.

16. As regards the conversion coefficient, as the Court pointed out in response to the same argument at paragraph 28 of its judgment in Case C-62/89, cited above, the French authorities have themselves relied on this coefficient in order to determine the catch figures reported to the Commission. In these circumstances, it is not open to France to question the reliability of this method of calculation. Moreover, any minor margin of uncertainty arising from the application of the conversion coefficient cannot explain the substantial — in percentage terms — overfishing of the relevant quotas: 21% in respect of the increased redfish quota and 60% in respect of the quota for 'other species'.

17. The argument concerning the alleged dispute as to jurisdiction was also raised in Case C-62/89. At paragraph 30 of its judgment in that case, the Court pointed out that under Article 2(b) of the agreement on fisheries of 1976 between the Community, on the one hand, and the Government of Denmark and the Home Government of the Faeroe Islands, on the other, the Faeroese authorities determine annually the allotments for Community fishing vessels and the areas within their jurisdiction in which those allotments may be fished. The lists of allotments and fishing areas are sent to the Commission and serve as the basis for the allocation of quotas to Member States. The Court held that in the absence of any reservation in that agreement as regards an alleged dispute as to jurisdiction, and in the absence of any challenge by the Member State allegedly concerned to the fishing areas communicated by the Faeroese authorities, France had not succeeded in establishing any doubt that the catch totals used by the Commission in those proceedings were fished in waters within the fishery jurisdiction of the Faroes. Since France has not advanced any additional argument or information in the context of these proceedings, it appears to me that the same conclusion must apply.

18. Thirdly, France argues that the overall Community quotas for the relevant stocks in Norwegian and Faeroese waters in 1986 were not exceeded, with the result that the overfishing of the national quotas did not endanger either the conservation objectives of the Community legislation or respect for the Community's agreements with the third countries concerned. This argument was also considered by the Court in Case C-62/89. There the Court ruled (at paragraph 32) that the figure for total

Community catches, which can only be established at the end of the relevant year, cannot affect the obligations of a Member State to take in good time the necessary measures to anticipate the exhaustion of its individual national quota.

19. Finally, France advances two new arguments which essentially seek to call into question the criteria applied by the Commission in evaluating the effectiveness of Mermber State management and control of quotas. First, France contends that the Commission, in deciding whether to institute Article 169 proceedings for overfishing of quotas, should not look to the percentage overfished by reference to the overall quota, but should evaluate the significance of the excess by reference to its absolute value, i. e. in tonnage terms. In that respect, it should compare the amounts by which the relevant quotas were overfished to the amounts by which other quotas were exceeded, but which were considered insignificant by the Commission, and should also take into account the capacity of the vessels fishing against the quotas. Secondly, in evaluating the seriousness of the delay between the date of exhaustion and the date of closing the fishery, the Commission should have regard to the time-limits laid down in the Community legislation which require skippers of vessels to communicate the information in logbooks to national authorities at least every 15 days and in any event within 48 hours of unloading, and which give Member States a period of 15 days in which to communicate to the Commission the monthly catch declaration.

20. As regards the first argument, as the Commission points out, an evaluation of the significance of the overfishing of a quota by reference to its absolute value, i. e. in terms of tonnage, is pointless because the quotas allocated to France, or any other Member State, vary considerably in terms of quantity. On the other hand, an evaluation in terms of the percentage overfished is capable of indicating whether there has been effective management and control of the quotas. As the Commission again points out, the fact that the vessels operating in the relevant waters were of large capacity was a factor which called for even greater vigilance on the part of the French authorities, but did not in any respect lessen the obligation to ensure respect for the quotas.

21. As for the second argument, I again agree with the Commission that it is not open to a Member State to rely on the minimum requirements of the Community legislation in order to evade its responsibilities. As regards the 15-day deadline for reporting by skippers of catches, it is open to Member States to require more frequent reporting of catches, for instance by radio. The 15-day period for communication of monthly catch figures to the Commission cannot in any event excuse the failure by the French Government to respect the quite distinct obligation to take the necessary steps provisionally to close the fisheries.

22. I am therefore of the view that France's final arguments must be rejected and that the Commission has accordingly established an infringement of Article 10(2) of Regulation No 2057/82.

23. The Commission also seeks a declaration that France has failed to fulfil its obligations under Article 5(2) of Regulation No 170/83 which provides that Member States shall determine, in accordance with the applicable Community provisions, the detailed rules for the utilization of the quotas allocated to them. No details of this secondary allegation are given in the application. Accordingly, in a written question, the Court asked the Commission to indicate the concrete factors which established that France had infringed that provision.

24. The Commission's reply suggests that in its view Article 5(2) of Regulation No 170/83 has been breached in three respects. First, the Commission argues that Article 5(2) has a wide scope, covering all the measures necessary to ensure that quotas are utilized in accordance with the relevant Community rules: in consequence, any case of overfishing which is attributable to a Member State constitutes a breach of Article 5(2). Secondly, since the provisions of Regulation No 2057/82, including Article 10(2), although adopted prior to Regulation No 170/83, merely define more exactly the general obligation contained in Article 5(2), any breach of Article 10(2) of Regulation No 2057/82 constitutes *ipso facto* a breach of Article 5(2) of the basic regulation. Thirdly, the Commission argues that where the late closure of the fishery is due to the fact that the Member State has not taken the necessary measures, in addition to those required by Regulation No 2057/82, to acquire the necessary information concerning catches, then that failure too must be seen as a breach of Article 5(2).

25. I do not find these arguments convincing. Where, as in the present case, there has been an undisputed breach of a specific obligation, namely Article 10(2) of Regulation No 2057/82, it is superfluous to invoke in addition the terms of a more general, underlying obligation. In my view it is also unnecessary to invoke Article 5(2) as the basis of an obligation to adopt the necessary measures in addition to those required by Regulation No 2057/82. As already indicated above at paragraph 8, the Court in its judgment in Case C-62/89 ruled that it follows from Article 10(2) of Regulation No 2057/82 that Member States are required to take in good time all the measures necessary to anticipate the overfishing of quotas. In any event, even if Article 5(2) does have the independent force suggested by the Commmission, the Commission has in my view failed to specify at a sufficiently early stage in the proceedings in what respects France may be said to have infringed that provision.

26. I therefore conclude that the Commission has not made out a breach of Article 5(2) of Regulation No 170/83. However, since it has succeeded in its central contentions, I consider that it is entitled to costs.

27. Accordingly, I am of the opinion that the Court should:

(1) Declare that the French Republic, by not ensuring respect for the quotas allocated to it for 1986 for the capture of 'other species' in Norwegian waters and redfish in Faeroese waters, has failed to fulfil its obligations under Article 10(2) of Council Regulation No 2057/82 in conjunction with Article 1 of Regulation No 3730/85 and Article 1 of Regulation No 3732/85.

(2) For the rest, dismiss the application.

(3) Order the French Republic to pay the costs.