JUDGMENT OF THE COURT (Fifth Chamber)
7 December 1995 *

In Case C-52/95,

Commission of the European Communities, represented by G. Rozet, Legal Adviser, acting as Agent, with an address for service in Luxembourg at the office of C. Gómez de la Cruz, of its Legal Service, Wagner Centre, Kirchberg,

applicant,

v

French Republic, represented by E. Belliard, Deputy Director in the Legal Directorate of the Ministry of Foreign Affairs, and G. Mignot and I. Latournarie, Foreign Affairs Secretaries in the same directorate, acting as Agents, with an address for service in Luxembourg at the French Embassy, 9 Boulevard du Prince Henri,

defendant,

APPLICATION for a declaration by the Court that by not provisionally prohibiting fishing by its vessels of anchovy stocks in ICES Zone VIII so as to ensure compliance with the fishing quotas allocated to it in 1991 and 1992 and by not taking action against the persons responsible for fishing and fishing-related activities

* Language of the case: French.

carried out in respect of such stocks after fishing was prohibited by the Commission in 1991 and 1992, the French Republic has failed to fulfil its obligations under Articles 11(2) and 1 of Council Regulation (EEC) No 2241/87 of 23 July 1987 establishing certain control measures for fishing activities (OJ 1987 L 207, p. 1), as amended by Council Regulation (EEC) No 3483/88 of 7 November 1988 (OJ 1988 L 306, p. 2), in conjunction with Article 3 of, and the Annexes to, both Council Regulation (EEC) No 3926/90 of 20 December 1990 fixing, for certain fish stocks and groups of fish stocks, the total allowable catches for 1991 and certain conditions under which they may be fished (OJ 1990 L 378, p. 1) and Council Regulation (EEC) No 3882/91 of 18 December 1991 fixing, for certain fish stocks and groups of fish stocks, the total allowable catches for 1992 and certain conditions under which they may be fished (OJ 1991 L 367, p. 1),

THE COURT (Fifth Chamber),

composed of: D. A. O. Edward (Rapporteur), President of the Chamber, J.-P. Puissochet, J. C. Moitinho de Almeida, C. Gulmann and M. Wathelet, Judges,

Advocate General: N. Fennelly,
Registrar: R. Grass,

having regard to the report of the Judge-Rapporteur,

after hearing the Opinion of the Advocate General at the sitting on 17 October 1995,

gives the following

Judgment

1 By application lodged at the Court Registry on 28 February 1995, the Commission of the European Communities brought an action under Article 169 of the EC Treaty for a declaration that

— by not provisionally prohibiting fishing by its vessels of anchovy stocks in ICES Zone VIII ('Zone VIII') so as to ensure compliance with the fishing quotas allocated to it in 1991 and 1992 and

— by not taking action against the persons responsible for fishing and fishing-related activities carried out in respect of such stocks after fishing was prohibited by the Commission in 1991 and 1992,

the French Republic has failed to fulfil its obligations under Articles 11(2) and 1 of Council Regulation (EEC) No 2241/87 of 23 July 1987 establishing certain control measures for fishing activities (OJ 1987 L 207, p. 1), as amended by Council Regulation (EEC) No 3483/88 of 7 November 1988 (OJ 1988 L 306, p. 2), in conjunction with Article 3 of, and the Annexes to, both Council Regulation (EEC) No 3926/90 of 20 December 1990 fixing, for certain fish stocks and groups of fish stocks, the total allowable catches for 1991 and certain conditions under which they may be fished (OJ 1990 L 378, p. 1) and Council Regulation (EEC) No 3882/91 of 18 December 1991 fixing, for certain fish stocks and groups of fish stocks, the total allowable catches for 1992 and certain conditions under which they may be fished (OJ 1991 L 367, p. 1).

2 Articles 2, 3 and 4 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) enable the Council to limit catches for each

stock, where necessary. The volume of the catches available is to be distributed between the Member States in the form of quotas. However, under Article 5(1), Member States may exchange all or part of the quotas allocated to them.

3 Under Article 5(2) of Regulation No 170/83, Member States must determine, in accordance with the applicable Community provisions, the detailed rules for the utilization of their quotas.

4 Control of that conservation system is governed by Regulation No 2241/87, under Article 1(1) of which each Member State must, within its territory and maritime waters, monitor fishing vessels and all activities whose inspection would enable verification of compliance with any regulations concerning conservation and control measures.

5 When an infringement is found, the competent authorities must, under Article 1(2), take penal or administrative action against the master of the vessel or any other person responsible.

6 Under Article 9(2) of the same regulation, Member States must notify the Commission, before the 15th of each month, of the quantities of each stock subject to quotas landed during the preceding month.

7 Article 11(1) provides that all catches of a stock subject to quota made by vessels flying the flag of a Member State or registered in a Member State are to be charged against the quota applicable to that State for the stock in question.

8 In accordance with Article 11(2), the Member States must determine the date from which the catches of a stock subject to quota made by their vessels are to be deemed to have exhausted the quota in question. As from that date, the Member States must provisionally prohibit fishing of that stock by their vessels, as well as the retention on board, the transhipment and the landing of fish of the same stock taken after that date. That measure must be notified to the Commission forthwith.

9 Following such notification or on its own initiative, the Commission is to fix, under Article 11(3), the date on which the catches of a stock are deemed to have exhausted the quota of the Member State concerned. Under the third subparagraph of Article 11(3), the vessels of the Member State must cease fishing the stock in question on that date. Such vessels must also cease retention on board, transhipment, landing or arranging for transhipment and landing in respect of catches of that stock taken after that date.

10 Where the competent authority of a Member State has recorded that a vessel of that State has failed to comply with the rules concerning conservation or control measures, the Member State may, under Article 11b of the same regulation, as amended, adopt with respect to the vessel concerned an additional control measure.

11 On the basis of Regulation No 170/83, the Council adopted Regulation No 3926/90 and Regulation No 3882/91. For 1991 and 1992 respectively, quotas of 3 000 tonnes for anchovy in Zone VIII were allocated to France by Article 3 of, and the Annex to, each of those regulations.

12 Article 5(1) of each of those regulations prohibited the retention on board or the landing of catches from stocks for which quotas were fixed unless the catches had been taken by vessels of a Member State having a quota and that quota was not exhausted.

13 According to the statistics supplied to the Commission by the French authorities, catches of anchovy in Zone VIII by vessels flying the French flag or registered in France (hereinafter 'French vessels') during the first two months of 1991 amounted to 3 397.2 tonnes, without the French authorities having taken any control measures.

14 On its own initiative, the Commission prohibited such fishing as from 24 May 1991 by the second paragraph of Article 1 of Regulation (EEC) No 1326/91 of 21 May 1991 concerning the stopping of fishing for anchovy by vessels flying the flag of France (OJ 1991 L 127, p. 11).

15 According to the data collected at the end of the 1991 fishing year by the French authorities, the total amount of the catches in question made by French vessels had reached 6 020.6 tonnes prior to the Commission's prohibition and catches for the remainder of the year amounted to 89 tonnes in June, 116 tonnes in July, 62 tonnes in August, 36 tonnes in September and 63 tonnes in October, together with lesser quantities for November and December, giving a total for 1991 of 6 402 tonnes.

16 For 1992, the French authorities informed the Commission by letter of 2 April 1992 that catches of anchovy in the same zone between 1 January and 29 March had totalled 3 473 tonnes.

17 The French Republic having taken no control measures, the Commission prohibited the fishing in question as from 16 April 1992 by the second paragraph of Article 1 of Regulation (EEC) No 942/92 of 13 April 1992 concerning the stopping of fishing for anchovy by vessels flying the flag of France (OJ 1992 L 101, p. 42).

18 The final figures supplied by the French authorities showed that the catches in question had reached 5 213.9 tonnes by the end of May 1992 and 5 559.4 tonnes by the end of July 1992.

19 On 3 July 1992, the French Republic was able to obtain a transfer of 6 000 tonnes of the quota in question from the Kingdom of Spain, bringing its annual quota to 9 000 tonnes. That transfer enabled the Commission to revoke Regulation No 942/92 by Regulation (EEC) No 2265/92 of 31 July 1992 (OJ 1992 L 220, p. 5) and thus to reopen the fishing in question.

20 By the end of September 1992, catches amounted to 8 995.4 tonnes, reaching 12 781 tonnes by the end of November and 14 013 tonnes by the end of the year. The French authorities, however, took no measures to stop the fishing in question during that year.

21 The Commission therefore considers that, by not taking the necessary steps to prohibit anchovy fishing in Zone VIII in 1991 and 1992 and by not taking action against the persons responsible for fishing activities carried out in respect of such stocks after fishing was prohibited by the Commission, the French Republic has failed to fulfil its obligations under Articles 11(2) and 1 of Regulation No 2241/87.

The first claim

22 In support of its first claim, the Commission submits that Article 11(2) of Regulation No 2241/87 requires Member States to prevent their quotas from being exhausted and to take the necessary steps to prohibit all fishing activities provisionally even before a quota is exhausted.

23 It contends that in 1991 the French Republic should have provisionally prohibited fishing of the stock in question by French vessels in February 1991 at the latest.

24 In 1992, the French Republic should have adopted control measures before the end of February in order to ensure that its initial quota would not be exceeded. Again, as soon as the increased quota was about to become exhausted, it should have prohibited the fishing in question by its vessels.

25 The French Government does not deny either that the catches in question exceeded the quotas allocated to France or that no control measure of the kind required by Article 11(2) of Regulation No 2241/87 was taken by the relevant French authorities, whether for 1991 or for 1992.

26 It submits, however, that the delay in closing the fishing in 1991 was due to deficiencies in the statistical system then in operation.

27 That argument cannot be accepted.

28 First, as regards the statistical system in operation in 1991, it has consistently been held (see Case C-62/89 *Commission* v *France* [1990] ECR I-925, paragraph 23) that a Member State cannot rely on practical difficulties in order to justify its failure to adopt appropriate control 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.

29 Secondly, in Case C-52/91 *Commission* v *Netherlands* [1993] ECR I-3069, paragraph 26, the Court held that Article 10(2) of Council Regulation (EEC) No 2057/82 of 29 June 1982 establishing certain control measures for fishing activities by vessels of the Member States (OJ 1982 L 220, p. 1), which has been repealed but whose terms were identical to those of Article 11(2) of Regulation No 2241/87, required the Member States to adopt binding measures to prohibit on a provisional basis all fishing activity even before quotas were exhausted.

30 Article 11(2) of Regulation No 2241/87 imposes the same requirement on the Member States.

31 Therefore, by not provisionally prohibiting the fishing in question by its vessels in either 1991 or 1992 before the quotas allocated to it for those years were exhausted, the French Republic has failed to fulfil its obligations under Article 11(2) of Regulation No 2241/87.

The second claim

32 The Commission considers that the fact that French vessels continued fishing and related activities in respect of the stock in question after they had been prohibited by Regulation No 1326/91 and Regulation No 942/92 constitutes an infringement, by the persons responsible for those vessels, of the third subparagraph of Article 11(3) of Regulation No 2241/87 and of Article 5 of both Regulation No 3926/90 and Regulation No 3882/91. It contends that, under Article 1(2) of Regulation No 2241/87, the French authorities were required to take penal or administrative action against the persons responsible for those infringements.

33 The French Government does not deny that the competent authorities did not take action against the persons responsible for the activities with which this case is concerned.

34 Under Article 1(2) of Regulation No 2241/87, where the competent authorities of a Member State observe that the rules concerning fishery conservation and control are not being complied with, they are required to take penal or administrative action.

35 If the competent authorities of a Member State were systematically to refrain from taking action against the persons responsible for such infringements, both the conservation and management of fishery resources and the uniform application of the common fisheries policy would be jeopardized.

36 Consequently, as from the dates fixed by the Commission for prohibition of the fishing in question, the French Republic was required to take penal or administrative action against persons responsible for continuing the fishing activities in question and related activities, as defined in the third subparagraph of Article 11(3) of

Regulation No 2241/87 and in Article 5 of both Regulation No 3926/90 and Regulation No 3882/91.

37 In relation to 1992, however, the French Government submits that the socio-economic climate during the anchovy fishing year was so difficult that there was a risk of major disorders likely to give rise to serious economic problems. The competent authorities were thus forced to refrain from taking action against the persons responsible for infringements.

38 That argument cannot be accepted. Mere apprehension of internal difficulties cannot justify a failure to apply the rules in question.

39 Therefore, by not taking action against the persons responsible for fishing and fishing-related activities carried out in respect of such stocks after fishing was prohibited by the Commission in 1991 and 1992, the French Republic has failed to fulfil its obligations under Article 1 of Regulation No 2241/87.

Costs

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

On those grounds,

THE COURT (Fifth Chamber)

hereby:

1. **Declares that, by not provisionally prohibiting fishing by its vessels of anchovy stocks in ICES Zone VIII so as to ensure compliance with the fishing quotas allocated to it in 1991 and 1992, the French Republic has failed to fulfil its obligations under Article 11(2) of Council Regulation (EEC) No 2241/87 of 23 July 1987 establishing certain control measures for fishing activities;**

2. **Declares that, by not taking action against the persons responsible for fishing and fishing-related activities carried out in respect of the stock in question after fishing was prohibited by the Commission in 1991 and 1992, the French Republic has failed to fulfil its obligations under Article 1 of Regulation No 2241/87;**

3. **Orders the French Republic to pay the costs.**

Edward Puissochet Moitinho de Almeida

Gulmann Wathelet

Delivered in open court in Luxembourg on 7 December 1995.

R. Grass

Registrar

D. A. O. Edward

President of the Fifth Chamber