In Joined Cases 185 to 204/78

REFERENCE to the Court under Article 177 of the EEC Treaty by the Economische Politierechter (magistrate in commercial matters) of the Arrondissementsrechtbank (District Court), Rotterdam, for a preliminary ruling in the criminal proceedings pending before that court against:

FIRMA J. VAN DAM EN ZONEN (Cases 185 and 186/78),

FIRMA J. EN W. LOKKER CORNELISZONEN (Cases 187 and 188/78),

REDERIJ DELTA B.V. (Case 189/78),

FIRMA GEBR. J. EN W. MELISSANT (Cases 190 and 191/78),

FIRMA C. TANIS JACZN EN ZONEN (Case 192/78),

JAN TANIS, fisherman (Case 193/78),

FIRMA GEBR. VAN DER KLOOSTER (Case 194/78),

FIRMA JAC. VAN DER KLOOSTER EN ZOON (Case 195/78),

JAC. TANIS, KMRSZN EN ZONEN (Case 196/78),

JAN GRINWIS, fisherman (Case 197/78)

ANTHONIJ REDERT, fisherman (Case 198/78)

FIRMA A. REDERT EN G. TANIS (Case 199/78),

FIRMA JOH. EN KR. ORGERS GERRITZONEN (Case 200/78)

VISSERIJBEDRIJF WISSELVALLIGHEID B.V. (Case 201/78),

JOHANNES TANIS, fisherman (Case 202/78),

JOHANNES GRINWIS, fisherman (Case 203/78),

ADAM 'T MANNETJE, fisherman (Case 204/78),

all having their place of business or residence in Goedereede,

on the interpretation of Article 102 of the Act of 22 January 1972 concerning the Conditions of Accession and the Adjustments to the Treaties, and of certain rules of Community law, with regard to national measures relating to quota restrictions on catches of sole and plaice in the North Sea,

THE COURT

composed of: H. Kutscher, President, J. Mertens de Wilmars and Lord Mackenzie Stuart (Presidents of Chambers), P. Pescatore, M. Sørensen, A. O'Keeffe, G. Bosco, A. Touffait and T. Koopmans, Judges,

Advocate General: G. Reischl
Registrar: A. Van Houtte

gives the following

JUDGMENT

Facts and Issues

The facts of the case, the course of the procedure and the observations submitted under Article 20 of the Protocol on the Statute of the Court of Justice of the EEC may be summarized as follows:

I — Facts and procedure

In the Netherlands, Article 2 of the Beschikking Voorlopige Regeling Vangstbeperking Tong en Schol 1978 (Decree provisionally laying down restrictions on catches of sole and plaice, 1978) dated 29 December 1977 prohibits fishing for sole and plaice from 1 January 1978 in certain maritime zones, in particular the North Sea, which is under the jurisdiction not only of the Netherlands, but also Belgium, Denmark, the Federal Republic of Germany, the United Kingdom and Norway. Article 3 of the decree exempts all Netherlands fishermen from this general prohibition up to a maximum total catch of 765 tonnes of sole and 2 950 tonnes of plaice per calendar month.

The Beschikking Voorlopige Regeling Contingentering Tong en Schol Noordzee 1978 (Decree provisionally laying down quotas for North Sea sole and plaice, 1978) likewise dated 29 December 1977, implemented Article 3 of the decree provisionally laying down restrictions on catches of sole and plaice by fixing the rules and criteria for the allocation each month of the total authorized catch and for deciding the monthly quota allocated in 1978 to each Netherlands fishing vessel for catches of sole and plaice in the North Sea.

The two decrees of 29 December 1977, which entered into force on 1 January 1978, were issued pursuant to the Reglement Zee- en Kustvisserij 1977 (Regulation concerning Sea and Coastal Fishing, 1977) dated 25 November 1977, Article 3 of which first enables the Minister of Agriculture and Fisheries to adopt measures implementing international conventions or the decisions of international organizations, and secondly grants him power to make regulations "autonomously", that is to say, independently of international rules. Article 4 of the regulation lists the spheres covered by this power of the Minister to make regulations; the list includes in particular the fixing of the total quantity of fish which Netherlands fishermen are authorized to catch and how this amount is to be allocated among Netherlands fishermen.

In January 1978, 17 Netherlands fishing groups or fishermen infringed the provisions of the Decree provisionally laying down quotas for North Sea sole and plaice by landing from fishing vessels belonging to them quantities of sole and/or plaice in excess of the monthly quota fixed for those vessels, which had been communicated to them in a notice issued by the Director of Fisheries at the Ministry of Agriculture and Fisheries.

On that ground these fishing groups and fishermen were summoned by the Officier van Justitie (the Public Prosecutor) to appear on 27 June 1978 before the Economische Politierechter (magistrate in commercial matters) of the Arrondissementsrechtbank (District Court), Rotterdam.

In 20 judgments given on 18 July 1978 the Economische Politierechter decided to stay the proceedings, in accordance with Article 177 of the EEC Treaty, pending a preliminary ruling from the Court of Justice of the EEC on the following questions:

(1) On what date did the period referred to in Article 102 of the Act concerning the Conditions of Accession and the Adjustments to the Treaties expire?

(2) Are the measures pursuant to the Reglement Zee- en Kustvisserij 1977 (Regulation concerning sea and coastal fishing, 1977 — Staatsblad 666) as set out in the Beschikking Voorlopige Regeling Vangstbeperking Tong en Schol (Decree provisionally laying down restrictions on catches of sole and plaice, 1978) and the Beschikking Voorlopige Regeling Contingentering Tong en Schol Noordzee 1978 (Decree provisionally laying down quotas for North Sea sole and plaice, 1978 — Staatscourant 1977, 255) based on decisions of the Community or on obligations imposed by the Community on the Member States by treaty as referred to in Article 5 of the EEC Treaty or on powers conferred on the Member States by the Community?

(3) Is the content of the aforesaid measures compatible with Community law?

The judgments given by the Economische Politierechter were received at the Court Registry on 14 September 1978. By an order dated 15 November 1978, the Court decided to join the 20 cases, listed under numbers 185/78 to 204/78 for the purpose of the written and oral procedure and the judgment.

In accordance with Article 20 of the Protocol on the Statute of the Court of Justice of the EEC, written observations

were submitted on 27 November 1978 by the Commission of the European Communities, represented by its Legal Adviser, J. H. J. Bourgeois; on 6 December by Firma J. van Dam en Zonen and the other accused in the main proceedings represented by H. H. Kronenberg, Advocate of Rotterdam; on the same date by the Government of the Kingdom of the Netherlands, represented by F. Italianer, Secretary General of the Ministry for Foreign Affairs; on 13 December by the Government of the Kingdom of Denmark, represented by Per Lachmann, adviser to the Department of External Economic Relations at the Ministry for Foreign Affairs, and on 2 January 1979 by the Government of the French Republic.

Upon hearing the report of the Judge-Rapporteur and the views of the Advocate General the Court decided to open the oral proceedings without holding any preliminary inquiry. The Court decided, however, to request the Governments of the Kingdom of the Netherlands, the Kingdom of Denmark, the French Republic and the United Kingdom and the Commission to answer a question before the proceedings commenced. The request was complied with in due time.

II — Written observations submitted to the Court

Firma J. van Dam en Zonen and the other accused in the main proceedings refer to the Netherlands regulations at issue in the main proceedings.

(a) On this point it should be noted that at the beginning of the year 1977 the Netherlands, in company with the other Member States of the EEC who were party to it, denounced the North-East Atlantic Fisheries Convention; no new international convention with the EEC a party to it was made. Nor had the Council of the EEC adopted regulations restricting catches of sole and plaice for the year 1978; the decision of the Council in December 1977 to extend the validity of the Community regulations for conservation and management until 31 January 1978 cannot apply to fishing for sole and plaice: in 1977 there were no Community regulations specifically relating to this sector. No decision was taken by the Council within the terms of the EEC Treaty to extend the validity of national regulations in force in 1977 and based on international conventions which have since lapsed. For the year 1978 the Council at its meeting on 30 and 31 January 1978 approved a statement from the Commission to the effect that where no common system existed, national measures might only be adopted: in so far they were strictly necessary for the conservation and management of fishery resources, non-discriminatory, in accordance with the terms of the Treaty, and after the prior approval of the Commission had been sought. The date on which the Council approved the Commission's statement shows that it cannot refer to the quota system at issue in the main proceedings, which was in force in January 1978; nor can it be accepted as being a formal authorization.

On the facts stated the reply to the second question put to the Court should be in the negative.

(b) The power of Member countries to adopt national measures restricting fishing rights has been considered by the Court in earlier cases.

The judgment of 14 July 1976 (Joined Cases 3, 4 and 6/76 *Kramer and Others* [1976] 2 ECR 1279) lays down that "the Community not yet having fully exercised its functions" in the matter, the Member States had at the time "the power to assume commitments ... in respect of the conservation of the biological resources of the sea", but that "this authority which the Member States have is only of a transitional nature"; this transitional authority will come to an end "from the sixth year after accession at the latest, since the Council must by then have adopted, in accordance with the obligation imposed on it by Article 102 of the Act of Accession, measures for the conservation of the resources of the sea". Thus, from the sixth year after accession at the latest, only the Community is competent to adopt measures internally for the conservation of the biological resources of the sea, and this exclusive authority at the internal level implies also exclusive authority at the external level.

It also appears from the judgments of the Court of 16 February 1978 (Case 61/77 *Commission* v *Ireland* [1978] ECR 417; Case 88/77, *Schonenberg* [1978] ECR 473) that during the transitional period referred to in Article 102 of the Act of Accession, Member States retain only residual powers as far as the fishing sector is concerned, and that no powers can remain at the national level once the transitional period expires.

The accession referred to in Article 102 of the Act of Accession took place on 1 January 1973; the measures envisaged by this provision must therefore have been adopted by 1 January 1978 at the latest.

The reply to the first question should therefore be:

On the basis of Community law, and in particular Article 102 of the Act of Accession, Member States are not competent after 1 January 1978 to take measures to limit catches such as those referred to in the Beschikking Voorlopige Regeling Vangstbeperking Tong en Schol 1978 and in the Beschikking Voorlopige Regeling Contingentering Tong en Schol Noordzee 1978. Only an express authorization in a Council regulation can enable Member States to adopt such measures.

(c) Even on the assumption that Member States retained residual powers after 1 January 1978, the fact remains that the terms of the two Netherlands regulations in question in the main proceedings are not compatible with Article 7 of the EEC Treaty and Article 2 of Council Regulation No 101/76 of 19 January 1976 laying down a common structural policy for the fishing industry (Official Journal, L 20, p. 19). Indeed the case-law of the Court shows that even during the transitional period national measures may not be contrary to Community law and that, where they restrict fishing activities, they must affect the functioning of the market organization as little as possible.

Article 7 of the EEC Treaty prohibits any discrimination on grounds of nationality; Article 2 of Regulation No 101/76 provides for equal treatment as regards the conditions of access to, and

fishing in, the maritime waters coming under the sovereignty or within the jurisdiction of each Member State. The disputed regulations either impose, over the North Sea area, which is only partially covered by the Netherlands fishing zone of 200 nautical miles, a prohibition applicable to all fishermen irrespective of nationality with an exemption in favour of Netherlands fishermen up to the limit of the monthly quota they are allowed, or they permit EEC fishermen other than Netherlands fishermen to fish freely whilst the Netherlands fishermen are restricted to the monthly quota imposed on them by their national regulations; there is discrimination in either case. In fact, the Netherlands regulations apply only to Netherlands fishermen taking sole and plaice, who are thus put in a much less favourable position than their fellow fishermen in the EEC, as none of the Member States has adopted a comparable or identical quota system for the month of January 1978.

The reply to the third question should be as follows:

The measures restricting catches, based on Article 4 of the Reglement Zee- en Kustvisserij 1977 and which are laid down in particular by the Beschikking Voorlopige Regeling Vangstbeperking Tong en Schol 1978 and the Beschikking Voorlopige Regeling Contingentering Tong en Schol Noordzee 1978 are incompatible with Community law, and with Article 7 of the EEC Treaty and Articles 2 and 4 of Regulation No 101/76 in particular.

The *Government of the Kingdom of the Netherlands* emphasizes that the essential point raised by the main proceedings is whether Member States have power to adopt measures restricting fishing rights and that this point must be considered in the light of a provisional extension through 1978 of the validity of the two ministerial decrees regulating catches of sole and plaice in the North Sea.

(a) Until the beginning of 1978, the Member States of the Community, apart from Italy and Luxembourg, were parties to the North-East Atlantic Fisheries Convention. Recommendation No 15A, adopted on 25 November 1976 under this convention, imposed for the year 1977 restrictions on catches of sole and plaice in the North Sea by means of fixing global catch quotas and allocating them amongst the countries concerned. The Netherlands authorities adopted this recommendation in the Beschikking Vangstbeperking Tong en Schol 1977 (Decree laying down restrictions on catches of sole and plaice, 1977) and, implementing this Decree, in the Beschikking Contingentering Tong en Schol Noordzee 1977 (Decree laying down quotas for North Sea sole and plaice, 1977) which introduced a quota system on the basis of annual quotas for each vessel. In December 1977, as the Community was unable to establish a common fisheries policy, it decided at the Council meeting held on 5, 6 and 7 December 1977 to extend until 1 February 1978 the national regulations concerning catches of sole and plaice in force in 1977. The Netherlands authorities adopted this decision in the two decrees of 29 December 1977 at issue in the main proceedings.

(b) In its judgment of 16 February 1978, the Court decided that Member

States are still entitled, within their own jurisdiction, to take appropriate conservation measures "so long as the transitional period laid down in Article 102 of the Act of Accession has not expired and the Community has not yet fully exercised its power in the matter".

The transitional period referred to in Article 102 is not a period of transition within the meaning of Article 9 of the Act of Accession: Article 102 imposes an obligation not on the Member States, but on a Community institution. Article 9 imposes an obligation on the new Member States to abolish precisely defined transitional measures, but the duty which falls on the Council is to determine "conditions for fishing", with no further definition. Thus Article 102 of the Act of Accession does not prevent the adoption of national conservation measures, provided, of course, that such measures are adopted with due regard to the duty of co-operation devolving on the Member States, especially as regards keeping the Commission informed and consulting it, in the event of its proving impossible to find a general solution within the Council early enough.

It is generally agreed that the six-year period referred to in Article 102 of the Act of Accession expires on 1 January 1979.

(c) The duty of co-operation to which the judgment of the Court of 16 February 1978 refers has been respected in this case, because the measures in question in the main proceedings were adopted directly upon conclusion of agreements made within the Community: the discussions in the Council were suspended in December 1977 until 16 January 1978, but it was also decided to extend until 1 February 1978 the validity of Community regulations for conservation and management, which were in force until 1 January 1978, as well as the national regulations in the fisheries sector which expired on the same date.

The Netherlands decrees introducing a provisional system for the year 1978 are not discriminatory within the meaning of Article 7 of the EEC Treaty: according to the decision taken on 5, 6 and 7 December 1977 which is in essence a Community one, the Member States concerned are obliged to extend until 1 February 1978 the prohibition, applicable to all in 1977, on catching more sole and plaice in the North Sea than was allowed by Recommendation No 15 A. The Netherlands made this extension: they were bound to do so, even if the authorities in the other Member States did not have due regard to this obligation. In any case, even if the provisional rules applied by the Netherlands are purely national in character, they do not on that account amount to discrimination prohibited by Community law, because the unequal treatment given to the nationals of the various Member States is due to the differences existing between the laws of the Member States.

(d) The Netherlands Government was, therefore, entitled to adopt the measures in question and their terms are compatible with Community law.

The *Government of the Kingdom of Denmark* submitted in substance the following observations:

(a) The doubt whether the period prescribed by Article 102 of the Act of Accession expires on 1 January 1978 or 1 January 1979 cannot be resolved by purely linguistic interpretation.

The argument that the period expired on 31 December 1977 is based on the conclusion that it is the date on which the transitional provisions normally cease to apply that is meant, in accordance with Article 9 of the Act of Accession. However, the fact that Article 102 does not in terms refer to the end of the normal transitional period seems to militate rather in favour of the argument that 31 December 1978 is the ultimate date for applying the transitional measures referred to therein.

(b) The Court has recognized, notably in its judgment of 16 February 1978, that Member States have power to take conservation measures which are strictly necessary, provisional and non-discriminatory, so long as the transitional period laid down in Article 102 of the Act of Accession has not expired and the Community has not yet fully exercised its power in the matter. The competence of the Netherlands Government cannot therefore be contested in this instance; moreover, the Netherlands measures were of a provisional nature and were not discriminatory.

If the period in Article 102 of the Act of Accession is considered to have ended on 1 January 1978, it should be noted that according to the case-law of the Court, even if the power to take provisional conservation measures on a national level, based on the law applicable up to that time, lapsed on expiry of the period, the law will not tolerate a vacuum. Article 5 of the EEC Treaty imposes a duty on Member States, even after expiry of the period allowed in Article 102 of the Act of Accession, and until the Council adopts the regulations necessary for implementing a common fisheries policy, first to take the measures necessary to ensure fulfilment of the aims of the Community regarding a common conservation policy, and secondly to act in a manner which does not hinder the Council's adoption of the measures which are required.

At a meeting of the Council on 5, 6 and 7 December 1977, when no agreement could be reached on the introduction of Community rules as from 1 January 1978, the Member States decided that the regulations in force in 1977, both Community and national, would continue to apply in January 1978; the agreement to extend the validity of national measures was made in the Council during the discussions, but was not made the subject of a formal decision.

The Netherlands decrees concerned in the main proceedings were adopted in accordance with this tacit agreement between the Member States and the Commission. The obligation to co-operate imposed on Member States by Article 5 of the Treaty was thus fulfilled by the Netherlands Government after the period laid down in Article 102 of the Act of Accession had expired.

(c) The measures adopted by the Netherlands laying down quotas for catches of sole and plaice are clearly compatible with Community law. The Court has declared that the fixing of catch quotas constitutes a legitimate

measure for the conservation of the resources of the sea; as for the management of such quotas, any Member State is entitled, until the Council adopts more precise rules in this respect, to fix the rules which it considers necessary and appropriate. The fact that these national rules, which each Member State determines with regard to the participation of its own nationals in fishing activity, differ in detail from one Member State to another is not sufficient to make them discriminatory as far as Community law is concerned.

The reply to the second and third questions referred to the Court should be as follows:

The adoption of national measures of the kind referred to in the second question is not incompatible with Community law.

The *Government of the French Republic* notes in relation to the first question that there are two types of provision concerning expiry of the transitional periods in the Act of Accession, one general, Article 9, and the others specific. According to Article 9, the application of the transitional measures designed to facilitate the adjustment of new Member States terminates at the end of 1977, "subject to the dates, time-limits and special provisions" provided for in the Act of Accession; the fishing industry is covered by one such special provision containing time-limits and dates different from those in Article 9.

The expiry of the time-limit set by Article 102 of the Act of Accession occurred therefore on 1 January 1979. Any other interpretation would mean that Article 102 was not intended to set a precise time for the end of the transitional period for the fishing sector, so that this sphere would remain outside the field of common Community policies indefinitely.

The national measures concerned in the main proceedings are dependent on the general body of Community law, for this law as it stands at present still permits Member States to issue national regulations under certain conditions.

The powers of the Community as regards the fishing sector and, more precisely, the conservation of maritime species, are clearly derived from the EEC Treaty (subparagraph (d) of Article 3, Article 38 (3), Annex II, Article 40 (1), (2) and (3), Article 43 (2)), and from Article 102 of the Act of Accession; the Court has said, however, that in spheres not yet covered by Community rules, Member States may still, as a transitional step, adopt national measures, which are, of course, subject to certain conditions. The competence of Member States derives from Community law in its present uncompleted state in relation to fishing; this competence is not, however, "unbridled".

The Netherlands decrees concerned in the main proceedings were issued in accordance with Community law: they amount to no more than an extension, as decided by the Council at its meeting on 5, 6 and 7 December 1977, of the period of validity of measures enacted with the agreement of the Community institutions for the year 1977 in order to implement a recommendation from the North-East Atlantic Fisheries Commission.

The replies to be given to the questions referred to the Court should be as follows:

(1) The transitional period referred to in Article 102 of the Act of Accession expired on 1 January 1979.

(2) The Netherlands measures are founded on Community law, in so far as it still allowed national measures in the circumstances prevailing at the time in question, as an interim arrangement and subject to certain conditions.

(3) The decrees issued by the Netherlands Government were compatible with Community law.

The *Commission of the European Communities* recalls the circumstances surrounding the adoption of the Netherlands measures concerned in the main proceedings and also their context, in particular its own draft regulation proposed to the Council in October 1977, which defined certain measures for the conservation and management of fishery resources for 1978, including the introduction of quotas, the decisions of the Council at its meeting on 5, 6 and 7 December 1977 and, after "stopping the clock", on 16 January 1978, Council Regulation No 2899/77 of 21 December 1977, extending the validity of certain interim measures for the conservation and management of fishery resources (Official Journal L 338, p. 5).

(a) Article 102 of the Act of Accession contains two elements concerning the time-limit for which it provides. It determines a period, "the sixth year after accession"; as the Treaty of Accession came into force, by virtue of Article 2, on 1 January 1973, the sixth year after accession commenced on 1 January 1978 and finished on 31 December 1978. It fixes a time-limit by reference to this period. In this regard the interpretation of the text has to reconcile two terms which, at first sight, are hard to reconcile: "from" (à partir de) and "at the latest" (au plus tard). From the use of the word "from" one must conclude that the meaning intended could not have been "*before* the sixth year after accession at the latest", that is to say, by 31 December 1977 at the latest, and, bearing in mind the phrase "at the latest", one must conclude that the measures envisaged in Article 102 must be adopted before expiry of the sixth year after accession. It is therefore difficult to infer from the actual text of Article 102 that the Community should have taken the necessary measures by 31 December 1977 at the latest.

Moreover, Article 102 appears in the part of the Act of Accession devoted to transitional measures. It is therefore covered by the general provisions in Article 9 of the Act of Accession; but paragraph (2) of the latter states that the application of the transitional measures shall terminate at the end of 1977 "subject to the dates, time-limits and special provisions provided for in this act". Article 102 thus falls outside the scope of the general rule in Article 9 (2) which would have compelled the Community to act before completion of the five-year transitional period.

(b) The third question referred to the Court ought to be worded: "Should Community law be interpreted to mean that the Netherlands measures in question are incompatible in substance with Communtiy law?"

The problem is to determine the exact scope of the prohibition of discrimination, in two respects: the difference in treatment resulting from the legislation of the various Member States and the difference in treatment which results from the Netherlands legislation itself.

As regards the first aspect, it should be noted that as a result of the agreement reached at the Council meeting on 7 December 1977 on the extension until 31 January 1978 of the existing national measures, the other Member States concerned continued to apply the catch quotas fixed for the year 1977 in accordance with the recommendations made under the North-East Atlantic Fisheries Convention.

The different treatment resulting from discrepancies between the laws of Member States is inherent in the very existence of jurisdiction and legislation at the national level. The Treaty ignores such disparities except to the extent to which they directly effect the establishment or functioning of the Common Market (Article 100) or cause distortion (Articles 101 and 102); the Treaty does not provide for their total abolition except where a common policy has created a unified system of rules. Moreover, the Treaty does not prohibit such disparities, but entrusts to the Community legislature the task of eliminating them. Consequently these disparities do not fall within the sphere of application of Article 7 of the Treaty; this view is confirmed by the case-law of the Court, especially the judgment of 13 February 1969 (Case 14/68 *Wilhelm* [1969] ECR 1).

National laws restricting the catches of fish, such as those in question in the main proceedings, cannot therefore be held to infringe Article 7 for the sole reason that other Member States have adopted differing provisions, have not adopted any provisions or have not applied them.

As for the different treatment by reason of the Netherlands legislation, the question whether, during the period relevant in the main proceedings, and having regard to the present state of the law, Netherlands fishermen received different treatment which put them at a disadvantage, is a question of fact which must be decided by the court hearing in the main proceedings.

The question which has been referred to the Court covers the possibility of discrimination against Netherlands fishermen in two situations: a prohibition on fishing with a partial exemption from that prohibition, first, outside the area under Netherlands jurisdiction, and secondly, inside that area.

As to the first situation, Article 7 of the Treaty does not envisage such differences of treatment: it is not in this instance a case of a Member State applying its legislation differently according to nationality. The possibility of different treatment is due, in this case, to the fact that the authority of the Netherlands State is itself limited. As far as fishing activities outside the area under its jurisdiction are concerned, the Netherlands State can only legislate with regard to Netherlands fishermen. The difference in treatment can only be eliminated by not executing the conservation measures in question to the extent to which they apply outside the area under Netherlands jurisdiction.

As to the second situation, that which exists in the area under Netherlands jurisdiction, it must first be ascertained whether other Member States have adopted, with regard to their nationals, similar restrictions on catches for the period in question. If they have, such restrictions apply equally, in principle, to fishing activities in areas subject to the jurisdiction of another Contracting State. Furthermore, the parties to the North-East Atlantic Fisheries Convention

accepted the obligation to adopt appropriate measures governing their nationals, even in the area subject to the jurisdiction of another Contracting State "without prejudice to the sovereign rights of the States in regard to their territorial and internal waters".

In so far as fishermen from other Member States fished for sole and plaice in the area subject to Netherlands jurisdiction, there was no unfair treatment of Netherlands fishermen. This difference of treatment was the result of two factors: the fact that Netherlands legislation contained no restriction on catches applicable to fishermen from other Member States, and the fact that, contrary to the undertaking which they gave during the Council meeting on 7 December 1977, other Member States did not extend the validity of the national measures of 1977. It is doubtful whether making the Netherlands restrictions on catches illegal under Article 7 of the Treaty would be the proper way of penalizing the failure of other Member States to fulfil that undertaking. Apart from this point, the disparity of treatment in question is a form of discrimination in reverse.

In this context it should be noted that a restriction on catches of fish by its nationals in the area subject to the jurisdiction of a Member State when there is no similar restriction on the same area applicable to fishermen from other Member States does not infringe Article 7 of the Treaty.

(c) In view of the judgment of the Court of 16 February 1978 it is not necessary to reply to the second question in order to decide the issue in the main proceedings.

III — Oral procedure

Firma J. van Dam en Zonen and the other accused in the main proceedings, represented by H. H. Kronenburg; the Government of the Kingdom of the Netherlands, represented by A. Bos, Deputy Counsellor in the Legal Department of the Ministry for Foreign Affairs; the Government of the Kingdom of Denmark, represented by Per Lachmann; the Government of the United Kingdom, represented by P. G. Langdon-Davies, Barrister-at-Law, and the Commission of the European Communities, represented by J. H. J. Bourgeois, submitted their oral observations and their replies to the questions asked by the Court at the hearing on 10 May 1979.

The Advocate General delivered his opinion at the hearing on 6 June 1979.

Decision

1 In a series of 20 judgments, given on 18 July 1978 and received at the Court the following 14 September, the Economische Politierechter (magistrate in commercial matters) of the Arrondissementsrechtbank (District Court), Rotterdam, referred certain questions to the Court under Article 177 of the

EEC Treaty for a preliminary ruling on the interpretation of Article 5 of the EEC Treaty and Article 102 of the Act of Accession so as to enable it to assess the compatibility with Community law of measures laid down by regulation, adopted by the Netherlands Government to restrict catches of sole and plaice in the North Sea.

2 From the file on the case it appears that criminal proceedings were instituted before the Economische Politierechter against 20 fishing undertakings of fishermen for infringing the provisions of the Netherlands regulations fixing for the year 1978 quotas for catches of sole and plaice in the North Sea area, namely the "Decree provisionally laying down restrictions on catches of sole and plaice, 1978" and the "Decree provisionally laying down quotas for North Sea sole and plaice, 1978". In the national court the accused claimed in their defence that since the transitional period laid down in Article 102 of the Act of Accession expired on 1 January 1978, the measures to be taken for protecting the biological resources of the sea were under the Community's jurisdiction. Consequently the Netherlands State was no longer authorized to enact the regulations which gave rise to the proceedings. The accused also claim that even if the Netherlands provisions were legally enacted, they are incompatible with Community law because they constitute discrimination against Netherlands fishermen in view of the fact that the provisions applied by the other Member States in the same maritime zone are less strict.

3 To enable him to settle this dispute the Economische Politierechter has referred three questions to the Court, which are worded as follows:

(1) On what date did the period referred to in Article 102 of the Act concerning the Conditions of Accession and the Adjustments to the Treaties expire?

(2) Are the measures pursuant to the Reglement Zee- en Kustvisserij 1977 (Regulation concerning sea and coastal fishing, 1977 — Staatsblad 666) as set out in the Beschikking Voorlopige Regeling Vangstbeperking Tong en Schol 1978 (Decree provisionally laying down restrictions on catches of sole and plaice, 1978) and the Beschikking Voorlopige Regeling Contingentering Tong en Schol Noordzee 1978 (Decree provisionally laying down quotas for North Sea sole and plaice, 1978 — Staatsblad 1977, 255) based on decisions of the Community or on obligations imposed by the Community on the Member States by treaty

as referred to in Article 5 of the EEC Treaty or on powers conferred on the Member States by the Community?

(3) Is the content of the aforesaid measures compatible with Community law?

First question (interpretation of Article 102 of the Act of Accession)

4 According to Article 102 of the Act of Accession, "From the sixth year after accession at the latest, the Council, acting on a proposal from the Commission, shall determine conditions for fishing with a view to ensuring protection of the fishing grounds and conservation of the biological resources of the sea". The definition of the time-limit prescribed by this provision presents a difficulty owing to the fact that the text does not refer to a precise moment but to a period, designated by the phrase "the sixth year after accession". This phrase can be understood as referring either to the beginning or to the end of that year, that is to say 1 January or 31 December 1978. It is possible, however, to resolve this difficulty by looking at the general clause in Article 9 of the Act of Accession, paragraph (2) of which provides that "Subject to the dates, time-limits and special provisions provided for in this Act, the application of the transitional measures shall terminate at the end of 1977". A comparison with this provision shows that the fixing of a particular time-limit in Article 102 would have no practical significance if the end of the period specified coincided with the end of the period, of general application, fixed by Article 9 (2), that is to say, 31 December 1977. Accordingly, the time-limit laid down by Article 102 can have no real meaning unless the phrase "from the sixth year after accession at the latest" is interpreted as referring not to the beginning, but to the end of the sixth year, that is to say, 31 December 1978.

5 The answer to the first question must therefore be that the period referred to in Article 102 of the Act concerning the Conditions of Accession and the Adjustments to the Treaties expired on 31 December 1978.

Second question (competence)

6 It follows from the foregoing that the events which gave rise to the proceedings pending before the Economische Politierechter occurred

at a time when the transitional period under Article 102 had not yet expired.

7 It should also be borne in mind, however, that at the time in question the Council had not implemented the protective measures envisaged by Article 102. This led to uncertainty in the law, but it did not actually entail a legal vacuum from the point of view of Community law. The Court has shown in its judgment of 16 February 1978 (Case 61/77 *Commission* v *Ireland* [1978] ECR 417, paragraphs 28 to 37 and 56 to 68), what the law is applicable in the circumstances and how powers are divided between the Community and the Member States. It follows that during the year 1978 the Member States had the right and the duty to adopt, within their respective spheres of jurisdiction, any measure compatible within Community law to protect the biological resources of the sea and, in particular, to fix fishing quotas for fishing undertakings and fishermen subject to their control.

8 The answer to the second question must therefore be that measures such as those covered by the provisions of the national regulations mentioned by the court making the reference were, at the time in question, within the powers of the Member States.

Third question (substantive requirements of Community law)

9 According to the documents on the file and the arguments presented by the persons prosecuted in the national court, the protective measures introduced in the Netherlands for the year 1978 are criticized on the ground that they discriminate against Netherlands fishermen, because the provisions applied by other Member States in this sphere are less strict. The result is that fishermen who are not subject to the jurisdiction of the Netherlands authorities can, even in waters within the Netherlands' fishing zone, make more rewarding catches than the Netherlands fishermen. In the opinion of the accused, therefore, the Netherlands regulations are contrary to the principle in Article 7 of the EEC Treaty which, they say, requires equal treatment between the nationals of all the Member States.

10 In this connexion it should be remembered that protective measures agreed on within the Community, in consultation with the Commission, are based on responsibility shared between the Member States, in the sense that at present each State regulates in accordance with the provisions of its own national legislation concerning fishing quotas, the catches landed in its own ports. It cannot be held contrary to the principle of non-discrimination to apply national legislation, the compatibility of which with Community law is moreover not contested, because other Member States allegedly apply less strict rules. Inequalities of this kind, if they exist, must be eliminated by means of the consultations provided for by Annex VI to The Hague Resolution, quoted in the judgment referred to above, but they cannot be the foundation of a charge of discrimination with regard to the provisions made by a Member State which applies equally to any person under its jurisdiction, the regulations which it had adopted for fishing quotas.

11 The answer to the third question must therefore be that national provisions, such as those in the Netherlands regulations concerning fishing quotas to which the national court has referred, cannot be considered as discriminatory as long as they are applied uniformly to all the fishermen under the jurisdiction of the Member State concerned.

Costs

12 The costs incurred by the Government of the Kingdom of the Netherlands, the Government of the Kingdom of Denmark, the Government of the French Republic, the Government of the United Kingdom and the Commission of the European Communities, which have submitted observations to the Court, are not recoverable.

As these proceedings are, in so far as the parties to the main proceedings are concerned, in the nature of a step in the proceedings pending before the Economische Politierechter of the Arrondissementsrechtbank, Rotterdam, the decision on costs is a matter for that court.

On those grounds,

THE COURT,

in answer to the questions referred to it by the Economische Politierechter of the Arrondissementsrechtbank, Rotterdam, by judgments of 18 July 1978, hereby rules:

1. **The period referred to in Article 102 of the Act of 22 January 1972 concerning the Conditions of Accession and the Adjustments to the Treaties expired on 31 December 1978.**

2. **Measures such as those covered by the Beschikking Voorlopige Regeling Vangstbeperking Tong en Schol 1978 (Decree provisionally laying down restrictions on catches of sole and plaice, 1978) and the Beschikking Voorlopige Regeling Contingentering Tong en Schol Noordzee 1978 (Decree provisionally laying down quotas for North Sea sole and plaice, 1978), both dated 29 December 1977, were, at the time in question, within the powers of the Member States.**

3. **National laws such as those in the Netherlands regulations relating to fishing quotas dated 29 December 1977 cannot be considered discriminatory as long as they are applied uniformly to all the fishermen under the jurisdiction of the Member State concerned.**

Kutscher Mertens de Wilmars Mackenzie Stuart Pescatore Sørensen

O'Keeffe Bosco Touffait Koopmans

Delivered in open court in Luxembourg on 3 July 1979.

A. Van Houtte
Registrar

H. Kutscher
President