JUDGMENT OF THE COURT (Second Chamber)
5 March 1998 *

In Case C-199/94 P and C-200/94 P REV,

Compañia Internacional de Pesca y Derivados SA (Inpesca), a company incorporated under Spanish law, established in Bermeo (Spain), represented by Maria Iciar Angulo Fuertes, of the Vizcaya Bar, with an address for service in Luxembourg at the Chambers of Ernest Arendt, 8-10 Rue Mathias Hardt,

applicant for revision,

APPLICATION for revision of the order of the Court of Justice of 26 October 1995 in Joined Cases C-199/94 P and C-200/94 P *Pevasa and Inpesca* v *Commission* [1995] ECR I-3709,

the other parties to the proceedings being:

Commission of the European Communities, represented by Francisco Santaolalla Gadea, Principal Legal Adviser, and José Luis Iglesias Buhigues, Legal Adviser, acting as Agents, with an address for service in Luxembourg at the office of Carlos Goméz de la Cruz, of its Legal Service, Wagner Centre, Kirchberg,

and

Pesqueria Vasco-Montañesa SA (Pevasa), a company incorporated under Spanish law, established in Bermeo (Spain), represented by Maria Iciar Angulo Fuertes, of

* Language of the case: Spanish.

the Vizcaya Bar, with an address for service in Luxembourg at the Chambers of Ernest Arendt, 8-10 Rue Mathias Hardt,

THE COURT (Second Chamber),

composed of: R. Schintgen, President of the Chamber, G. F Mancini (Rapporteur) and G. Hirsch, Judges,

Advocate General: S. Alber,
Registrar: R. Grass,

after hearing the Advocate General,

gives the following

Judgment

1 By application lodged at the Court Registry on 12 February 1996, Compañia Internacional de Pesca y Derivados SA (Inpesca) applied, pursuant to Article 41 of the EC Statute of the Court of Justice ('the Statute'), for the revision of the order of the Court of Justice of 26 October 1995 in Joined Cases C-199/94 P and C-200/94 P *Pevasa and Inpesca* v *Commission* [1995] ECR I-3709 (hereinafter 'the order of the Court of Justice').

2 In that order, the Court dismissed as clearly unfounded, pursuant to Article 119 of its Rules of Procedure, the appeals brought by Pevasa and Inpesca against the order of the Court of First Instance of 28 April 1994 in Joined Cases T-452/93 and T-453/93 *Pevasa and Inpesca* v *Commission* [1994] ECR II-229 (hereinafter 'the order of the Court of First Instance').

3 Those appeals sought (i) a decision setting aside the order of the Court of First Instance; (ii) annulment of the Commission's decisions of 18 December 1990 and 8 November 1991 (hereinafter 'the contested decisions') refusing Pevasa and Inpesca the financial aid they had sought from the Community for a project involving the construction of a tuna fishing vessel with freezer facilities, pursuant to Council Regulation (EEC) No 4028/86 of 18 December 1986 on Community measures to improve and adapt structures in the fisheries and aquaculture sector (OJ 1986 L 376, p. 7); (iii) an order directing the Commission to take the necessary steps to grant the said financial aid; and (iv) an order directing the Commission to pay compensation for the damage caused by its conduct.

4 It was held in the order of the Court of Justice, in particular, that the Court of First Instance was correct in considering that the applications for the annulment of the contested decisions had been submitted after the expiry of the time-limit laid down in Article 173 of the Treaty; that the claims for a declaration that the contested decisions were void overlapped with the claims for annulment which the Court of First Instance had dismissed as inadmissible; that the claims that the Court of First Instance should direct the Commission to take certain measures conflicted with the consistent case-law of the Court of Justice to the effect that, when exercising judicial review of legality under Article 173 of the Treaty, the Community judicature has no jurisdiction to issue directions; that the claim for compensation seeking payment of precisely the same amounts as would have been granted by way of the Community aid that was refused, and on the basis of the same pleas in law alleging illegality as were put forward in support of the claims for annulment, constituted a misuse of procedure; and, finally, that since the other forms of order sought were contingent upon the order of the Court of First Instance being set aside, there was no need to consider them.

5 The applicant for revision claims that the Court should:

— declare the application for revision admissible;

— set aside the order of the Court of Justice and, consequently, declare admissible the action brought before the Court of First Instance for the annulment of the contested decisions;

— annul the contested decisions;

— direct the Commission to take the necessary steps to grant the financial aid sought from the Community, in accordance with Article 176 of the EC Treaty;

— declare the claim for compensation in respect of the damage suffered as a result of the Commission's conduct, pursuant to Articles 176, 178 and 215 of the EC Treaty to be admissible and well founded;

— order the Commission to pay the costs.

6 In its observations, Pevasa supports the form of order sought by Inpesca.

7 The Commission contends that the Court should:

— declare the application for revision inadmissible;

— order the applicant for revision to pay the costs.

8 The applicant refers to three facts which it describes as new and decisive facts and which, in its view, justify the revision of the order of the Court of Justice: first, a letter from the Registrar of the Court of Justice of 27 November 1995; second,

the Annual Report of the Court of Auditors concerning the financial year 1994 (OJ 1995 C 303, p. 1); and third, the construction and commissioning of a tuna fishing vessel with freezer facilities in respect of which a subsidy had been sought, as evidenced by a certificate issued by Anabac (Asociación Nacional de Armadores de Buques Atuneros Congeladores de España — National Association of Spanish owners of tuna fishing vessels with freezer facilities) on 8 February 1996.

9 With regard to the first of those facts, Inpesca states that it requested the Registrar of the Court of Justice, following notification of the order of that Court, for a complete copy of the report from the Judge-Rapporteur and the views expressed by the Advocate General 'in order to ascertain the grounds of the order, having regard to the scant content of paragraphs 16 to 29 thereof'. On 27 November 1995 the Registrar replied that, by virtue of the Instructions to the Registrar of the Court of 23 February 1989, the parties may not have access to the report from the Judge-Rapporteur and that, although the Advocate General's views are heard, he does not submit any written observations.

10 The applicant emphasises, in that regard, that by virtue of Article 119 of the Rules of Procedure, the report from the Judge-Rapporteur is fundamental to the initiation of the specific procedure on which, according to that provision, the declaration of inadmissibility depends. Furthermore, the fourth paragraph of Article 18 of the Statute provides that the oral procedure is to consist of the reading of the report presented by a judge acting as rapporteur. To conceal that report from the parties would cast doubt on the existence of a document essential to the decision. If Article 119 of the Rules of Procedure is to be strictly and scrupulously observed, the Advocate General must also be heard, in compliance with Articles 164, 166 and 168 of the EC Treaty, which provide for reasoned submissions to be made in open court by the Advocate General on cases brought before the Court of Justice. His intervention is an essential guarantee that the law is observed in the interpretation and application of the Treaty.

11 As for the second fact relied upon in the application for revision, Inpesca argues that, according to the Court of Auditors' Annual Report concerning the financial year 1994, 'The examples of waste and mismanagement of EC funds that are to be found in numerous Court audit reports are ample evidence for the need for a

concerted effort to complete the Commission's improvement programme and convert a rather lax "spend the budget" approach into one which emphasises value for money'. Those observations by the Court of Auditors correspond to those made by the applicant in its originating application. The Court of Justice dismissed the appeals lodged without making any reference whatsoever to those shortcomings in the Commission's management.

12 Thirdly, the applicant maintains that although it honoured the undertakings provided for by Regulation No 4028/86, it did not receive the financial aid requested. A tuna fishing vessel with freezer facilities, the 'Txori-berri', was built in Astilleros Balenciaga de Zumaya (Spain) and has been fishing since 12 March 1992 in the waters of the Seychelles, Madagascar and the Comoros, as evidenced by the Anabac certificate of 8 February 1996.

13 The Commission considers that none of the elements relied upon by the applicant meets the conditions necessary to justify revision. It argues, in particular, that the fact that the parties had no access to the report from the Judge-Rapporteur and that the Advocate General did not deliver a written Opinion were known to the Court at the time when it gave its decision on the case and could not have affected the content of the order. Nor could publication of the Court of Auditors' report, which was subsequent to the order, have been decisive for the solution of the dispute. Similarly, the construction and commissioning of the vessel were facts that were well known to the applicant before the order was made and cannot exert any influence whatever on the content of that order.

14 According to Article 100(1) of the Rules of Procedure, without prejudice to its decision on the substance, the Court, in closed session, is to give in the form of a judgment its decision on the admissibility of the application, after hearing the Advocate General.

15 The first point to note is that, according to the first paragraph of Article 41 of the Statute, an application for revision of a judgment may be made to the Court only on discovery of a fact which is of such a nature as to be a decisive factor, and which, when the judgment was given, was unknown to the Court and to the party claiming the revision.

16 The wording of the Statute does not expressly provide that an order may be the subject of an application for revision. In this case, however, the application for revision relates to an order which dismisses the appeals lodged as clearly unfounded, pursuant to Article 119 of the Rules of Procedure, and which therefore produces the same effects as would a judgment dismissing the appeals as unfounded. Accordingly, in the event of the discovery of a new and decisive fact, an application for revision may be brought against such an order (see, in that regard, Case C-130/91 REV *ISAE/VP and Interdata* v *Commission* [1995] ECR I-407 and Case C-130/91 REV II *ISAE/VP and Interdata* v *Commission* [1996] ECR I-65).

17 As the Court has repeatedly held, revision is not an appeal procedure but an exceptional review procedure that allows the authority of *res judicata* attaching to a final judgment to be called in question on the basis of the findings of fact relied upon by the court. Revision presupposes the discovery of elements of a factual nature which existed prior to the judgment and which were unknown at that time to the court which delivered it as well as to the party applying for revision and which, had the court been able to take them into consideration, could have led it to a different determination of the proceedings (see, in particular, Case C-130/91 REV II *ISAE/VP and Interdata* v *Commission*, cited above, paragraph 6).

18 In this case, the elements referred to in the letter from the Registry of the Court of 27 November 1995, relied upon by the applicant in support of its application, relate to the Rules of Procedure applicable where the Court gives a decision in the form of an order, and in particular to the facts, of which the Court is well aware, that the Advocate General does not deliver a written Opinion in open court and

that the parties do not have access to the report from the Judge-Rapporteur. Those elements do not therefore constitute new facts capable of justifying an application for revision.

19 The Report of the Court of Auditors, for its part, relates at most to the substance of the cases brought by Pevasa and Inpesca before the Court of First Instance, whereas the order of the Court of Justice deals only with matters concerning the admissibility of the actions brought at first instance and of the appeals lodged against the order of the Court of First Instance dismissing those actions as inadmissible. It is therefore quite clear that the Report of the Court of Auditors is not decisive for the solution of the dispute.

20 Similarly, the certificate concerning the construction and commissioning of the vessel, in respect of which Community aid had been sought, is of no relevance whatever with regard to the order forming the subject-matter of the application for revision. Furthermore, since it was known to the applicant well before the Court of Justice gave a decision in the form of an order, it is not a new fact.

21 Consequently, the application for revision of the order of the Court of Justice must, pursuant to Article 100(1) of the Rules of Procedure, be held to be inadmissible.

Costs

22 Under Article 69(2) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs. Since the applicant has been unsuccessful, it must be ordered to pay the costs. Pursuant to Article 69(4) of the Rules of procedure, Pevasa must be ordered to bear its own costs.

On those grounds,

THE COURT (Second Chamber)

hereby:

1. Dismisses the application for revision as inadmissible;

2. Orders Inpesca to pay the costs;

3. Orders Pevasa to bear its own costs.

Delivered in closed session in Luxembourg on 5 March 1998.

R. Grass

Registrar

R. Schintgen

President of the Second Chamber