OPINION OF ADVOCATE GENERAL TIZZANO

delivered on 7 September 2004 [1]

1. This case is an appeal by José Martí Peix, SA, against the judgment delivered on 13 March 2003 by the Court of First Instance in Case T-125/01 *José Martí Peix* v *Commission* [2003] ECR II-865 ('the contested judgment') dismissing that company's action for the annulment of the Commission decision of 19 March 2001 reducing the aid granted for a project to create a joint enterprise in the fisheries sector ('the contested decision'). [2]

I — Relevant legislation

Regulations No 4028/86 and No 1956/91

2. In order to protect Community fish stocks from overfishing, the Community has adopted various measures aimed at reducing the Community fishing fleet.

3. One such measure, introduced by the now-repealed Council Regulation No 4028/86 ('Regulation No 4028/86') [3] and of particular relevance to this case, concerned grant-aid partnerships between Community shipowners and nationals of third countries (known as 'joint enterprises') set up to exploit the fishery resources of the third countries in question using vessels flying the flag of a Member State and registered in a Community port, which were to be transferred definitively to the third country concerned (Articles 21a and 21b(2)).

1 — Original language: Italian.

2 — Commission Decision of 19 March 2001 reducing the aid granted to José Martí Peix SA by Commission Decision C(91) 2874 final/11 of 16 December 1991, as amended by Commission Decision C(93) 1131 final/4 of 12 May 1993 for a project to create a joint enterprise in the fisheries sector.

3 — 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), as amended in turn by Council Regulation (EEC) No 3944/90 of 20 December 1990 (OJ 1990 L 380, p. 1), by Council Regulation (EEC) No 2794/92 of 21 September 1992 (OJ 1992 L 282, p. 3) and by Council Regulation (EEC) No 3946/92 of 19 December 1992 (OJ 1992 L 401, p. 1). Regulation No 4028/86 and the regulations laying down detailed rules for the application thereof were repealed by Article 9 of Council Regulation (EEC) No 2080/93 of 20 July 1993 laying down provisions for implementing Regulation (EEC) No 2052/88 as regards the financial instrument of fisheries guidance (OJ 1994 L 193, p. 1).

4. At the material time, the conditions and procedures for the grant of the aid were set out in Commission Regulation No 1956/91, also now repealed (hereinafter 'Regulation No 1956/91'). [4]

5. Under that regulation, aid applications had to be submitted to the Commission through the Member State authorities, who were required to express an opinion on the joint enterprise project and to retain the relevant supporting documentation (Article 1).

6. The aid in question could take different forms. One consisted of a capital subsidy paid in two instalments: an initial payment of not more than 80% of the total, and a second instalment in respect of the balance (Article 5).

7. Every 12 months for three consecutive years, grantees were required to send the Commission a periodic report on the activity of their joint enterprise, complete with financial statements and official documents relating to fishing, landing and transhipment operations (Article 6).

Regulation No 2988/95

8. For the purpose of effectively protecting the Community's financial interests in all areas covered by Community policies (third and fourth recitals), the Council adopted Regulation (EC, Euratom) No 2988/95 ('Regulation No 2988/95') [5], which sets out 'general rules ... relating to homogenous checks and to administrative measures and penalties concerning irregularities with regard to Community law' (Article 1(1)).

9. According to Article 1(2):

' "Irregularity" shall mean any infringement of a provision of Community law resulting from an act or omission by an economic operator, which has, or would have, the effect of prejudicing the general budget of the

4 — Commission Regulation (EEC) No 1956/91 of 21 June 1991 laying down detailed rules for the application of Regulation No 4028/86 as regards measures to encourage the creation of joint enterprises (OJ 1991 L 181, p. 1). For repeal details, see footnote 3.

5 — Council Regulation (EC, Euratom) No 2988/95 of 18 December 1995 on the protection of the European Communities financial interests (OJ 1995 L 312, p. 1).

Communities or budgets managed by them, either by reducing or losing revenue accruing from own resources collected directly on behalf of the Communities, or by an unjustified item of expenditure.'

10. Under Article 3 of the regulation:

'1. The limitation period for proceedings [6] shall be four years as from the time when the irregularity referred to in Article 1(1) was committed. However, the sectoral rules may make provision for a shorter period which may not be less than three years.

In the case of continuous or repeated irregularities, the limitation period shall run from the day on which the irregularity ceases. In the case of multiannual programmes, the limitation period shall in any case run until the programme is definitively terminated.

The limitation period [7] shall be interrupted by any act of the competent authority, notified to the person in question, relating to investigation or legal proceedings concerning the irregularity. The limitation period shall start again following each interrupting act.

However, limitation shall become effective at the latest on the day on which a period equal to twice the limitation period expires without the competent authority having imposed a penalty, except where the administrative procedure has been suspended in accordance with Article 6(1).

2. The period for implementing the decision establishing the administrative penalty shall be three years. That period shall run from the day on which the decision becomes final.

Instances of interruption and suspension shall be governed by the relevant provisions of national law.

3. Member States shall retain the possibility of applying a period which is longer than that provided for in paragraphs 1 and 2 respectively.'

6 — [Note applicable to the Italian version of the Opinion only].

7 — [Note applicable to the Italian version of the Opinion only].

II — Facts and procedure

Background to the dispute

11. The factual background to the dispute is set out in the contested judgment as follows:

'11. In October 1991 the company José Martí Peix SA (hereinafter 'the applicant') submitted to the Commission, through the Spanish authorities, an application for Community financial aid under Regulation No 4028/86, for a project to create a joint Spanish-Angolan fisheries enterprise. That project provided for the transfer, with a view to fishing activities, of three vessels — the Pondal, the Periloja and the Sonia Rosal — to the joint enterprise created by the applicant, the Portuguese company Iberpesca — Sociedades de Pesca Ltda and an Angolan partner, Empromar N'Gunza.

12. By decision of 16 December 1991 (hereinafter 'the aid decision') the Commission granted the project referred to in the preceding paragraph (project SM/ESP/17/91, hereinafter 'the project') Community aid for a maximum amount of ECU 1 349 550. (...)

13. In November 1992 the joint enterprise, named Ibermar Empresa de Pesca Ltda, was created and registered in Luanda, Angola. In December 1992 the three vessels of the joint enterprise were registered at the port of Luanda.

(...)

15. On 18 May 1993 the Commission received via the Spanish authorities an application for payment of the first instalment of the aid, dated 10 May 1993. That application was accompanied by a set of documents and certificates relating to the creation of the joint enterprise, the registration of the vessels at the port of Luanda, their removal from the Community register and the obtaining of the required fishing licences.

16. On 24 June 1993 the Commission paid 80% of the aid.

17. On 20 May 1994 the applicant sent the Spanish authorities an application for

payment of the balance of the aid. It attached to that application a first periodic progress report on activity, for the period from 20 April 1993 to 20 April 1994. That report stated, inter alia: 'Our long-term objectives have had to be modified owing to the *sinking of the Pondal on 20 July 1993*. (...)'.

18. The Commission (...) paid the balance of the aid on 14 September 1994.

19. On 6 November 1995 the Commission received the second periodic progress report, dated 19 June 1995, for the activity period from 20 May 1994 to 20 May 1995. That report referred to the *sinking of the Pondal on 20 July 1993* and described the difficulties encountered in replacing that vessel, owing to the reluctance of the Angolan authorities.

(...)

25. In September 1997 the third periodic activity report, covering the period from 20 May 1995 to 20 May 1996, was received by the Commission. In it mention was made of the conduct of the Angolan partner which prevented the pursuit of normal fishing activities. It was stated that the most recent landings of fish from Angola took place in March 1995 and that, in the light of the difficulties arising from that conduct, the Community partners had decided to sell their shares in the joint enterprise to the Angolan partner and to repurchase the vessels which had been transferred to the project. The report mentioned that, after their repurchase, *the vessels had been transferred by the applicant to a Nigerian port, where they had undergone repairs until 1996*' (emphasis added).

The pre-litigation procedure and the contested decision

12. The contested judgment also states that in a letter of 26 July 1999 the Commission notified the applicant and the Spanish authorities of its intention to reduce the aid initially granted to the project, in accordance with Article 44 of Regulation No 4028/86. This was being done on the ground that, 'in contrast to the requirements laid down in that regulation and by Regulation No 1956/91, the joint enterprise had not exploited for three years the fisheries resources of the third country mentioned in the decision to grant assistance'. [8]

8 — Paragraph 28.

13. It was apparent from the documents received that the vessel Pondal 'had been carrying on its activities *from 20 April to 20 July 1993* — that is, for three months — *when it sank*', while the Periloja and Sonia Rosal had operated 'in Angolan waters on behalf of the joint enterprise from 20 April 1993 to 20 April 1994 and from 20 May 1994 to 3 February 1995, when the applicant sold its shares in the joint enterprise, namely for a total period of 21 months'. [9]

14. On 5 October 1999 the applicant sent the Commission its comments on that letter, with new documents attached.

15. From those documents it transpired that in fact '*the sinking of the Pondal occurred on 13 January 1993, and not on 20 July 1993* as hitherto indicated by the applicant'. [10]

16. On 19 March 2001, the Commission therefore adopted the contested decision, in which it:

— stated that it had granted José Martí Peix SA Community aid of ECU 1 349 550 for a project to create a joint enterprise in Angola, involving the vessels Pondal, Periloja and Sonia Rosal (first recital);

— noted that the Pondal had sunk on 13 January 1993 (fourth recital);

— found that the recipient of the aid had committed a serious irregularity by failing to inform the Commission of the sinking of the Pondal in its application for the first instalment of the aid and by subsequently stating in the first report that the sinking occurred on 20 July 1993 (ninth recital);

— noted that the Sonia Rosal and Periloja had left Angola and were removed from the Angolan register in March 1995. They had not been active in 1995 and 1996 and had then been transferred to Cameroon at an unspecified date without prior authorisation from the Commission (fifth recital);

9 — Paragraph 28. Emphasis added.
10 — Paragraph 32. Emphasis added.

— accordingly, reduced the aid granted from ECU 1 349 550 to EUR 710 030, ordering the recipient to repay the Commission the excess of EUR 639 520 within three months (Articles 1 and 2).

The proceedings before the Court of First Instance and the contested decision

17. By application lodged on 8 June 2001, José Martí Peix SA (hereinafter 'Peix' or 'the applicant') requested the Court of First Instance to annul the decision to reduce the aid. That application was opposed by the Commission.

18. According to the contested judgment, 'the applicant [put] forward four pleas in law' in support of its action: i) expiry of the 'limitation period' in respect of the matters specified in the decision; ii) 'breach of the principles of due care and of good administration'; iii) 'erroneous of assessment and misinterpretation of Regulation No 4028/86'; and iv) 'breach of the principle of proportionality'. [11]

19. Particularly relevant to these proceedings is the first plea, by which the applicant claimed that 'at the time when [the contested decision] was adopted, the facts which had furnished the reasons for the reduction of the aid had been time-barred' [12]

20. In considering that submission, the Court of First Instance first noted that 'Article 3(1) of Regulation No 2988/95 sets a limitation period for proceedings of "four years as from the time when the irregularity (...) was committed"' which 'cover[s] both intentional irregularities or those caused by negligence, which could, in accordance with Article 5 of the regulation, result in an administrative penalty, and irregularities which justify merely the adoption of an administrative measure referred to in Article 4 of the regulation'. It therefore held that the limitation period in question was 'applicable to the irregularities at issue in the present case'. [13]

21. Having established that, the Court went on to consider whether the irregularities concerning the Pondal, on the one hand, and the Periloja and the Sonia Rosal, on the other, had in fact become time-barred.

22. Beginning with the Pondal, the Court first observed that 'the irregularity established, correctly, in the contested decision

11 — Paragraph 44.

12 — Paragraph 67.

13 — Paragraphs 78 and 79.

consists in the fact that the applicant at first concealed [the] sinking and subsequently communicated an incorrect date for it.' [14]

23. According to the Court of First Instance, those actions constituted 'a continuous irregularity within the meaning of the second subparagraph of Article 3(1) of Regulation No 2988/95, in that they were identical in substance - that is, an infringement by the applicant of its duty to provide information and act in good faith as regards that sinking.' [15]

24. Therefore, 'the limitation period began to run "from the day on which the irregularity cease[d]"', that is. 'on 5 October 1999', the day on which the applicant 'first informed the Commission of the exact date of that sinking, namely 13 January 1993'. [16]

25. The Court of First Instance held that in those circumstances the applicant could not 'rely on the limitation period as regards the facts found in the contested decision concerning [the Pondal]' [17]

26. Turning to the Periloja and the Sonia Rosal, the Court first upheld 'the finding of irregularity as regards [those vessels] set out in the contested decision', which may have contributed by the fact that they 'did not exploit Angolan waters over a period of three years, contrary to the requirement laid down by the decision to grant assistance'. [18]

27. According to the Court of the First Instance, those facts likewise constituted 'a continuous irregularity within the meaning of the second subparagraph of Article 3(1) of Regulation No 2988/95, since they continued until 20 May 1996, the date which (...) marks the end of the compulsory triennial period of activity for that enterprise and on which the irregularity definitively took the form claimed in the contested decision, namely the failure by those two vessels to engage in activities in Angolan waters for 15 of the 36 months making up the abovementioned period'. In that case too, therefore, the limitation period had begun to run only on 'the day on which the irregularity cease[d]', that is, 20 May 1996. [19]

28. The Court of the First Instance then held that the Commission's letter to the applicant of 26 July 1999 'informing it of the commencement of a reduction procedure

14 — Paragraph 81.
15 — Paragraph 81.
16 — Paragraphs 81 and 82.
17 — Paragraph 82.
18 — Paragraph 88.
19 — Paragraph 91.

linked to irregularities concerning, inter alia, the activity of the vessels Periloja and Sonia Rosal' constituted 'an act interrupting the limitation period within the meaning of the third subparagraph of Article 3(1) of Regulation No 2988/95'. [20]

29. It then noted that 'even if, on the basis of a literal reading of the first subparagraph of Article 3(1) of Regulation No 2988/95, the limitation period of four years laid down in that provision is considered to run, in respect of a continuous irregularity, from the day on which that irregularity ceased even when the competent authority does not learn of that irregularity until later (...) the sending of the letter of 26 July 1999, which took place before the expiry of the period of four years, which began on 20 May 1996, interrupted that period and caused a new period of four years to run as from 26 July 1999'. It followed that 'at the time when the contested decision was adopted, the facts constituting the irregularity as regards the Periloja and Sonia Rosal were not time-barred'. [21]

30. In the light of the foregoing considerations, the Court of First Instance rejected the plea of limitation. Then, having also declared the remaining pleas unfounded, it dismissed the application and awarded costs against the applicant.

20 — Paragraph 93.

21 — Paragraph 94

Proceedings before the Court

31. By application lodged on 22 May 2003, Peix requested the Court to declare the appeal admissible, to set aside the contested judgment and to order the Commission to pay the costs of both sets of proceedings.

32. That application was opposed by the Commission, which lodged a response in accordance with Article 115 of the Rules of Procedure of the Court.

33. The parties were subsequently represented at the hearing on 10 June 2004.

III — Legal analysis

34. Peix raises a single ground of appeal, claiming infringement of the second subparagraph of Article 3(1) of Regulation No 2988/95 stemming from a misinterpretation of the concept of 'continuous' irregularity.

35. In arguing that ground of appeal, the appellant dealt with the irregularity concerning the Pondal separately from that concerning the Periloja and the Sonia Rosal. The Commission did likewise in its response. Accordingly, in the interests of clarity of exposition, I will follow the same format in my analysis.

The continuous nature of the irregularity in the case of the Pondal

36. The appellant submits that the Court erred in finding that the irregularity concerning the Pondal was continuous. In its view, the provision of wrong information by a recipient of Community aid constituted a direct irregularity completed upon communication of the information being sent to the Commission, not, as in its view the Court of First Instance was saying, at the later time when the Commission discovered that the information was wrong.

37. According to Peix, the interpretation upheld by the Court of First Instance, quite apart from being in conflict with the case-law of the Court of Justice, to which I will return (see paragraph 48, below), runs counter to the principle of legal certainty, which is specifically secured by provisions limitations. In fact, if the limitation period were to run only from the time when the Commission discovered an irregularity, the time-limits laid down by the legislature would be protracted indefinitely until such time as the Commission proceeded to verify the correctness of the information received.

38. Finally, the appellant claims that the contested judgment is self-contradictory: at paragraph 94, with reference to the Periloja and the Sonia Rosal, the Court of First Instance acknowledged that the limitation period can begin to run even if the competent authority is unaware of the irregularity committed by the economic operator.

39. Applying that argument to the present case, Peix maintains that time should run from 20 May 1994, the day on which it notified the Commission of the sinking of the vessel, and not the date determined by the Court of First Instance namely 5 October 1999, when the Commission discovered the actual date of the occurrence.

40. In its view, therefore, the letter of 26 July 1999, by which the Commission notified it of the commencement of the aid-reduction procedure, was sent after the expiry of the four-year period and was therefore invalid, in the same way as the subsequent decision reducing the aid based on information obtained by means of that letter.

41. The Commission comes to the opposite conclusion contending that the breach by Peix of its duty of disclosure in good faith was not completed on 20 May 1994 with the first incorrect notification of the sinking of the Pondal, but, as rightly established by the Court of First Instance, continued until 5 October 1999, the date on which the appellant finally disclosed the true date of the sinking, thus bringing to an end the irregularity it had committed. According to the Commission, therefore, the Court of First Instance neither infringed the principle of legal certainty nor disregarded the case-law of the Court of Justice in finding the irregularity to be continuous.

42. As to the claim that the letter of 26 July 1999 was invalid, the Commission chiefly submits that that claim is inadmissible since it was raised for the first time on appeal before the Court of Justice. In addition, the claim is unfounded, since the letter in question was sent prior to the expiry of the four-year period which commenced only on 5 October 1999.

43. Turning to consider these submissions, I must first observe that according to the contested judgment:

— the application for payment of the first instalment of aid received by the Commission on 18 May 1993 did not contain any information regarding the sinking of the Pondal, despite the fact that it had already occurred on *13 January 1993*;

— the first periodic progress report submitted by Peix on 20 May 1994 stated that the 'sinking of the Pondal [occurred] on *20 July 1993*';

— the same information was also given in the second periodic progress report, dated 19 June 1995, which again referred to 'the sinking of the Pondal *on 20 July 1993*';

— not until 5 October 1999 did Peix produce the documents that showed that in fact 'the sinking of the Pondal had occurred on *13 January 1993, and not on 20 July 1993*'.[22]

44. That being so, I would say straightaway that in my view the Court of First Instance was correct in treating as a 'continuous' irregularity the breach by Peix of its duty, as a recipient of Community aid, to 'provide the

22 — Paragraphs 15 to 32. All emphasis added.

Commission with information which is reliable and not liable to mislead it' and to enable it 'to ensure proper use of Community funds' granted to the joint enterprise. [23]

45. Peix failed in that duty by repeated acts (giving an incorrect date for the sinking) and, above all, omissions (failing to give the correct date), which began even before the joint enterprise commenced its fishing activities in Angola and continued until 5 October 1999, the date on which the appellant furnished the documents disclosing the date on which the Pondal actually sank. It was only on 5 October 1999, therefore, that the irregularity ceased and the four-year limitation period began to run, in accordance with the second subparagraph of Regulation No 2988/95.

46. Nor, moreover, does it seem to me that the appellant's arguments can call in question that conclusion.

47. First of all, the judgment in *Strawson*, [24] upon which the appellant relies, does not appear to be in point.

48. In that case, the issue was whether an authority that had carried out an inspection in 1997, resulting in the discovery of several irregularities committed between 1993 and 1997, was entitled to penalise only the irregularity occurring in the year of inspection or also irregularities in previous years.

49. In response to a question in that regard, the Court held that the competent authorities' power to impose penalties extended to irregularities 'concerning the years before that in which those irregularities came to light, subject [however] to observance of the limitation periods prescribed by Regulation No 2988/95'. [25]

50. The Court thus did no more than clarify that the authority's power to impose penalties is limited in time to the four-year limitation period. However, it did not rule on the concept of 'continuous' irregularity at issue here in this case. As the Commission rightly points out, it was not necessary to rule on the point in that case, since all the matters alleged against the economic operator were committed between 1993 and 1997 (the year of inspection) and were therefore within the four-year timeframe period prescribed by Regulation No 2988/95.

23 — Case C-500/99 P Conserve Italia v Commission [2002] ECR I-867, paragraph 100.

24 — Case C-304/00 Strawson [2002] ECR I-10737.

25 — Strawson, paragraph 52.

51. Nor can it be objected that having the limitation period run from the date on which a recipient of Community aid discharges its duty of disclosure in good faith, thereby bringing to an end the irregularity committed, would be prejudicial to the 'function of ensuring legal certainty' inherent in every limitation period. [26]

52. As the Commission rightly observes, having time run from the date on which the irregularity ceased, quite apart from being expressly provided for by Regulation No 2988/95, is entirely consistent with that function.

53. In my view, the principle in question protects private parties in breach of a duty imposed by Community law only after the infringement has ceased, and not if the unlawful circumstances are ongoing. As the Commission rightly observes, it is therefore up to the recipient to decide whether to remain in a situation of irregularity and run the risk of extending the period within which action may be taken by the supervisory authorities, or whether to comply with its duties of good faith and disclosure and in so doing acquire the certainty that no measure or sanction can be taken against it once the four year period has elapsed.

54. Moreover, that principle is known to exist in order to protect private parties, by preventing 'the Commission from indefinitely delaying the exercise of its powers'. [27] However, a necessary precondition of that is that the Commission be placed in a position to exercise those powers, which is not the case where the recipients of Community aid, are breaching a clear obligation, notify information that is unreliable or in any event such as to mislead the institutions concerning key elements of the grant-aided projects.

55. Finally, in relation to the alleged contradiction in the contested judgment, which the appellant claims adopts a different approach in the paragraphs relating to the Periloja and the Sonia Rosal, I propose to demonstrate below that there is no such contradiction (see below, paragraphs 66 et seq.).

56. Accordingly, for the reasons set out above, I take the view that by treating the breaches relating to the Pondal as a 'con-

26 — See the judgment of the Court of Justice in Case 41/69 ACF Chemiefarma v Commission [1970] ECR 661, paragraphs 19 and 20, and the judgments of the Court of First Instance in Case T-26/89 De Compte v Parliament [1991] ECR II-781, paragraph 68, joined Cases T-126/96 and T-127/96 BFM and EFIM v Commission [1998] ECR II-3437, paragraph 67, and Case T-137/01 Neuss v Commission [2003] ECR II-3103.

27 — See Case 52/69 Geigy v Commission [1972] ECR 787, paragraphs 20 and 21, joined cases C-74/00 P and C-75/00 P Falck SpA e Acciaierie di Bolzano SpA v Commission [2002] ECR I-7869, paragraph 140), and Case C-298/00 P Italy v Commission [2004] ECR I-4087.

tinuing' irregularity and consequently having the limitation period run from 5 October 1999, the date on which the irregularity ceased, the Court of First Instance did not infringe the second subparagraph of Article 3(1) of Regulation No 2988/95.

57. Accordingly, without its being necessary to take a view on the admissibility of the submission, I am of the opinion that the appellant's claim concerning the alleged nullity of the Commission's letter of 26 July 1999 is plainly unfounded. Contrary to the appellant's assertion, that letter was sent not after the end of the limitation period but prior to its commencement.

58. The ground of appeal should therefore be rejected, in so far as the Pondal is concerned.

The continuing nature of the irregularity in the case of the Periloja and the Sonia Rosal

59. According to the appellant, the irregularity in the case of the Periloja and the Sonia Rosal is specific, and not, as held by the Court of First Instance, continuous, inasmuch as it was completed on removal of those vessels from Angolan waters in February 1995. Peix also claims that the contested judgment is contradictory, arguing again that at paragraph 94, but at variance with the views previously expressed in relation to the Pondal, the Court had acknowledged that the limitation period can begin to run even if the competent authority is unaware of the existence of the irregularity committed by the economic operator.

60. The Commission disagrees maintaining that the irregularity committed by Peix, in transferring the vessels in question to Cameroon without seeking prior authorisation and in not exploiting Angolan waters during 1995 and 1996, was continuous inasmuch as it was carried on throughout the whole of the period in which those vessels did not operate in Angola.

61. For my part, I must acknowledge that on this point the judgment of the Court of First Instance is not entirely clear. In its factual and legal findings concerning the nature of the irregularities in regard to the Periloja and the Sonia Rosal, the Court follows a somewhat oblique logic.

62. Firstly, concentrating on just one of the breaches established by the Commission in

the contested decision (fifth recital, see paragraph 17 above), it finds that 'the Periloja and Sonia Rosal did not exploit Angolan waters over a period of three years, contrary to the requirement laid down by the decision to grant assistance' (paragraph 88);

Secondly, it states that the breach in question constitutes a continuous irregularity which came to an end only on 20 May 1996, the date marking the end of the compulsory three-year period of activity in Angola (paragraph 91);

Then, it hypothetically observes that, '*even if* (...) the limitation period of four years laid down in that provision is considered to run, in respect of a continuous irregularity, from the day on which that irregularity ceased even when the competent authority does not learn of that irregularity until later',[28] the four-year period would still not have expired because of the interrupting act of 26 July 1999 (paragraph 94).

28 — Emphasis added.

63. As stated, the appellant does not dispute the Court's finding of irregularity (failure to exploit Angolan waters for the compulsory three-year period of activity), but only the fact that that irregularity is categorised as continuous.

64. That claim cannot, in my view, be upheld. As the Court of First Instance correctly determined, the irregularity began in February 1995, when the vessels in question left Angola, and it certainly continued until 20 May 1996, when the compulsory period of fishing in that country's waters came to an end. It was not, therefore, a momentary breach by Peix of a specific obligation, but a continuing breach of an obligation that had to be complied with until the specified date.

65. In my opinion, the argument concerning the contradiction the contested judgment should also be rejected. It seems to me that in paragraph 94, despite a somewhat unfelicitous wording, the Court of First Instance merely wished to underline that, even if the limitation period were construed in the manner most favourable to the appellant as running from before the disclosure to the Commission of the facts concerning the Periloja and the Sonia Rosal and before the Commission was in a position to know those facts, prescriptions would still not have occurred because of an act by the Commission interrupting that limitation period.

66. It is therefore a purely hypothetical consideration which in no way seeks to contradict the other passages of the judgment where the Court explicitly states, in relation to the Pondal, that in the event of a breach by a recipient of Community aid of its duty of disclosure, the limitation period runs from the time when the recipient correctly discloses to the Commission any supervening facts concerning key elements of the grant-aided project.

67. That reading of the decision seems to me also to be borne out by certain passages of the contested judgment that follow on from the appraisals concerning the limitation period.

68. In the section dealing with the alleged breach of the principle of proportionality, the Court of First Instance states with greater clarity that, in relation to the Periloja and the Sonia Rosal, Peix committed 'serious infringements of the obligations which are essential for the functioning of the Community financial aid system in the fisheries sector', not only in regard to its failure to satisfy the condition of 'the exploitation by the two vessels at issue of Angolan fishery resources for a period of three years', but also in regard to the fact that 'during some two years, the applicant concealed the fact that those vessels had left Angolan waters'. [29] For '[i]t was only in the third periodic report on activity, sent to the Commission in September 1997, that [the applicant] clearly indicated that the final landings of fish from Angola took place in March 1995 (...) and that (...) the applicant had transferred the vessels to a port in Nigeria where they underwent repairs until 1996'. [30]

69. Notwithstanding the oblique and purely hypothetical terms in which it is couched, I therefore take the view that the Court's reasoning in categorising the irregularity concerning the Periloja and the Sonia Rosal as 'continuous' does not contradict the passages of the contested judgment concerning the Pondal.

70. For the reasons set out above I therefore take the view that the ground of appeal must also be rejected in respect of the Periloja and the Sonia Rosal.

Concluding considerations

71. Since I have found the sole ground of appeal raised by Peix to be unfounded, I do not believe it necessary to analyse the

29 — Paragraph 130.

30 — Paragraph 128.

submissions put forward in the alternative by the Commission concerning the inapplicability of the limitation period in Article 3 of Regulation No 2988/95 to measures for the recovery of overpayments and concerning the interruption of the limitation period by the Spanish authorities' letter of 26 February 1998.

72. In conclusion, I therefore propose that the Court should dismiss the appeal in its entirety .

IV — Costs

73. In accordance with Article 69(2) and (4) of the Rules of Procedure, which applies to appeal proceedings by virtue of Article 118 thereof, and in view of the conclusions I have reached in favour of a dismissal of the appeal, I consider that Peix should be ordered to pay the costs.

V — Conclusions

74. In light of the foregoing considerations, I propose that the Court should:

— dismiss the appeal,

— order José Martí Peix, SA, to pay the costs.