JUDGMENT OF THE COURT
19 June 1990 *

In Case C-213/89

REFERENCE to the Court under Article 177 of the EEC Treaty by the House of Lords for a preliminary ruling in the proceedings pending before that court in the case of

The Queen

v

Secretary of State for Transport, ex parte: Factortame Ltd and Others,

on the interpretation of Community law with regard to the extent of the power of national courts to grant interim relief where rights claimed under Community law are at issue,

THE COURT

composed of: O. Due, President, Sir Gordon Slynn, C. N. Kakouris, F. A. Schockweiler, M. Zuleeg (Presidents of Chambers), G. F. Mancini, R. Joliet, J. C. Moitinho de Almeida, G. C. Rodríguez Iglesias, F. Grévisse and M. Diez de Velasco, Judges,

Advocate General: G. Tesauro
Registrar: H. A. Rühl, Principal Administrator

after considering the written observations submitted on behalf of

* Language of the case: English.

the United Kingdom, by T. J. G. Pratt, Principal Assistant Treasury Solicitor, acting as Agent, assisted by Sir Nicholas Lyell, QC, Solicitor-General, Mr Christopher Bellamy, QC, and Mr Christopher Vajda, barrister,

Ireland, by Louis J. Dockery, Chief State Solicitor, acting as Agent, assisted by James O'Reilly, SC,

Factortame Ltd and Others, by David Vaughan QC, Gerald Barling, barrister, David Anderson, barrister, and Stephen Swabey, solicitor, of Thomas Cooper & Stibbard,

the Commission, by Mr Götz zur Hausen, Legal Adviser, and Peter Oliver, a member of its Legal Department, acting as Agents,

having regard to the Report for the Hearing,

after hearing the oral argument presented at the hearing on 5 April 1990 by the United Kingdom, Factortame Ltd and Others, Rawlings (Trawling) Ltd., the latter represented by N. Forwood, QC, and by the Commission,

after hearing the Opinion of the Advocate General delivered at the sitting on 17 May 1990,

gives the following

Judgment

1 By a judgment of 18 May 1989, which was received at the Court on 10 July 1989, the House of Lords referred to the Court of Justice for a preliminary ruling under Article 177 of the EEC Treaty two questions on the interpretation of Community law. Those questions concern the extent of the power of national courts to grant interim relief where rights claimed under Community law are at issue.

2 The questions were raised in proceedings brought against the Secretary of State for Transport by Factortame Ltd and other companies incorporated under the laws of the United Kingdom, and also the directors and shareholders of those companies, most of whom are Spanish nationals (hereinafter together referred to as the 'appellants in the main proceedings').

3 The companies in question are the owners or operators of 95 fishing vessels which were registered in the register of British vessels under the Merchant Shipping Act 1894. Of those vessels, 53 were originally registered in Spain and flew the Spanish flag, but on various dates as from 1980 they were registered in the British register. The remaining 42 vessels have always been registered in the United Kingdom, but were purchased by the companies in question on various dates, mainly since 1983.

4 The statutory system governing the registration of British fishing vessels was radically altered by Part II of the Merchant Shipping Act 1988 and the Merchant Shipping (Registration of Fishing Vessels) Regulations 1988 (SI 1988, No 1926). It is common ground that the United Kingdom amended the previous legislation in order to put a stop to the practice known as 'quota hopping' whereby, according to the United Kingdom, its fishing quotas are 'plundered' by vessels flying the British flag but lacking any genuine link with the United Kingdom.

5 The 1988 Act provided for the establishment of a new register in which henceforth all British fishing vessels were to be registered, including those which were already registered in the old general register maintained under the 1894 Act. However, only fishing vessels fulfilling the conditions laid down in Section 14 of the 1988 Act may be registered in the new register.

Paragraph 1 of that section provides that, subject to dispensations to be determined by the Secretary of State for Transport, a fishing vessel is eligible to be registered in the new register only if:

'(a) the vessel is British-owned,

(b) the vessel is managed, and its operations are directed and controlled, from within the United Kingdom and;

(c) any charterer, manager or operator of the vessel is a qualified person or company'.

According to Section 14(2), a fishing vessel is deemed to be British-owned if the legal title to the vessel is vested wholly in one or more qualified persons or companies and if the vessel is beneficially owned by one or more qualified companies or, as to not less than 75%, by one or more qualified persons. According to Section 14(7) 'qualified person' means a person who is a British citizen resident and domiciled in the United Kingdom and 'qualified company' means a company incorporated in the United Kingdom and having its principle place of business there, at least 75% of its shares being owned by one or more qualified persons or companies and at least 75% of its directors being qualified persons.

The 1988 Act and the 1988 Regulations entered into force on 1 December 1988. However, under Section 13 of the 1988 Act, the validity of registrations effected under the previous Act was extended for a transitional period until 31 March 1989.

On 4 August 1989 the Commission brought an action before the Court under Article 169 of the EEC Treaty for a declaration that, by imposing the nationality requirements laid down in Section 14 of the 1988 Act, the United Kingdom had failed to fulfil its obligations under Articles 7, 52 and 221 of the EEC Treaty. That action is the subject of Case 246/89, now pending before the Court. In a separate document, lodged at the Court Registry on the same date, the Commission applied

to the Court for an interim order requiring the United Kingdom to suspend the application of those nationality requirements as regards the nationals of other Member States and in respect of fishing vessels which until 31 March 1989 were carrying on a fishing activity under the British flag and under a British fishing licence. By an order of 10 October 1989 in Case 246/89 R *Commission* v *United Kingdom* [1989] ECR 3125, the President of the Court granted that application. Pursuant to that order, the United Kingdom made an Order in Council amending Section 14 of the 1988 Act with effect from 2 November 1989.

9 At the time of the institution of the proceedings in which the appeal arises, the 95 fishing vessels of the appellants in the main proceedings failed to satisfy one or more of the conditions for registration under Section 14 of the 1988 Act and thus could not be registered in the new register.

10 Since those vessels were to be deprived of the right to engage in fishing as from 1 April 1989, the companies in question, by means of an application for judicial review, challenged the compatibility of Part II of the 1988 Act with Community law. They also applied for the grant of interim relief until such time as final judgment was given on their application for judicial review.

11 In its judgment of 10 March 1989, the Divisional Court of the Queen's Bench Division: (i) decided to stay the proceedings and to make a reference under Article 177 of the EEC Treaty for a preliminary ruling on the issues of Community law raised in the proceedings; and (ii) ordered that, by way of interim relief, the application of Part II of the 1988 Act and the 1988 Regulations should be suspended as regards the applicants.

12 On 13 March 1989, the Secretary of State for Transport appealed against the Divisional Court's order granting interim relief. By judgment of 22 March 1989, the Court of Appeal held that under national law the courts had no power to suspend, by way of interim relief, the application of Acts of Parliament. It therefore set aside the order of the Divisional Court.

3 The House of Lords, before which the matter was brought, gave its abovementioned judgment of 18 May 1989. In its judgment it found in the first place that the claims by the appellants in the main proceedings that they would suffer irreparable damage if the interim relief which they sought were not granted and they were successful in the main proceedings were well founded. However, it held that, under national law, the English courts had no power to grant interim relief in a case such as the one before it. More specifically, it held that the grant of such relief was precluded by the old common-law rule that an interim injunction may not be granted against the Crown, that is to say against the government, in conjunction with the presumption that an Act of Parliament is in conformity with Community law until such time as a decision on its compatibility with that law has been given.

14 The House of Lords then turned to the question whether, notwithstanding that rule of national law, English courts had the power, under Community law, to grant an interim injunction against the Crown.

15 Consequently, taking the view that the dispute raised an issue concerning the interpretation of Community law, the House of Lords decided, pursuant to Article 177 of the EEC Treaty, to stay the proceedings until the Court of Justice had given a preliminary ruling on the following questions:

'(1) Where

(i) a party before the national court claims to be entitled to rights under Community law having direct effect in national law (the "rights claimed"),

(ii) a national measure in clear terms will, if applied, automatically deprive that party of the rights claimed,

(iii) there are serious arguments both for and against the existence of the rights claimed and the national court has sought a preliminary ruling under Article 177 as to whether or not the rights claimed exist,

(iv) the national law presumes the national measure in question to be compatible with Community law unless and until it is declared incompatible,

(v) the national court has no power to give interim protection to the rights claimed by suspending the application of the national measure pending the preliminary ruling,

(vi) if the preliminary ruling is in the event in favour of the rights claimed, the party entitled to those rights is likely to have suffered irremediable damage unless given such interim protection,

does Community law either

(a) oblige the national court to grant such interim protection of the rights claimed; or

(b) give the Court power to grant such interim protection of the rights claimed?

(2) If Question 1(a) is answered in the negative and Question 1(b) in the affirmative, what are the criteria to be applied in deciding whether or not to grant such interim protection of the rights claimed?'

16 Reference is made to the Report for the Hearing for a fuller account of the facts in the proceedings before the national court, the course of the procedure before and the observations submitted to the Court of Justice, which are mentioned or discussed hereinafter only in so far as is necessary for the reasoning of the Court.

17 It is clear from the information before the Court, and in particular from the judgment making the reference and, as described above, the course taken by the proceedings in the national courts before which the case came at first and second instance, that the preliminary question raised by the House of Lords seeks essentially to ascertain whether a national court which, in a case before it concerning Community law, considers that the sole obstacle which precludes it from granting interim relief is a rule of national law, must disapply that rule.

18 For the purpose of replying to that question, it is necessary to point out that in its judgment of 9 March 1978 in Case 106/77 *Amministrazione delle finanze dello Stato* v *Simmenthal SpA* [1978] ECR 629 the Court held that directly applicable rules of Community law 'must be fully and uniformly applied in all the Member States from the date of their entry into force and for so long as they continue in force' (paragraph 14) and that 'in accordance with the principle of the precedence of Community law, the relationship between provisions of the Treaty and directly applicable measures of the institutions on the one hand and the national law of the Member States on the other is such that those provisions and measures . . . by their entry into force render automatically inapplicable any conflicting provision of . . . national law' (paragraph 17).

19 In accordance with the case-law of the Court, it is for the national courts, in application of the principle of cooperation laid down in Article 5 of the EEC Treaty, to ensure the legal protection which persons derive from the direct effect of provisions of Community law (see, most recently, the judgments of 10 July 1980 in Case 811/79 *Ariete SpA* v *Amministrazione delle finanze dello Stato* [1980] ECR 2545 and Case 826/79 *Mireco* v *Amministrazione delle finanze dello Stato* [1980] ECR 2559).

20 The Court has also held that any provision of a national legal system and any legislative, administrative or judicial practice which might impair the effectiveness of Community law by withholding from the national court having jurisdiction to apply such law the power to do everything necessary at the moment of its application to set aside national legislative provisions which might prevent, even temporarily, Community rules from having full force and effect are incompatible with those requirements, which are the very essence of Community law (judgment of 9 March 1978 in *Simmenthal*, cited above, paragraphs 22 and 23).

21 It must be added that the full effectiveness of Community law would be just as much impaired if a rule of national law could prevent a court seised of a dispute governed by Community law from granting interim relief in order to ensure the full effectiveness of the judgment to be given on the existence of the rights claimed under Community law. It follows that a court which in those circumstances would grant interim relief, if it were not for a rule of national law, is obliged to set aside that rule.

22 That interpretation is reinforced by the system established by Article 177 of the EEC Treaty whose effectiveness would be impaired if a national court, having stayed proceedings pending the reply by the Court of Justice to the question referred to it for a preliminary ruling, were not able to grant interim relief until it delivered its judgment following the reply given by the Court of Justice.

23 Consequently, the reply to the question raised should be that Community law must be interpreted as meaning that a national court which, in a case before it concerning Community law, considers that the sole obstacle which precludes it from granting interim relief is a rule of national law must set aside that rule.

Costs

24 The costs incurred by the United Kingdom, Ireland and the Commission of the European Communities, which have submitted observations to the Court, are not recoverable. Since 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 national court, the decision on costs is a matter for that court.

On those grounds,

THE COURT,

in reply to the question referred to it for a preliminary ruling by the House of Lords, by judgment of 18 May 1989, hereby rules:

Community law must be interpreted as meaning that a national court which, in a case before it concerning Community law, considers that the sole obstacle which precludes it from granting interim relief is a rule of national law must set aside that rule.

Due Slynn Kakouris Schockweiler Zuleeg

Mancini Joliet Moitinho de Almeida

Rodríguez Iglesias Grévisse Díez de Velasco

Delivered in open court in Luxembourg on 19 June 1990.

J.-G. Giraud
Registrar

O. Due
President