

In Joined Cases 13 to 28/82

REFERENCES to the Court under Article 177 of the EEC Treaty by the Cour d'Appel [Court of Appeal], Rennes, for a preliminary ruling in the action pending before that court between

JOSÉ ARANTZAMENDI-OSA, Ondarroa, Spain, AND OTHERS

and

PROCUREUR DE LA RÉPUBLIQUE [Public Prosecutor at the Tribunal de Grande Instance] AND PROCUREUR GÉNÉRAL [Public Prosecutor at the Cour d'Appel]

on the validity of regulations of the Council laying down certain temporary measures for the conservation and management of fishery resources applicable to vessels flying the flag of Spain,

THE COURT (First Chamber)

composed of: A. O'Keefe, President of Chamber, G. Bosco and T. Koopmans, Judges,

Advocate General: F. Capotorti

Registrar: H. A. Rühl, Principal Administrator

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 written procedure

1. Mr Arantzamendi-Osa and certain other Spanish fishermen were found guilty by various judgments of the Tribunal de Grande Instance [Regional

Court], Lorient, and of the Tribunal de Grande Instance, Quimper, of offences against the legislation on fishing. They were discovered fishing in the French economic zone extending between 12 and 200 miles from the coast without holding the fishing licence required by the Community regulations applicable to vessels flying the flag of Spain.

The defendants appealed to the Cour d'Appel [Court of Appeal], Rennes, and challenged the validity of the Community rules at issue in relation to prior international obligations.

In a series of judgments delivered on 3 December 1981 the Cour d'Appel, Rennes, decided to stay the proceedings until the Court of Justice delivered a preliminary ruling on the question "whether, having regard to prior international obligations, regulations of the Council of the European Communities laying down certain interim measures for the conservation and management of fishery resources applicable to vessels flying the flag of Spain are valid, in so far as they have laid down certain conditions for fishing operations carried out by Spanish nationals in the economic zone established by Decree No 77-130 of 11 February 1977 and whether, if valid, those regulations are enforceable against Spanish nationals".

2. The provisions of the regulations and international agreements involved in those cases may be summarized as follows:

(a) Pursuant to the Council Resolution of 3 November 1976 on certain external aspects of the creation of a 200-mile fishing zone in the Community with effect from 1 January 1977 (Official Journal 1981, C 105, p. 1) the Member

States of the Community extended their fishing zones with effect from 1 January 1977 to 200 miles off their North Sea and North Atlantic coasts.

Thus in the case of France Decree No 77-130 of 11 February 1977, issued pursuant to Law No 76-655 of 16 July 1976, creates an economic zone off the North Sea, English Channel and Atlantic coasts of the territory of the French Republic, from the Franco-Belgian frontier to the Franco-Spanish frontier, from the outside limit of the territorial waters to a line 188 nautical miles beyond that limit.

Article 2 of the decree provides:

"Subject to the provisions of the Treaty establishing the European Economic Community and instruments adopted in implementation thereof, fishing by foreign vessels in the above-mentioned economic zone is prohibited, in accordance with the Law of 1 March 1888 as amended.

However, notwithstanding these provisions, fishing permits may be issued to certain foreign vessels in accordance with the conditions laid down in the Treaty establishing the European Economic Community and the instruments adopted in implementation thereof, by international agreements and by internal French law."

Article 3 lays down the applicable penalties.

(b) After the Member States extended these fishing zones to 200 miles the exploitation of fishery resources in those zones by fishing vessels of non-member countries has been governed by Community measures relating to each of the countries concerned. Pending the

conclusion of framework agreements on fisheries between the Community and those non-member countries interim measures were initially adopted.

Having regard to the date when the facts occurred in each of those cases the Community regime applicable is

in Case 23/82 (date of the facts: 14 January 1980), Council Regulation (EEC) No 1177/79 of 12 June 1979 laying down for 1979 certain measures for the conservation and management of fishery resources applicable to vessels flying the flag of Spain (Official Journal L 151, p. 1); the duration of the validity of the fishing licences issued in accordance with that regulation was extended until 31 January 1980 by Regulation (EEC) No 2897/79 of 18 December 1979 (Official Journal L 362, p. 2);

in Cases 14/82 (date of the facts: 4 April 1980), 15/82 (date of the facts: 17 April 1980), 18/82 (date of the facts: 3 June 1980), 19/82 (date of the facts: 6 May 1980), 20/82 (date of the facts: 15 March 1980) 21/82 (date of the facts: 30 May 1980), 25, 26 and 27/82 (date of the facts: 17 May 1980), Council Regulation (EEC) No 541/80 of 3 March 1980 laying down certain interim measures for the conservation and management of fishery resources applicable to vessels flying the flag of Spain (Official Journal L 60, p. 1);

in Cases 16 and 24/82 (date of the facts: 5 January 1981), 17/82 (date of the facts: 16 August 1980) and 22/82 (date of the facts: 2 August 1980) Council Regulation (EEC) No 1719/80 of 30 June 1980 laying down for 1980 certain

measures for the conservation and management of fishery resources applicable to vessels flying the flag of Spain (Official Journal L 168, p. 27); with regard to Cases 16 and 24/82 the period of validity of the licences issued in accordance with this regulation was extended until 31 January 1981 by Regulation No 3305/80 of 17 December 1980 (Official Journal L 344, p. 33).

Each of the above-mentioned regulations provides that fishing is subject to the holding on board of a licence issued by the Commission on behalf of the Communities. The catches which vessels flying the flag of Spain are authorized to make during the period in question and the number of licences which may be issued for such vessels are fixed in an annexe to each regulation. Furthermore the regulations lay down a certain number of specific requirements for holders of licences.

For the period between 1 February and 4 March 1981, during which the facts concerned in Cases 13/82 (2 February 1981) and 28/82 (14 February 1981) occurred, no Community regulation making provision for the issue of licences to Spanish vessels was adopted.

(c) The framework agreement, namely the Agreement on Fisheries concluded between the EEC and Spain, was initialled on 23 September 1978 and signed on 15 April 1980. The Agreement was approved in the name of the Community by Council Regulation (EEC) No 3062/80 of 25 November 1980 on the conclusion of the Agreement on Fisheries between the European Economic Community and the Government of Spain (Official Journal L 322, p. 3). On completion of the ratification procedure in Spain the Agreement

entered into force on 22 May 1981 (Official Journal 1981, L 204, p. 34).

It was provided in Article 12 of the Agreement that, pending its entry into force, the Agreement should apply provisionally from the date of its signature, namely 15 April 1980.

Articles 1 (1), 2, 3 and 4 of the Agreement are worded as follows:

“Article 1

(1) The purpose of this Agreement is to establish the principles and rules which will govern, in all respects, the fishing activities of vessels of either party within the fishing zones falling under the jurisdiction of the other party.

...

Article 2

Each party shall grant access to the fishing zone falling under its jurisdiction to the fishing vessels of the other party under the conditions laid down by the following articles.

Article 3

(1) Each party shall determine each year, for the fishing zone falling under its jurisdiction, subject to adjustments necessitated by unforeseen circumstances, and on the basis of the need for rational management of the biological resources:

(a) the total allowable catch for individual stocks or complexes of stocks, taking into account the most reliable scientific information available to it, the interdependence of stocks, the work of appropriate international organizations and other relevant factors;

(b) after appropriate reciprocal consultations, the catch allotted to the fishing vessels of the other party and the zones in which these catches may be made. The two parties shall have as their objective the attainment of a satisfactory balance between their respective fishing possibilities in the fishing zones falling under the jurisdiction of the other party.

In determining these possibilities, each party shall take into account:

- (i) the advantage of preserving the traditional characteristics of fishery activities in the frontier coastal areas;
- (ii) the need to minimize the difficulties encountered by the party whose fishing possibilities may be reduced in the course of achieving the above-mentioned balance;
- (iii) all other relevant factors.

(2) Each party shall be able to take any other measures to ensure the conservation and rational management of resources in the fishing zones falling under its jurisdiction. Such measures when taken following the annual fixing of the other party's fishing possibilities, should not be such as to compromise the effective operation of fishing.

Article 4

Each party may require that in the fishing zone falling under its jurisdiction fishing by vessels of the other party shall be subject to licence.

The competent authorities of each party shall communicate to the other party the name, registration number and other relevant particulars of vessels requesting authorization to fish in the fishing zone

of the other party. This provision shall also apply to any vessel intended to aid or assist a fishing vessel in carrying out tasks directly related to the latter's fishing activity. The second party shall issue licences commensurate with the possibilities for fishing granted under Article 3 (1) (b)."

(d) The prior international obligations raised by the defendants in the main proceedings before the national court concern in particular the following agreements to which France and Spain are parties:

The London Fisheries Convention of 9 March 1964 (United Nations Treaty Series, Vol. 581, No 8432) and the Agreement on Fisheries between France and Spain of 20 March 1967 concluded in implementation of Article 9 (2) of the London Convention which relates to *voisinage* arrangements; and

The Geneva Convention of 29 April 1958 on Fishing and Conservation of the Living Resources of the High Seas (United Nations Treaty Series, Vol. 559, No 8164).

3. The judgments of the Cour d'Appel, Rennes, of 3 December 1981 making the reference to the Court were received at the Court Registry on 14 January 1982.

Pursuant to Article 20 of the Protocol on the Statute of the Court of Justice of the EEC, written observations were submitted by the following: the Government of the French Republic, represented in both cases by Gilbert Guillaume, Director of Legal Matters at the Ministry of Foreign Affairs, acting as Agent; the Council of the European Communities, represented by Daniel

Vignes, Director in its Legal Department, acting as Agent, assisted by Moyra Sims, an administrator in that department; and the Commission of the European Communities, represented by François Lamoureux, a member of its Legal Department.

By order of 20 January 1982 the Court decided to join Cases 13 to 28/82 for the purposes of the procedure and judgment.

By order of 29 June 1982 the Court, pursuant to Article 95 (1) and (2) of the Rules of Procedure, decided to refer the joined cases to the First Chamber.

Upon hearing the report of the Judge-Rapporteur and the views of the Advocate General, the Court decided to open the oral procedure without any preparatory inquiry.

II — Summary of the written observations submitted to the Court

The *French Government* remarks that the circumstances in Cases 14 to 27/82 are the same as those considered by the Court in its judgment of 8 December 1981 (*Crujeiras Tome and Yurrita*, Joined Cases 180 and 266/80, [1981] ECR 2997) in which the Court stated that "the interim regime established by the Community under its own rules falls within the framework of the relations established between the Community and Spain in order to resolve the problems inherent in conservation measures and the extension of fishery zones and in order to ensure reciprocal access by fishermen to the waters subject to such measures" and that "those relations were

substituted for the regime which previously applied in those zones ...” (paragraph 18 of the decision). The French Government proposes that the Court should restrict itself to confirming that decision and consequently rule that, with regard to Cases 14 to 27/82, consideration of the question raised has disclosed no factor of such a kind as to affect the validity of the regulations at issue and that the provisions of those regulations are enforceable against Spanish nationals.

With regard to Cases 13 and 28/82, the facts of which occurred in a period for which no regulation made provision for the issue of licences to Spanish fishermen, the French Government points out that Council Regulation (EEC) No 554/81 of 27 February 1981 (Official Journal L 37, p. 1) states in the fifth recital in the preamble thereto that fishing by Community vessels in the fishing zones of Member States was “authorized, during the period 1 to 31 January 1981 by Regulation (EEC) No 3305/80” but that “such fishing has been interrupted since 1 February 1981”. Such fishing thus could not lawfully be resumed until the entry into force of the said Regulation No 554/81, that is to say on 4 March 1981.

In this connection the French Government refers furthermore to the observations which it submitted in Case 137/81, which gave rise to the same problem.

The *Council of the European Communities* states first of all that the facts at

issue in the present cases occurred between 14 January 1980 and 14 February 1981, that is during a period beginning shortly before the signature of the Agreement on Fisheries between the EEC and Spain and terminating while it was provisionally applicable.

As the Council has previously indicated, it does not consider that Spanish fishermen may rely upon prior international obligations as against the application of the Community regulations in question. The close collaboration of the Spanish authorities with the Community throughout the time when the Agreement was being negotiated shows tacit acceptance, whilst signature of the Agreement shows express acceptance, of the new reciprocal relations between the Community and Spain in the field of fisheries. With regard to Cases 14 to 27/82 the Council consequently suggests that the judgment of 8 December 1981 cited above should be followed.

With regard to the period between 1 February and 3 March 1981 in which the facts at issue in Cases 13 and 28/82 took place the Council refers to its observations in Case 137/81 and claims that the Community rules did not provide any possibility for Spanish fishermen to obtain a licence since relations between the Community and Spain concerning fishing were interrupted. That interruption nevertheless did not entail freedom to fish since French legislation expressly prohibits fishing in territorial waters and the economic zone except with an authorization granted in accordance with Community law.

Because of a disagreement between the Community and Spain on the number of licences and on the volume of quotas it was impossible to determine the arrangements for 1981 either in December 1980 or in January 1981. In this connection the Council refers to a *note verbale* of the Commission of 23 December 1980 addressed to the Mission of Spain to the European Communities in which the Commission emphasized the need to conclude the reciprocal consultations in sufficient time to enable a regulation to be adopted before 1 February 1981 giving effect to the outcome of the consultations in order to avoid interrupting fishing by Spanish vessels in the fishing zone of the Community. When the consultations were finally concluded on 17 February 1981 Regulation No 554/81 was quickly adopted.

The *Commission of the European Communities* also suggests that, with regard to Cases 14 to 27/82, the Court should follow the judgment of 8 December 1981 in Joined Cases 180 and 266/80 cited above.

It considers furthermore that the solution, which is based on the replacement by the interim measures resulting from the new relationship between Spain and the Community of the rules previously applicable in the fishing zones in order to take account of the evolution of international law, may be adopted as such in Cases 13 and 28/82. The fact that the Court has found that the new regime replaced the former rules also justifies the suspension of fishing by Spanish vessels between

1 February and 3 March 1981 in the fishing zone of the Community.

In fact, the new relations between the Community and Spain resulted in the conclusion and application of a framework agreement on fisheries and, in accordance with the rules of the new Law of the Sea, they entail in particular mutual recognition of the power of each of the parties to take measures for the protection of resources in the exclusive fishing zone extending to 200 miles. The requirement that Spanish fishermen should hold a licence or the suspension of their fishing operations thus constitute means of exercising the general powers of the Community in its exclusive fishing zone. In that connection the Commission further states that no provision of the Draft Convention on the Law of the Sea which was drawn up at the Third Conference on the Law of the Sea and which gives expression to the new customary law, contemplates the maintenance or recognition of historical rights or traditional fishing by nationals of other States within the exclusive economic zone.

In the light of the framework agreement concluded between the Community and Spain which has been applied provisionally since 15 April 1980 the Commission considers that the Community was entitled to suspend fishing by Spanish vessels in the absence of agreement by the Spanish authorities to the proposed conditions. By *notes verbales* of 23 December 1980 and of 30 January 1981 it pointed out to the Spanish delegation the need to complete in good time the consultations on the fishing arrangements for 1981 and, following the suspension of consultations by the Spanish delegation, it also

informed the latter of the interruption of fishing by Spanish vessels as from 31 January 1981. It is accordingly Spain which is responsible for the suspension of the consultations and thus of the issue of the licences.

Finally, having regard to the power of the Community to take measures for the conservation of resources, which extends to all maritime waters falling under the jurisdiction of the Member States, not only the Community regulations at issue in the present cases but also the prohibition of all fishing during the period from 1 February to 3 March 1981 may be enforced against Spanish nationals.

III — Oral procedure

At the sitting on 16 September 1982 oral argument was presented by the following: Bernard Botte, Attaché at the Ministry of Foreign Affairs, acting as Agent, for the Government of the French Republic; Daniel Vignes, Director in the Legal Department of the Council, acting as Agent, for the Council of the European Communities and François Lamoureux, a member of the legal Department of the Commission, acting as Agent, for the Commission of the European Communities.

The Advocate General delivered his opinion at the sitting on 6 October 1982.

Decision

- 1 By judgments of 3 December 1981, which were received at the Court on 14 January 1982 the Cour d'Appel [Court of Appeal], Rennes, referred to the Court for a preliminary ruling under Article 177 of the EEC Treaty a question as to whether, having regard to prior international obligations, regulations of the Communities laying down certain interim measures for the conservation and management of fishery resources applicable to vessels flying the flag of Spain are valid, in so far as they have laid down certain conditions for fishing operations carried out by Spanish nationals in the economic zone established by French Decree No 77-130 of 11 February 1977 (Journal Officiel de la République Française of 12 February 1977, p. 864) and whether, if valid, those regulations are enforceable against Spanish nationals.
- 2 The question was raised in criminal proceedings against certain masters of fishing vessels registered in Spain, who were fined by the Tribunal de Grande Instance [Regional Court], Lorient, and by the Tribunal de Grande Instance, Quimper, for fishing in waters within the French economic zone without being in possession of a fishing licence.

- 3 The defendants in the main proceedings were discovered fishing in the zone between 12 and 200 nautical miles from the baseline on various dates during the period between 14 January 1980 and 14 February 1981.

- 4 The Tribunal de Grande Instance, Lorient, and the Tribunal de Grande Instance, Quimper, imposed fines on the defendants, having found that they were unable to produce the licence required by the Community regulations and that in those circumstances the fishing in which they had engaged constituted an offence created and punished by French criminal legislation.

- 5 Before the Cour d'Appel the defendants challenged the validity of the Community regulations, which render fishing by vessels flying the flag of Spain conditional upon holding a licence, on the ground that their fishing rights are recognized by virtue of international obligations previously entered into between France and Spain.

- 6 For the year 1980 the Council first of all extended until 31 January 1980 the period of the validity of fishing licences issued pursuant to Regulation (EEC) No 1177/79 of 12 June 1979 laying down for 1979 certain measures for the conservation and management of fishery resources applicable to vessels flying the flag of Spain (Official Journal L 151, p. 1). That extension was laid down in Regulation (EEC) No 2897/79 of 18 December 1979 (Official Journal L 362, p. 2). New interim measures for conservation and management applicable to Spanish vessels were laid down for the year 1980 by Council Regulations (EEC) No 541/80 and No 1719/80 of 3 March 1980 and of 30 June 1980 respectively (Official Journal L 60, p. 1 and Official Journal L 168, p. 27).

- 7 For the year 1981 the Council first of all extended until 31 January 1981 the period of the validity of fishing licences issued to Spanish fishermen pursuant to Regulation No 1719/80. That extension was laid down in Regulation No 3305/80 of 17 December 1980 (Official Journal L 344, p. 33). Regulation No 554/81 of 27 February 1981 (Official Journal L 57, p. 1) lays down new interim measures for conservation and management applicable to Spanish vessels for the period up to 31 May 1981. That regulation entered into force on 4 March 1981.

- 8 The regulations cited above form part of a series of Council regulations which, pending the entry into force of the Agreement on Fisheries between the European Economic Community and the Government of Spain of 15 April 1980 (Official Journal L 263, p. 1), established for short periods interim provisions prescribing catch quotas for Spanish fishermen.
- 9 The Court has already found, in its judgment of 8 December 1981 (*Crujeiras Tome and Yurrita*, Joined Cases 180/80 and 266/80 [1981] ECR 2997), that that interim regime established by the Community falls within the framework of the relations established between it and Spain in order to resolve the problems inherent in conservation measures and the extension of fishery zones and in order to ensure reciprocal access by fishermen to the waters subject to such measures and that those relations were substituted for the regime which previously applied in those zones in order to take account of the general development of international law in relation to fishing on the high seas and the increasingly urgent need to conserve the living resources of the sea.
- 10 Accordingly the provisions of the regulations at issue were part of the progressive creation of new reciprocal relations between the Community and Spain in the field of sea-fishing which were substituted for the regime previously applicable to fishing on the high seas. In these circumstances Spanish fishermen may not rely on prior international commitments as between France and Spain in order to prevent the application of the interim regulations adopted by the Community in the event of any incompatibility between the two categories of provisions.
- 11 Consideration of the question raised has disclosed no factor of such a kind as to affect the validity of Regulations No 1177/79, No 2897/79, No 541/80, No 1719/80, No 3305/80 and No 554/81. The provisions of those regulations are enforceable against Spanish nationals.

Costs

- 12 The costs incurred by the French Government and by the Council and the Commission of the European Communities, which 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 national court the decision on costs is a matter for that court.

On those grounds,

THE COURT (First Chamber)

in answer to the question submitted to it by the Cour d'Appel, Rennes, by judgments of 3 December 1981, hereby rules:

Consideration of the question raised has disclosed no factor of such a kind as to affect the validity of Council Regulations (EEC) No 1177/79 of 12 June 1979 (Official Journal L 151, p. 1), No 2897/79 of 18 December 1979 (Official Journal L 362, p. 2), No 541/80 of 3 March 1980 (Official Journal L 60, p. 1), No 1719/80 of 30 June 1980 (Official Journal L 168, p. 27), No 3305/80 of 17 December 1980 (Official Journal L 344, p. 33) and No 554/81 of 27 February 1981 (Official Journal L 57, p. 1). The provisions of those regulations are enforceable against Spanish nationals.

O'Keefe

Bosco

Koopmans

Delivered in open court in Luxembourg on 28 October 1982.

For the Registrar

H. A. Rühl

Principal Administrator

A. O'Keefe

President of the First Chamber