



Reports of Cases

JUDGMENT OF THE COURT (Sixth Chamber)

11 February 2021 *

(Reference for a preliminary ruling – Common fisheries policy – Regulation (EC) No 1224/2009 – Control system for ensuring compliance with the rules of the common fisheries policy – Use on board a fishing vessel of equipment which is capable of automatically grading fish by size – Article 89 – Measures to ensure compliance – Article 90 – Criminal sanctions – Principle of proportionality)

In Case C-77/20,

REQUEST for a preliminary ruling under Article 267 TFEU from the Court of Appeal (Ireland), made by decision of 21 January 2020, received at the Court on 13 February 2020, in criminal proceedings against

K. M.

other party:

Director of Public Prosecutions,

THE COURT (Sixth Chamber),

composed of L. Bay Larsen, President of the Chamber, C. Toader (Rapporteur) and M. Safjan, Judges,

Advocate General: H. Saugmandsgaard Øe,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

- K. M., by E. Sweetman, Barrister-at-Law, D.C. Smyth, Senior Counsel, and D.F. Conway, Solicitor,
- the Director of Public Prosecutions, by H. Kiely and A. Collins, acting as Agents, F. McDonagh, Senior Counsel, and T. Rice, Barrister-at-Law,
- Ireland, by A. Joyce, J. Quaney and M. Browne, acting as Agents, and B. Doherty, Barrister-at-Law,
- the European Commission, by F. Moro, K. Walkerová and A. Dawes, acting as Agents,

having decided, after hearing the Advocate General, to proceed to judgment without an Opinion,

gives the following

* Language of the case: English.

Judgment

- 1 This request for a preliminary ruling concerns the interpretation of the principle of proportionality, of Article 49(3) of the Charter of Fundamental Rights of the European Union ('the Charter') and of Articles 89 and 90 of Council Regulation (EC) No 1224/2009 of 20 November 2009 establishing a Community control system for ensuring compliance with the rules of the common fisheries policy, amending Regulations (EC) No 847/96, (EC) No 2371/2002, (EC) No 811/2004, (EC) No 768/2005, (EC) No 2115/2005, (EC) No 2166/2005, (EC) No 388/2006, (EC) No 509/2007, (EC) No 676/2007, (EC) No 1098/2007, (EC) No 1300/2008, (EC) No 1342/2008 and repealing Regulations (EEC) No 2847/93, (EC) No 1627/94 and (EC) No 1966/2006 (OJ 2009 L 343, p. 1).
- 2 The request has been made in the context of criminal proceedings brought against K. M., the master of a fishing vessel, for carrying on board equipment capable of automatically grading by size herring, mackerel or horse mackerel without the equipment being installed or located on the vessel in such a way as to ensure immediate freezing or to prevent the return of marine organisms to the sea.

Legal context

EU law

Regulation (EC) No 850/98

- 3 Article 19a of Council Regulation (EC) No 850/98 of 30 March 1998 for the conservation of fishery resources through technical measures for the protection of juveniles of marine organisms (OJ 1998 L 125, p. 1), as amended by Regulation (EU) No 227/2013 of the European Parliament and of the Council of 13 March 2013 (OJ 2013 L 78, p. 1) ('Regulation No 850/98'), a provision which is headed 'Prohibition of highgrading', states:
 1. Within Regions 1, 2, 3 and 4 the discarding, during fishing operations, of species subject to quota which can be legally landed shall be prohibited.
 2. The provisions referred to in paragraph 1 are without prejudice to the obligations set out in this Regulation or in any other Union legal acts in the field of fisheries.'
- 4 Article 32 of Regulation No 850/98, headed 'Restrictions on the use of automatic grading equipment', provides:
 1. The carrying or use on board a fishing vessel of equipment which is capable of automatically grading by size or by sex herring or mackerel or horse mackerel shall be prohibited.
 2. However, the carrying and use of such equipment shall be permitted provided that:
 - (a) the vessel does not simultaneously carry or use on board either towed gear of mesh size less than 70 millimetres or one or more purse seines or similar fishing gears;
or
 - (b) (i) the whole of the catch which may be lawfully retained on board is stored in a frozen state, the graded fish are frozen immediately after grading and no graded fish are returned to the sea except as required by Article 19;
and

- (ii) the equipment is installed and located on the vessel in such a way as to ensure immediate freezing and not to allow the return of marine organisms to the sea.

3. Any vessel authorised to fish in the Baltic, Belts or Sound may carry automatic grading equipment in the Kattegat provided that a special fishing permit has been issued to that effect.

The special fishing permit shall define the species, areas, time periods and any other required conditions applicable to the use and carriage on board of the grading equipment.'

Regulation (EC) No 1005/2008

5 Article 3 of Council Regulation (EC) No 1005/2008 of 29 September 2008 establishing a Community system to prevent, deter and eliminate illegal, unreported and unregulated fishing, amending Regulations (EEC) No 2847/93, (EC) No 1936/2001 and (EC) No 601/2004 and repealing Regulations (EC) No 1093/94 and (EC) No 1447/1999 (OJ 2008 L 286, p. 1), headed 'Fishing vessels engaged in [illegal, unreported and unregulated] fishing', provides:

'1. A fishing vessel shall be presumed to be engaged in [illegal, unreported and unregulated] fishing if it is shown that, contrary to the conservation and management measures applicable in the fishing area concerned, it has:

...

(e) used prohibited or non-compliant fishing gear; or

...

2. The activities set out in paragraph 1 shall be considered as serious infringements in accordance with Article 42 depending on the gravity of the infringement in question which shall be determined by the competent authority of the Member State, taking into account the criteria such as the damage done, its value, the extent of the infringement or its repetition.'

6 Article 42 of Regulation No 1005/2008, headed 'Serious infringements', states:

'1. For the purpose of this Regulation, serious infringement means:

(a) the activities considered to constitute [illegal, unreported and unregulated] fishing in accordance with the criteria set out in Article 3;

...

2. The serious character of the infringement shall be determined by the competent authority of a Member State taking into account the criteria set out in Article 3(2).'

7 Article 44 of Regulation No 1005/2008, headed 'Sanctions for serious infringements', provides:

'1. Member States shall ensure that a natural person having committed or a legal person held liable for a serious infringement is punishable by effective, proportionate and dissuasive administrative sanctions.

2. The Member States shall impose a maximum sanction of at least five times the value of the fishery products obtained by committing the serious infringement.

In case of a repeated serious infringement within a five-year period, the Member States shall impose a maximum sanction of at least eight times the value of the fishery products obtained by committing the serious infringement.

In applying these sanctions the Member States shall also take into account the value of the prejudice to the fishing resources and the marine environment concerned.

3. Member States may also, or alternatively, use effective, proportionate and dissuasive criminal sanctions.'

8 Article 45 of Regulation No 1005/2008, headed 'Accompanying sanctions', provides in point 3:

'The sanctions provided for in this Chapter may be accompanied by other sanctions or measures, in particular:

...

3. the confiscation of prohibited fishing gear, catches or fishery products;

...'

Regulation No 1224/2009

9 Recitals 2, 38 and 39 of Regulation No 1224/2009 are worded as follows:

'(2) Given that the success of the common fisheries policy involves implementing an effective system of control, the measures provided for in this Regulation seek to establish a Community system for control, inspection, and enforcement with a global and integrated approach in accordance with the principle of proportionality, so as to ensure compliance with all the rules of the common fisheries policy in order to provide for the sustainable exploitation of living aquatic resources by covering all aspects of this policy.

...

(38) Nationals of Member States should be deterred from committing infringements of the rules of the common fisheries policy. Since action taken following infringements of those rules differs widely from one Member State to another, thereby causing discrimination and unfair competition rules for fishermen and given that the absence of dissuasive, proportionate and effective sanctions in certain Member States reduces the effectiveness of controls, it is appropriate to introduce administrative sanctions in combination with a point system for serious infringements to provide a real deterrent.

(39) The persistence of a high number of serious infringements of the rules of the common fisheries policy within Community waters or by Community operators is to a large extent attributable to the non-deterrent level of sanctions for serious infringements of those rules laid down in national legislation. That weakness is compounded by the wide discrepancy in the levels of sanctions between Member States, which encourages illegal operators to operate in waters or within the territory of the Member States where the sanctions are lowest. It is therefore appropriate to complement the maximum levels of sanctions for serious infringements of the rules of the common fisheries policy as laid down in Article 44 of Regulation (EC) No 1005/2008 with dissuasive sanctions, taking into account the nature of the damage, value of the fishery products

obtained by committing the serious infringement, the economic situation of the offender and any repetition of an infringement. Immediate enforcement measures and complementary measures should also be laid down.’

10 Article 1 of Regulation No 1224/2009 provides that that regulation ‘establishes a Community system for control, inspection and enforcement ... to ensure compliance with the rules of the common fisheries policy’.

11 Article 89 of Regulation No 1224/2009, headed ‘Measures to ensure compliance’, states in paragraphs 1 to 3:

‘1. Member States shall ensure that appropriate measures are systematically taken, including administrative action or criminal proceedings in conformity with their national law, against the natural or legal persons suspected of a breach of any of the rules of the common fisheries policy.

2. The overall level of sanctions and accompanying sanctions shall be calculated, in accordance with the relevant provisions of national law, in such way as to make sure that they effectively deprive those responsible of the economic benefit derived from their infringement without prejudice to the legitimate right to exercise their profession. Those sanctions shall also be capable of producing results proportionate to the seriousness of such infringements, thereby effectively discouraging further offences of the same kind.

3. Member States may apply a system whereby a fine is proportionate to the turnover of the legal person, or to the financial advantage achieved or envisaged by committing the infringement.’

12 Article 90 of Regulation No 1224/2009, headed ‘Sanctions for serious infringements’, provides:

‘1. In addition to Article 42 of Regulation (EC) No 1005/2008, the following activities shall also be considered as serious infringements ...:

...

(c) the failure to land any species subject to a quota caught during a fishing operation, unless such landing would be contrary to obligations provided for in the rules of the common fisheries policy in fisheries or fishing zones where such rules apply.

2. Member States shall ensure that a natural person having committed or a legal person held liable for a serious infringement is punishable by effective, proportionate and dissuasive administrative sanctions, in accordance with the range of sanctions and measures provided for in Chapter IX of Regulation (EC) No 1005/2008.

3. Without prejudice to Article 44(2) of Regulation (EC) No 1005/2008, the Member States shall impose a sanction that is effectively dissuasive and, as appropriate, calculated on the value of the fisheries products obtained by committing a serious infringement.

4. In fixing the sanction, the Member States shall also take into account the value of the prejudice to the fishing resources and the marine environment concerned.

5. Member States may also, or alternatively, use effective, proportionate and dissuasive criminal sanctions.

6. The sanctions provided for in this Chapter may be accompanied by other sanctions or measures, in particular those described in Article 45 of Regulation (EC) No 1005/2008.’

Irish law

- 13 Under section 14(3) of the Sea Fisheries and Maritime Jurisdiction Act 2006 ('the 2006 Act'), where there is a contravention of a regulation made under that section, in relation to a sea-fishing boat or to fishing gear or equipment on board the boat, the master can be prosecuted. Section 14(4) provides that, in the event of a criminal prosecution, it is for the accused to show entitlement to any exemption that he or she invokes.
- 14 Section 28 of the 2006 Act concerns the fines for certain offences. The fines depend on the nature of the offence and on whether the prosecution is summary or on indictment. In the Irish legal system, summary criminal proceedings are proceedings which do not involve a jury, and take place before a single judge. This procedure is reserved for minor offences. More serious offences are tried on indictment, and the procedure involves a jury.
- 15 In the event of conviction on indictment, section 28(1) of the 2006 Act and Table 1 of that section define the maximum fine, but the court may impose a lesser fine. The maximum fine is laid down on the basis of the size of the vessel concerned. A fine imposed under section 28 will not be combined with an administrative fine or imprisonment.
- 16 Section 28(5) of the 2006 Act provides that, where a person is convicted on indictment of an offence laid down by that law, the catches and prohibited or non-compliant fishing gear found on the relevant vessel may be forfeited as a legal consequence of the conviction. Under section 28(5)(b), this forfeiture is mandatory in the event of conviction for most of the offences laid down by the 2006 Act, including the offence of which the appellant in the main proceedings was found guilty. However, the Court may decide not to order forfeiture in the event of conviction for a breach of section 8 or 9 of the 2006 Act, which deal with the unlawful presence of a vessel in Ireland's exclusive economic zone.
- 17 Section 28(6) of the 2006 Act lays down the rules relating to forfeiture in the event of summary conviction. Forfeiture is at the discretion of the court in the case of a first offence or in the case of conviction for breach of section 8 or 9 of the 2006 Act. On the other hand, it is mandatory in the case of a second or subsequent conviction, with the exception of a conviction for breach of section 8 or 9.
- 18 Section 28(7) of the 2006 Act provides that, in addition to any fine and forfeiture, the court may revoke or suspend the licence of the vessel concerned.

The dispute in the main proceedings and the question referred for a preliminary ruling

- 19 On 11 February 2015, a fishing vessel registered in the United Kingdom, of which K. M. was the master, was intercepted at sea in Ireland's exclusive economic zone by an Irish Naval Service vessel which was on patrol in the course of sea fisheries protection duty.
- 20 Following inspection of the fishing vessel, it was found that equipment capable of grading herring, mackerel or horse mackerel by size was on board, without it, however, being installed or located on the vessel in such a way as to ensure immediate freezing or to prevent the return of marine organisms to the sea. The Irish Naval Service took the view that the manner in which that equipment was set up gave grounds for suspecting that the vessel at issue had been engaging in an unlawful fishing activity, known as 'high grading', which consists in selecting the best fish from the catch and discarding the rest back into the sea.
- 21 As the carriage on board and use of that type of equipment was prohibited by both Article 32(1) of Regulation No 850/98 and Irish law, that is to say, the Sea Fisheries (Technical Measures) Regulations 2013 and section 14 of the 2006 Act, on 27 July 2015 K. M. was sentenced by the Cork Circuit

Criminal Court (Ireland), following his conviction for carriage of the equipment on board by verdict of a jury on 16 June 2015, in accordance with the charge brought by the Director of Public Prosecutions (Ireland). A fine of EUR 500 was imposed on him, accompanied by forfeiture of the catch, valued at EUR 344 000, and forfeiture of the non-compliant fishing gear, valued at EUR 55 000.

- 22 K. M. appealed against that sentence to the referring court, contesting the severity of the sanction imposed, especially so far as concerns forfeiture of the catch and forfeiture of the non-compliant fishing gear.
- 23 The referring court is uncertain whether a national provision which prescribes, as a sanction in the event of a serious infringement of the rules regarding the common fisheries policy, such as the infringement at issue in the main proceedings, the mandatory forfeiture of the catches and the prohibited or non-compliant fishing gear found on board is compatible with Regulation No 1224/2009 and the principle of proportionality enshrined in Article 49(3) of the Charter.
- 24 In those circumstances, the Court of Appeal (Ireland) decided to stay the proceedings and to refer the following question to the Court of Justice for a preliminary ruling:

‘In the context of the implementation of the Common Fisheries Policy and of the provisions of Article 32 of [Regulation No 850/1998], and in the context of a criminal prosecution taken to enforce the provisions thereof, is a provision of national law which provides on conviction on indictment, in addition to a fine, for the mandatory forfeiture of all fish and all fishing gear found on board the boat to which the offence relates, compatible with the provisions of [Regulation No 1224/2009], and specifically Articles 89 and 90 thereof, and the principle of proportionality under the Treaties ... and Article 49(3) of the [Charter]?’

Consideration of the question referred

- 25 By its question, the referring court asks, in essence, whether Articles 89 and 90 of Regulation No 1224/2009, read in the light of the principle of proportionality enshrined in Article 49(3) of the Charter, must be interpreted as precluding a national provision which, to penalise a breach of Article 32 of Regulation No 850/98, provides for not only the imposition of a fine but also the mandatory forfeiture of the catches and the prohibited or non-compliant fishing gear found on board the vessel concerned.
- 26 A preliminary point to note is that Regulation No 850/98, which is referred to in the order for reference, was repealed with effect from 14 August 2019 by Regulation (EU) 2019/1241 of the European Parliament and of the Council of 20 June 2019 on the conservation of fisheries resources and the protection of marine ecosystems through technical measures, amending Council Regulations (EC) No 1967/2006, (EC) No 1224/2009 and Regulations (EU) No 1380/2013, (EU) 2016/1139, (EU) 2018/973, (EU) 2019/472 and (EU) 2019/1022 of the European Parliament and of the Council, and repealing Council Regulations (EC) No 894/97, (EC) No 850/98, (EC) No 2549/2000, (EC) No 254/2002, (EC) No 812/2004 and (EC) No 2187/2005 (OJ 2019 L 198, p. 105). However, since Regulation No 850/98 was in force at the material time, it is applicable to the dispute in the main proceedings.
- 27 It is clear from Article 1 of Regulation No 1224/2009, read in the light of recital 2 thereof, that, given the fact that the success of the common fisheries policy involves implementing an effective system of control, that regulation seeks to establish a system for control, inspection, and enforcement with a global and integrated approach in accordance with the principle of proportionality, so as to ensure compliance with all the rules of the common fisheries policy in order to provide for the sustainable exploitation of living aquatic resources by covering all aspects of this policy.

- 28 In that connection, recital 38 of Regulation No 1224/2009 states that the absence of dissuasive, proportionate and effective sanctions in certain Member States reduces the effectiveness of controls.
- 29 Indeed, the obligation on the Member States to ensure that sanctions which are effective, proportionate and a deterrent are imposed for infringements of the rules of the common fisheries policy is of fundamental importance (see, to that effect, judgment of 29 October 2009, *Commission v Italy*, C-249/08, not published, EU:C:2009:672, paragraph 71 and the case-law cited).
- 30 In that context, Articles 89 and 90 of Regulation No 1224/2009 give the Member States the responsibility of ensuring that appropriate measures are taken to penalise infringements of the rules of the common fisheries policy. Without requiring particular sanctions, those articles lay down certain criteria that the Member States must take into account and the principle that the sanctions must be effective, proportionate and dissuasive.
- 31 In particular, Article 89(1) of Regulation No 1224/2009 imposes on Member States the obligation that they systematically take appropriate measures, including administrative action or criminal proceedings in conformity with their national law, against the natural or legal persons suspected of a breach of any of the rules of the common fisheries policy.
- 32 Article 89(2) of Regulation No 1224/2009 specifies that the overall level of sanctions and accompanying sanctions is to be calculated, in accordance with the relevant provisions of national law, in such a way as to make sure that they effectively deprive those responsible of the economic benefit derived from their infringement, without prejudice to the legitimate right to exercise their profession, and that those sanctions are to be capable of producing results proportionate to the seriousness of such infringements, thereby effectively discouraging further offences of the same kind. As is apparent from Article 89(3) of the regulation, in order to determine the proportionality of the fine the Member States may take certain factors into consideration, including the turnover of the legal person or the financial advantage achieved or envisaged by committing the infringement.
- 33 Article 90 of Regulation No 1224/2009 relates to cases of serious infringements. Under Article 90(1) of the regulation, read in the light of recital 39 thereof, in order to determine the gravity of infringements, the competent authority of the Member State is to take into account criteria such as the nature of the damage, its value, the economic situation of the offender and the extent of the infringement or its repetition. That provision also refers to the activities covered by Article 42 of Regulation No 1005/2008, read in conjunction with Article 3 of that regulation, which may constitute serious infringements and which include the use of prohibited or non-compliant fishing gear, such as the fishing gear at issue in the main proceedings.
- 34 As regards sanctions, it is clear from Article 90(3) of Regulation No 1224/2009 that the Member States are required to impose a sanction that is effectively dissuasive and, as appropriate, calculated on the value of the fisheries products obtained by committing a serious infringement. Article 90(4) of that regulation states that, in fixing the sanction, the Member States are also to take into account the value of the prejudice to the fishing resources and the marine environment concerned. In addition, under Article 90(5) of the regulation, the Member States may also, or alternatively, use effective, proportionate and dissuasive criminal sanctions.
- 35 It follows that, within those limits as resulting from Articles 89 and 90 of Regulation No 1224/2009, the choice of sanctions is left to the discretion of the Member States.
- 36 In that regard, it should be recalled that, according to settled case-law, in the absence of harmonisation at EU level in the field of the sanctions applicable, the Member States retain the power to choose the sanctions which seem to them to be appropriate. However, the Member States must exercise that

power in accordance with EU law and its general principles, and consequently in accordance with the principle of proportionality (judgment of 16 July 2015, *Chmielewski*, C-255/14, EU:C:2015:475, paragraph 21 and the case-law cited).

- 37 In particular, the administrative or punitive measures permitted under national legislation must not go beyond what is necessary in order to attain the objectives legitimately pursued by that legislation (judgment of 16 July 2015, *Chmielewski*, C-255/14, EU:C:2015:475, paragraph 22 and the case-law cited).
- 38 Furthermore, the severity of the sanctions must be commensurate with the seriousness of the breaches for which they are imposed, in particular by ensuring a genuinely dissuasive effect, while respecting the general principle of proportionality (judgment of 16 July 2015, *Chmielewski*, C-255/14, EU:C:2015:475, paragraph 23 and the case-law cited).
- 39 Whilst it is for the referring court to decide whether, in this instance, in relation to the infringement committed by K. M., the mandatory forfeiture of catches and prohibited or non-compliant fishing gear, in addition to a fine, is proportionate to the attainment of the objective legitimately pursued by the prohibition, laid down in Article 32(1) of Regulation No 850/98, relating to grading equipment, the fact remains that the Court may provide it with all the criteria for the interpretation of EU law which may enable it to determine whether that is the case (see, to that effect, judgment of 28 January 2016, *Laezza*, C-375/14, EU:C:2016:60, paragraph 37 and the case-law cited).
- 40 In that regard, it should be examined whether the severity of the sanction provided for by the national legislation exceeds the limits of what is appropriate and necessary in order to attain the objectives legitimately pursued by the legislation in question (see, to that effect, judgment of 9 March 2010, *ERG and Others*, C-379/08 and C-380/08, EU:C:2010:127, paragraph 86 and the case-law cited).
- 41 Furthermore, as the Court has already held, it should in particular be verified that, for persons engaging in fishing activity and related activities, there is a serious risk that infringements of the rules of the common fisheries policy will be detected and offenders will have sufficiently severe sanctions imposed on them (see, to that effect, judgment of 12 July 2005, *Commission v France*, C-304/02, EU:C:2005:444, paragraph 37).
- 42 As to the objective pursued by the prohibition, laid down in Article 32 of Regulation No 850/98, relating to grading equipment, it should be noted that that provision, which is intended to conserve fishery resources through technical measures for the protection of juveniles of marine organisms, prohibits such equipment from being carried or used on board unless it ensures the immediate freezing of catches and does not allow the return of marine organisms to the sea. The prohibition laid down in that provision has the objective in particular of preventing a practice that consists in keeping the most profitable species and returning the other species to sea in order to increase the value of catches, a practice which is prohibited in Article 19a of that regulation.
- 43 In that way, Article 32 of Regulation No 850/98 also pursues the objective of, first, preventing the risk of the non-reporting of certain quantities of discarded dead fish that are therefore not taken into account in the quota uptake, resulting in a risk of overfishing, and, second, gradually eliminating the discarding into the sea of unwanted catches in order to ensure the long-term environmental sustainability of fishing activities.
- 44 The mandatory forfeiture of catches and prohibited or non-compliant fishing gear appears to be such as to deter the persons concerned from infringing the prohibition, laid down in Article 32(1) of Regulation No 850/98, relating to grading equipment, by depriving them of the unlawfully acquired profits that they could otherwise enjoy and of the possibility of continuing to use such equipment.

- 45 The forfeiture of catches, as the European Commission has noted in its observations, has the effect of depriving the persons responsible for the infringement of the undue economic benefit derived from that infringement, which a fine alone cannot ensure. As regards forfeiture of the prohibited or non-compliant gear, which is on board a fishing vessel for the purposes of carrying out an unlawful activity, such as the equipment prohibited in Article 32(1) of Regulation No 850/98, it must be stated that that mandatory forfeiture constitutes an effective sanction that is proportionate to the objective pursued by the legislation infringed.
- 46 In that regard, it should be noted that Article 90(6) of Regulation No 1224/2009 provides that the sanctions provided for therein may be accompanied by other sanctions or measures, in particular those described in Article 45 of Regulation No 1005/2008. The latter article provides, in point 3, specifically for a supplementary sanction such as the confiscation of prohibited fishing gear, catches or fishery products.
- 47 In the present instance, it is apparent from the request for a preliminary ruling that a fine of EUR 500 was imposed on K. M., whilst the catch on board the fishing vessel had a value of EUR 344 000 and the non-compliant fishing gear was valued at EUR 55 000. It is also apparent from Ireland's written observations that the maximum fine that the courts may impose for an offence such as that at issue in the main proceedings is, under Irish law, EUR 10 000, EUR 20 000 or EUR 35 000, depending on the size of the vessel concerned.
- 48 If those fines were imposed as the sole sanction for that type of offence, they might not effectively deprive those responsible of the economic benefit derived from their infringement. Thus, such a sanction would be neither effective nor dissuasive.
- 49 In order to assess the proportionality of the sanction, account should also be taken of the relationship between the amount of the fine that may be imposed and the economic benefit derived from the infringement committed, in order to deter offenders from committing such an infringement, and, in accordance with Article 90(3) of Regulation No 1224/2009, of the value of the fisheries products obtained by committing a serious infringement.
- 50 Furthermore, if, as in the main proceedings, a fine is imposed on the master of the fishing vessel, who is not its owner, the latter could, first, not perceive any dissuasive effect resulting from that sanction and, second, continue to enjoy the economic benefit of the catches acquired in breach of Article 32 of Regulation No 850/98 and to possess, with a view to its possible use, the equipment prohibited by that provision.
- 51 Also, subject to the verifications which it is for the referring court to carry out, in accordance with section 28 of the 2006 Act, the sanction varies in relation to the seriousness of the infringement, as determined by the Irish authorities. Indeed, as Ireland explains in its observations, sanctions depend on the nature of the infringement, including on whether the prosecution is summary – which is a procedure not involving a jury, before a single judge, for minor offences – or is on indictment, for more serious offences, a procedure involving a jury. Where a person is convicted, the forfeiture of catches and prohibited or non-compliant fishing gear is mandatory for certain offences prescribed by the 2006 Act, but the court may decide not to order forfeiture for some offences or in the case of a first offence. The court may also apply a more severe sanction and revoke or suspend the licence of the vessel concerned.
- 52 Thus, in the light of the seriousness of the infringement and of the objective pursued in Article 32 of Regulation No 850/98, and subject to verifications concerning the overall level of the sanctions and accompanying sanctions under Irish law, which it is for the referring court to carry out, the mandatory forfeiture of catches and prohibited or non-compliant fishing gear is necessary in order to deprive those responsible of the economic benefit derived from their infringement. It also appears to have a dissuasive effect.

- 53 Therefore, such a sanction is consistent with the criteria laid down in Article 89(2) of Regulation No 1224/2009, stating that those responsible must be effectively deprived of the economic benefit derived from their infringement and that the sanctions must be capable of producing results proportionate to the seriousness of such infringements, thereby effectively discouraging further offences of the same kind.
- 54 In addition, the national court must assess the possible impact of the sanction on the offender as regards his or her legitimate right to exercise a profession, in accordance with Article 89(2) of Regulation No 1224/2009. In that regard, K. M. submits in his written observations before the Court that forfeiture of the catch and prohibited or non-compliant fishing gear would have very serious consequences for his reputation and career, that he did not set out deliberately to infringe the rules in question with a view to procuring a profit therefrom and that he had not committed other offences previously. It is, however, for the national court to consider those matters.
- 55 It should, furthermore, be noted that, although Article 90(1) of Regulation No 1224/2009 mentions certain criteria that the competent authorities of the Member State may take into account in order to assess the gravity of an infringement, that provision must be read in conjunction with recital 39 of that regulation, which states that those criteria are intended to set dissuasive sanctions. However, in the light of the type of sanctions at issue and in the absence of detail to this end in the text of that regulation, it should be noted that the requirement that sanctions introduced by the Member States must be proportionate does not mean that, in applying Article 90(1), those authorities must take account of the specific individual circumstances of each case or that they necessarily have to take account of intention or recidivism (see, by analogy, judgment of 16 July 2015, *Chmielewski*, C-255/14, EU:C:2015:475, paragraphs 28 and 29).
- 56 In the light of the foregoing, the answer to the question referred is that Articles 89 and 90 of Regulation No 1224/2009, read in the light of the principle of proportionality enshrined in Article 49(3) of the Charter, must be interpreted as meaning that, subject to the verifications which it is for the referring court to carry out, they do not preclude a national provision which, to penalise a breach of Article 32 of Regulation No 850/98, provides for not only the imposition of a fine but also the mandatory forfeiture of the catches and the prohibited or non-compliant fishing gear found on board the vessel concerned.

Costs

- 57 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national court, the decision on costs is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (Sixth Chamber) hereby rules:

Articles 89 and 90 of Council Regulation (EC) No 1224/2009 of 20 November 2009 establishing a Community control system for ensuring compliance with the rules of the common fisheries policy, amending Regulations (EC) No 847/96, (EC) No 2371/2002, (EC) No 811/2004, (EC) No 768/2005, (EC) No 2115/2005, (EC) No 2166/2005, (EC) No 388/2006, (EC) No 509/2007, (EC) No 676/2007, (EC) No 1098/2007, (EC) No 1300/2008, (EC) No 1342/2008 and repealing Regulations (EEC) No 2847/93, (EC) No 1627/94 and (EC) No 1966/2006, read in the light of the principle of proportionality enshrined in Article 49(3) of the Charter of Fundamental Rights of the European Union, must be interpreted as meaning that, subject to the verifications which it is for the referring court to carry out, they do not preclude a national provision which, to penalise a breach of Article 32 of Council Regulation (EC) No 850/98 of 30 March 1998 for the conservation of fishery resources through technical measures for the protection of juveniles of marine organisms, as amended by Regulation (EU) No 227/2013 of the European Parliament

and of the Council of 13 March 2013, provides for not only the imposition of a fine but also the mandatory forfeiture of the catches and the prohibited or non-compliant fishing gear found on board the vessel concerned.

Bay Larsen

Toader

Safjan

Delivered in open court in Luxembourg on 11 February 2021.

A. Calot Escobar
Registrar

L. Bay Larsen
President of the Sixth Chamber