

COURT OF FIRST INSTANCE

Action brought on 1 June 2001 by Pescanova SA against Commission of the European Communities**(Case T-119/01)**

(2001/C 245/34)

(Language of the case: Spanish)

An action against the Commission of the European Communities was brought before the Court of First Instance of the European Communities on 1 June 2001 by Pescanova SA, whose registered office is at Chapela, Pontevedra (Spain), represented by Antonio Creus, Begoña Uriarte and Salvador Rodríguez.

The applicant claims that the Court should:

- annul the Commission's decision of 19 March 2001 in so far as it reduces the contribution granted to that undertaking by way of Commission Decision C(94) 3834/4 final of 21 December 1994 for a project relating to the setting up of a joint company in the fishing sector;
- order the Commission to pay the costs.

Pleas in law and main arguments

The contested decision, which was adopted on the basis of Regulation No 4253/88⁽¹⁾, in particular Article 24 thereof, and on the basis of the EC/Argentina Agreement⁽²⁾, finds that the Community contribution amounting to EUR 1 824 813 granted in 1994 to the applicant is to be reduced to EUR 472 818 over three months, with effect from the date of the decision. According to the decision, the reason for reducing the contribution was that the fishing vessel Orense, which was transferred to Argentina when the joint company was set up, ceased to fish in Argentinian waters, without the prior authorisation of the Commission, eighteen months after the creation of the company, which is tantamount to a serious change in the conditions laid down for the granting of the assistance.

In support of its arguments seeking the annulment of the contested decision, the applicant claims:

- *Lack of legal basis*: The contested decision lacks a proper legal basis, since the EC/Argentina Agreement does not

lay down any procedure for reducing or recovering assistance granted to joint companies set up in accordance with the Agreement, neither does it refer to any Community legislation providing for such procedure. Moreover, the Commission has not specified at any time throughout the procedure what actual provisions of the EC/Argentina Agreement or conditions laid down in the decision granting the assistance it considers to have been infringed by the applicant. The applicant takes the view that there has been no infringement of any of the provisions of the EC/Argentina Agreement or of the decision granting the assistance and the contested decision must be annulled on the ground that the Commission erred in its assessment of an infringement for which there is no legal basis.

- *Breach of the principle of sound administration and of the rights of the defence*: The Commission has taken no account of the applicant's complaints, which have been submitted to it on numerous occasions throughout the administrative procedure.
- *Failure to provide a statement of reasons*: First, the Commission does not mention in the contested decision what provisions of applicable legislation it considers to have been infringed. Secondly, neither does it mention the facts which led the Orense to cease fishing in Argentinian waters, so that it did not set out the reasons why it considered that those facts could not be regarded as force majeure, capable of justifying the reduction of the amount of the contribution to be repaid, nor did it set out the grounds on which it decided not to allow such reduction.
- *Breach of the principles of legal certainty and legitimate expectations*: The applicant could not in any event have imagined that the Commission would initiate a procedure to reduce the contribution, since such a procedure is not provided for in the applicable legislation, not least in view of the practice of the Commission at the time and its lack of reaction when the company informed the Argentinian authorities that it was leaving Argentinian waters.

(1) Council Regulation (EEC) No 4253/88 of 19 December 1988, laying down provisions for implementing Regulation (EEC) No 2052/88 as regards coordination of the activities of the different Structural Funds between themselves and with the operations of the European Investment Bank and the other existing financial instruments (OJ 1988 L 374, p. 1).

(2) Council Regulation (EEC) No 3447/93 of 28 September 1993 on the conclusion of the Agreement between the European Economic Community and the Argentine Republic on relations in the sea fisheries sector (OJ 1993 L 318, p. 1).