

Action brought on 11 March 2004 by the Commission of the European Communities against the Kingdom of Spain

(Case C-132/04)

(2004/C 106/65)

An action against the Kingdom of Spain was brought before the Court of Justice of the European Communities on 11 March 2004 by the Commission of the European Communities, represented by L. Escobar Guerrero, member of the Commission's Legal Service, and by H. Kreppel, judge at the Social Court, assigned to the Legal Service as a national expert, with an address for service in Luxembourg.

The applicant claims that the Court should:

1. Declare that, by failing to transpose into its national legislation (or by doing so only partially) Article 2(1) and (2) and Article 4 of Council Directive 89/391/EEC⁽¹⁾ of 12 June 1989 on the introduction of measures to encourage improvements in the safety and health of workers at work as regards non-civilian personnel in public authorities, the Kingdom of Spain has failed to fulfil its obligations under that directive and under Articles 10 and 249 of the EC Treaty;
2. Order the Kingdom of Spain to pay the costs.

Pleas in law and main arguments:

The period prescribed for implementing the Directive in national law expired on 31 December 1992.

The object of Directive 89/391/EEC, which is to encourage improvements in the safety and health of workers at work, favours a broad interpretation of its scope. Moreover, it is settled case-law of the Court of Justice that exceptions to the scope of the Directive must be construed restrictively.

The inclusion in the scope of Directive 89/391/EEC of activities carried out in normal conditions by the armed forces, the police and other security forces provides the most favourable position for workers and better respects the principle of proportionality.

⁽¹⁾ OJ 1989 L 183, 29.6.1989, p. 1.

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(Case C-133/04)

(2004/C 106/66)

An action against the Commission of the European Communities was brought before the Court of Justice of the European Communities on 12 March 2004 by the Kingdom of Spain, represented by Enrique Braquehais Conesa, Abogado del Estado, with an address for service in Luxembourg.

The applicant claims that the Court should:

1. Annul Council Regulation (EC) No 2287/2003⁽¹⁾ of 19 December 2003 fixing for 2004 the fishing opportunities and associated conditions for certain fish stocks and groups of fish stocks, applicable in Community waters and, for Community vessels, in waters where catch limitations are required, in so far as it does not allocate quotas to Spain in relation to the fishing possibilities which were distributed before the accession of that State in respect of the North Sea;
2. Order the defendant to pay the costs.

Pleas in law and main arguments

1. Breach of the principle of non-discrimination:

Article 166 of the Act of Accession of Spain laid down, so far as concerns access to waters and resources of the Spanish fleet, a transitional period which ended upon the expiry of the period prescribed in Article 8(3) of Regulation (EEC) No 170/83, that is on 31 December 2002. However, the contested regulation in practice maintains the restrictions on access in respect of Spanish vessels to waters in the North Sea and in the Baltic Sea by granting practically no quotas in those waters, thus disregarding the fact that the transitional period has ended and discriminating against Spanish fishermen by comparison with those from other Member States.

2. Infringement of the Act of Accession of Spain:

The restrictions laid down in that Act are being extended beyond the time-limit laid down in Article 166 thereof by means of the contested regulation and inasmuch as certain quotas have not been allocated to Spanish vessels in the North Sea and in the Baltic Sea.

3. Breach of the principle of relative stability

The contested regulation radically changes the decisive factors so far as concerns the percentage of catches since Spanish vessels are not on an equal footing with vessels of the other Member States in terms of the application of the principle of relative stability.

(¹) OJ L 344 of 31.12.2003, p. 1.

Action brought on 12 March 2004 by Kingdom of Spain against Commission of the European Communities

(Case C-134/04)

(2004/C 106/67)

An action against the Commission of the European Communities was brought before the Court of Justice of the European Communities on 12 March 2004 by the Kingdom of Spain, represented by Enrique Braquehais Conesa, Abogado del Estado, with an address for service in Luxembourg.

The applicant claims that the Court should:

1. Annul Council Regulation (EC) No 2287/2003 (¹) of 19 December 2003 fixing for 2004 the fishing opportunities and associated conditions for certain fish stocks and groups of fish stocks, applicable in Community waters and, for Community vessels, in waters where catch limitations are required, in so far as it does not assign specific quotas to the Spanish fleet in Community waters in the North Sea and the Baltic Sea;
2. Order the defendant to pay the costs.

Pleas in law and main arguments

1. Breach of the principle of non-discrimination:

Article 166 of the Act of Accession of Spain laid down, so far as concerns access to waters and resources of the Spanish fleet, a transitional period which ended upon the expiry of the period prescribed in Article 8(3) of Regulation (EEC) No

170/83, that is on 31 December 2002. However, the contested regulation in practice maintains the restrictions on access in respect of Spanish vessels to waters in the North Sea and in the Baltic Sea by granting practically no quotas in those waters, thus disregarding the fact that the transitional period has ended and discriminating against Spanish fishermen by comparison with those from other Member States.

2. Infringement of the Act of Accession of Spain:

The restrictions laid down in that Act are being extended beyond the time-limit laid down in Article 166 thereof by means of the contested regulation and inasmuch as certain quotas have not been allocated to Spanish vessels in the North Sea and in the Baltic Sea.

3. Infringement of Article 20(2) of Regulation (EC) No 2371/2002

The distribution of Community fishing opportunities among the Member States has not been carried out, in the case of existing resources, in accordance with the principle of relative stability and, in the case of new fishing opportunities, having regard to the interests of the Member States, in the present case, those of the Kingdom of Spain.

(¹) OJ L 344 of 31.12.2003, p. 1.

Action brought on 12 March 2004 by the Commission of the European Communities against the Kingdom of Spain

(Case C-135/04)

(2004/C 106/68)

An action against the Kingdom of Spain was brought before the Court of Justice of the European Communities on 12 March 2004 by the Commission of the European Communities, represented by Michel Van Beek, Legal Adviser, and Gregorio Valero Jordano, member of its Legal Service, with an address for service in Luxembourg.

The applicant claims that the Court should:

- declare that, by allowing the practice of hunting migratory birds (woodpigeon – *Columba palumbus*) in Guipúzcoa, the Kingdom of Spain has failed to fulfil its obligations under Article 7(4) of Council Directive 79/409/EEC (¹) of 2 April 1979 on the conservation of wild birds;
- order the Kingdom of Spain to pay the costs.