

JUDGMENT OF THE COURT

10 July 2003 \*

In Joined Cases C-20/00 and C-64/00,

REFERENCE to the Court under Article 234 EC by the Court of Session (Scotland) (United Kingdom) for a preliminary ruling in the proceedings pending before that court between

**Booker Aquaculture Ltd**, trading as ‘Marine Harvest McConnell’ (C-20/00),

**Hydro Seafood GSP Ltd** (C-64/00)

and

**The Scottish Ministers**,

on the interpretation of the principles of Community law on the protection of fundamental rights, in particular of the right to property, and on the validity of Council Directive 93/53/EEC of 24 June 1993 introducing minimum Community measures for the control of certain fish diseases (OJ 1993 L 175, p. 23),

\* Language of the case: English.

THE COURT,

composed of: G.C. Rodríguez Iglesias, President, J.-P. Puissochet, R. Schintgen and C.W.A. Timmermans (Presidents of Chambers), C. Gulmann, D.A.O. Edward, A. La Pergola, F. Macken (Rapporteur), N. Colneric, S. von Bahr and J.N. Cunha Rodrigues, Judges,

Advocate General: J. Mischo,  
Registrar: H.A. Rühl, Principal Administrator,

after considering the written observations submitted on behalf of:

- Booker Aquaculture Ltd, by P.S. Hodge QC and J. Mure, advocate, instructed by Steedman Ramage, solicitors,
- Hydro Seafood GSP Ltd, by A. O'Neill QC and E. Creally, advocate, instructed by McClure Naismith, solicitors,
- The Scottish Ministers, by R. Magrill, acting as Agent, and by the Lord Advocate, C. Boyd QC assisted by N. Paines QC and L. Dunlop, advocate,
- the United Kingdom Government, by R. Magrill, acting as Agent, assisted by N. Paines QC,
- the French Government, by C. Vasak and K. Rispal-Bellanger, acting as Agents,

- the Italian Government, by U. Leanza, acting as Agent, assisted by F. Quadri, avvocato dello Stato,
- the Netherlands Government, by M.A. Fierstra, acting as Agent,
- the Norwegian Government, by M. Djupesland, acting as Agent,
- the Council of the European Union, by J. Carbery, acting as Agent,
- the Commission of the European Communities, by G. Berscheid and K. Fitch, acting as Agents,

having regard to the Report for the Hearing,

after hearing the oral observations of Booker Aquaculture Ltd, represented by P.S. Hodge QC and J. Mure, Hydro Seafood GSP Ltd, represented by A. O'Neill QC and E. Creally, The Scottish Ministers, represented by N. Paines QC and L. Dunlop, the United Kingdom Government, represented by G. Amodeo, acting as Agent, assisted by N. Paines QC, the Italian Government, represented by F. Quadri, the Council, represented by J. Carbery, and the Commission, represented by K. Fitch, at the hearing on 15 May 2001,

after hearing the Opinion of the Advocate General at the sitting on 20 September 2001,

gives the following

## Judgment

- 1 By orders of 11 January 2000 (C-20/00) and 18 February 2000 (C-64/00), received at the Court of Justice on 24 January and 28 February 2000 respectively, the Court of Session (Scotland) referred to the Court for a preliminary ruling under Article 234 EC several questions on the interpretation of the principles of Community law on the protection of fundamental rights, in particular of the right to property, and on the validity of Council Directive 93/53/EEC of 24 June 1993 introducing minimum Community measures for the control of certain fish diseases (OJ 1993 L 175, p. 23).
- 2 Those questions were raised in actions brought, respectively, by Booker Aquaculture Ltd (hereinafter 'Booker') and Hydro Seafood GSP Ltd (hereinafter 'Hydro Seafood') against the Scottish Ministers.
- 3 By order of the President of the Court of 10 May 2000, Cases C-20/00 and C-64/00 were joined for the purposes of the written procedure, the oral procedure and judgment.

## Legal framework

### *Community legislation*

#### Directive 91/67/EEC

- <sup>4</sup> Article 3(1) and (3) of Council Directive 91/67/EEC of 28 January 1991 concerning the animal health conditions governing the placing on the market of aquaculture animals and products (OJ 1991 L 46, p. 1), as amended by Council Directive 93/54/EEC of 24 June 1993 (OJ 1993 L 175, p. 34), provides:

‘1. The placing on the market of aquaculture animals shall be subject to the following general requirements:

- (a) they must show no clinical signs of disease on the day of loading;
- (b) they must not be intended for destruction or slaughter under a scheme for the eradication of a disease listed in Annex A;
- (c) they must not come from a farm which is subject to a prohibition for animal health reasons and must not have been in contact with animals from such a

farm and, in particular, from a farm which is subject to control measures in the context of... Directive 93/53/EEC...

...

3. Aquaculture products being placed on the market for human consumption must originate from animals which satisfy the requirement laid down in paragraph 1(a).’

5 Article 2(1), (2) and (3) of Directive 91/67, as amended, provides:

‘For the purposes of this Directive:

1. “aquaculture animals” means live fish... coming from a farm, including those from the wild intended for a farm;
2. “aquaculture products” means products derived from aquaculture animals, whether intended for farming, such as eggs and gametes, or for human consumption;

3. “fish...” means any fish..., at any stage of development’.

- 6 Annex A to Directive 91/67, as amended, entitled ‘Listed diseases/pathogens of fish, molluscs and crustacea’, sets out certain illnesses in column 1 and states against them, in column 2, the species which are susceptible to them. List I in that Annex includes, in column 1, only one disease, infectious salmon anaemia (‘ISA’), and designates, in column 2, Atlantic salmon as the species which is susceptible to it. Viral haemorrhagic septicaemia (‘VHS’) is one of the diseases in List II in that Annex, and turbot appears in column 2 in that list among the species susceptible to that disease.
- 7 The distinction between Lists I and II in that Annex, and the difference in the treatment laid down for the diseases mentioned therein, is justified by the fact that the diseases appearing in List I (hereinafter ‘List I diseases’) were not endemic in the Community, whereas the diseases in List II (hereinafter ‘List II diseases’) were already present in certain parts of the territory of the Community.
- 8 Article 5 of Directive 91/67, as amended, lays down the procedure to be followed to obtain approval of a zone within the territory of the Community, in which one or more of the List II diseases is not present (hereinafter ‘approved zone’). Article 6 of that directive institutes a similar procedure for farms situated in non-approved zones (hereinafter ‘approved farms’).

- 9 The criteria for approval of a zone are laid down in Annex B to Directive 91/67, as amended. Annex C to that directive contains similar provisions for the approval of farms.

- 10 Article 7(1) of Directive 91/67, as amended, reads as follows:

‘The placing on the market of live fish belonging to the susceptible species referred to in Annex A, column 2 of List II, their eggs or gametes, shall be subject to the following additional guarantees:

- (a) where they are to be introduced into an approved zone, they must, in accordance with Article 11, be accompanied by a movement document corresponding to the model set out in Annex E, Chapter 1 or 2, certifying that they come from an approved zone or an approved farm...;
- (b) where they are to be introduced into a farm which, although not situated in an approved zone, fulfils the conditions set out in Annex C I, they must in accordance with Article 11, be accompanied by a movement document corresponding to the model set out in Annex E, Chapter 1 or 2, certifying that they come respectively from an approved zone or from a farm of the same health status as the farm of destination.’

11 Article 9(1) of Directive 91/67, as amended, provides: “

‘The placing on the market in an approved zone of aquaculture animals and products for human consumption originating in a non-approved zone shall be subject to the following requirements:

1. Fish susceptible to the diseases referred to in Annex A, column 1, list II, must be slaughtered and eviscerated prior to dispatch. However, pending the outcome of the review provided for in Article 28, the obligation to eviscerate shall not be required, if the fish come from an approved farm in a non-approved zone. Derogations from this principle may be adopted under the procedure provided for in Article 26. Pending that decision, national rules shall continue to apply subject to compliance with the general provisions of the Treaty.’

- 12 It is therefore apparent from the provisions of Directive 91/67, as amended, that the requirement that fish must come from an approved zone or an approved farm if they are to be placed live on the market applies in relation to the species susceptible to List II diseases, including VHS, but not in relation to List I diseases, namely ISA. Species of fish susceptible to the diseases in List II, which come from neither an approved zone nor an approved farm, may be allowed into an approved zone only if they have been slaughtered and eviscerated prior to dispatch.

Decision 92/538/EEC

- 13 The zones of Great Britain and Northern Ireland were approved with regard to infectious haematopoietic necrosis and VHS by Commission Decision 92/538/EEC of 9 November 1992 (OJ 1992 L 347, p. 67).

Directive 93/53

- 14 Directive 93/53 applies to the diseases in Lists I and II. The 12th recital in its preamble states:

‘... Council Decision 90/424/EEC of 26 June 1990 on expenditure in the veterinary field..., and in particular Article 5 thereof, applies in the event of an outbreak of one of the diseases listed in Annex A to Directive 91/67/EEC’.

- 15 Article 3 of Directive 93/53 requires Member States to register farms which raise or keep fish which are susceptible to the diseases in Lists I and II. Under Article 4 of that directive they are required to make compulsory the notification of any case in which the existence of such a disease is suspected.

- 16 Article 5 of the same directive covers the situation in which fish are suspected of infection by a List I disease. It requires the adoption of various measures, including an official census of all species and categories of fish, the imposition of a safety zone around the affected farm, the disposal of dead fish or their offal under the supervision of the official service, the use of appropriate means of disinfection at the entrances and exits of the farm and an epizootic investigation.

17 Article 6 of Directive 93/53 states:

‘As soon as the presence of a List I disease has been officially confirmed, Member States shall ensure that the official service orders that, in addition to the measures listed in Article 5(2), the following measures be applied:

(a) in an infected farm:

- all fish must be immediately withdrawn,
- in the case of inland farms all pools must be drained for the purposes of cleaning and disinfection,
- all eggs and gametes, dead fish and fish showing clinical signs of disease shall be regarded as high-risk material and must be destroyed under the supervision of the official service, in accordance with Directive 90/667/EEC...,
- all live fish shall either be killed and destroyed under the supervision of the official service in accordance with Directive 90/667/EEC, or else, in the case of fish which have reached commercial size and show no clinical sign of disease, be slaughtered under the supervision of the official service for marketing or processing for human consumption.

In the latter case, the official service shall ensure that the fish are immediately slaughtered and gutted, that these operations are carried out in conditions such as to prevent the spread of pathogens, that the fish waste and offal are regarded as high-risk material and are submitted to a treatment to destroy pathogens in accordance with Directive 90/667/EEC and that the used water is submitted to a treatment which inactivates any pathogens it may contain;

- after removal of the fish, eggs and gametes, ponds, equipment and any material liable to be contaminated must be cleaned and disinfected as soon as possible following the instructions established by the official service in such a way as to eliminate any risk of the agent of the disease spreading or surviving. The procedures for cleaning and disinfecting an infected farm shall be determined in accordance with the procedure laid down in Article 19;
  - any substances which might be contaminated, referred to in Article 5 (2)(d), must be destroyed or treated in such a way as to ensure the destruction of any pathogen present;
  - an epizootic investigation must be carried out in accordance with Article 8(1) and the provisions of Article 8(4) must be applied; this investigation must include the taking of samples for laboratory examination;
- (b) all farms situated in the water catchment area or in the coastal zone in which the infected farm is situated shall undergo health inspections; if these inspections reveal positive cases, the measures provided for under (a) of this paragraph shall be applied;

- (c) the repopulation of the farm shall be authorised by the official service following satisfactory inspection of the cleaning and disinfection operations and at the end of a period deemed adequate by the official service to ensure eradication of the pathogen, and of other possible infections in the same water catchment area;
- (d) [if] application of the measures laid down under (a), (b), (c) and (d) of Article 5(2) requires the cooperation of the official services of other Member States, the official services of the Member States concerned shall collaborate to ensure compliance with the measures laid down in this Article.

Where necessary, appropriate additional measures shall be adopted in accordance with the procedure laid down in Article 19.’

18 Article 9 of Directive 93/53 provides:

‘1. Where a List II disease is suspected and/or confirmed in an approved zone or on an approved farm situated in a non-approved zone, an epizootic investigation shall be carried out in accordance with Article 8. Member States wishing to regain their status defined in accordance with Directive 91/67/EEC must comply with the provisions of Annexes B and C to that Directive.

2. If the epizootic investigation reveals that the disease could have been introduced from an approved zone or from another approved farm, or could have been transferred to another approved farm as a result of the movement of fish, eggs or gametes, vehicles or persons, or in any other way, those zones or farms shall be considered suspect and the appropriate measures shall apply.

3. The official service may, however, authorise the fattening of fish to be slaughtered until they reach commercial size.'

19 The provisions of Annex B to Directive 91/67, as amended, mentioned in Article 9(1) of Directive 93/53 provide that the approval of a zone may be restored provided that, among other things, all fish in the infected farms have been slaughtered, and infected or contaminated fish have been destroyed.

20 Under Article 17 of Directive 93/53:

'The conditions governing the Community's financial contribution to the measures connected with the application of this Directive are laid down in Decision 90/424/EEC.'

21 Article 20(2) of that directive provides:

'However, from the date laid down in paragraph 1, Member States may, subject to the general rules of the Treaty, maintain or apply in their territory stricter provisions than those laid down by this Directive. They shall notify the Commission of any such measure.'

## Decision 90/424/EEC

- 22 Council Decision 90/424/EEC of 26 June 1990 on expenditure in the veterinary field (OJ 1990 L 224, p. 19), lays down, among other things, detailed financial rules governing the Community's contribution towards emergency measures which are necessary in the case of outbreaks of the diseases listed in Article 3(1) thereof and towards programmes for the eradication and monitoring of certain diseases listed in the Annex thereto. It provides, in each case, for a financial contribution by the Community to national compensation programmes for farmers.
- 23 The list of diseases in Article 3(1) of Decision 90/424 does not include any fish disease. It may, however, as Article 5(2) of that decision expressly provides, be added to so as to include diseases which can be transmitted to fish.
- 24 In addition, by virtue of Article 3(2) of Decision 90/424, a Member State may obtain a financial contribution from the Community towards emergency measures which are necessary in the case of outbreaks of the diseases listed in paragraph 1 of that article, only on condition that the measures immediately applied by it include, at least, in particular, swift and adequate compensation of the livestock farmers.
- 25 The only fish disease which is mentioned in the list in the Annex to Decision 90/424 is infectious haematopoietic necrosis, which was added to that list by Council Decision 94/370/EC of 21 June 1994 (OJ 1994 L 168, p. 31).

*National legislation*

- 26 Directive 91/67 was implemented in the United Kingdom by the Fish Health Regulations 1992 (S.I. 1992 No 3300).
- 27 Directive 93/53 was implemented in the United Kingdom by the Diseases of Fish (Control) Regulations 1994 (S.I. 1994 No 1447). Regulations 4 and 5 thereof brought into effect the minimum Community measures for the control of List I diseases. They oblige the minister responsible to adopt orders requiring the application of measures prescribed by Directive 93/53.
- 28 When the Diseases of Fish (Control) Regulations 1994 were made, no clinical or other signs of List II diseases had been observed in the United Kingdom, entitling it, therefore, in that regard to the status of an approved zone. That Member State decided that an outbreak of such a disease called for the application of the same measures as the Community had laid down for List I diseases.
- 29 Regulation 7 of the Diseases of Fish (Control) Regulations 1994 therefore obliges the minister responsible to adopt orders imposing the same measures in respect of List II diseases as those intended to control List I diseases. The measures which the minister is bound to adopt by order in the case of a confirmed epidemic of VHS in an approved zone thus comprise:
- ‘(iii) the destruction of all eggs, gametes, dead fish, and fish showing clinical signs of disease, under the supervision of the Minister and in accordance with the provisions of Directive 90/667/EEC;

(iv) (aa) the killing and destruction of all live fish, under the supervision of the Minister and in accordance with the provisions of Directive 90/667/EEC; or

(bb) the slaughter of all live fish, for marketing or processing for human consumption, under the supervision of the Minister, but only if the fish have reached commercial size and show no clinical signs of disease.’

## Facts in the main proceedings and the questions referred

### *Case C-20/00*

30 McConnell Salmon Limited (‘MSL’) was acquired by Booker in 1995 and 1996. MSL had entered into a lease of a turbot farm on the Isle of Gigha (United Kingdom) in 1993. At the same time it had purchased a turbot stock of year classes 1991 and 1993. It subsequently introduced further turbot to the farm, of year class 1994. The farm was, at that time, situated in an approved zone under Directive 91/67, as amended.

31 In August 1994, an outbreak of VHS was confirmed at that farm, and, in September 1994, the Secretary of State for Scotland served a notice (hereinafter ‘the 1994 Notice’) on MSL under Regulation 7 of the Diseases of Fish (Control) Regulations 1994.

32 Under Article 4 of the 1994 Notice:

‘Subject to paragraph 5 hereof, all fish will be killed and their carcasses destroyed in accordance with the provisions of Council Directive 90/667/EEC provided that the carcasses or remains of those fish shall be disposed of in such a manner or to such a place as shall be previously approved by the Secretary of State.’

33 Article 5 of the 1994 Notice provides:

‘Any fish which, at the date of this Notice, are of commercial size may be slaughtered for marketing or processing for human consumption provided that:

(a) in the opinion of an inspector they show no clinical signs of disease;

(b) they are first eviscerated;

(c) their slaughter, evisceration and preparation for marketing or processing for human consumption is carried out in accordance with any rule of law relating to those matters;

...’

- 34 The fish in year classes 1993 and 1994 were not of a commercial size when the 1994 Notice was served and thus had to be killed and destroyed in accordance with paragraph 4 thereof. The fish in year class 1991, which were then of commercial size, were slaughtered for marketing or processing for human consumption, in accordance with paragraph 5 of that notice.
- 35 As a result of that outbreak of VHS, Decision 92/538 was amended by Commission Decision 94/817/EC of 15 December 1994 (OJ 1994 L 337, p. 88), so as to redefine the approved zones with regard to VHS as including '[t]he territory of Great Britain except the island of Gigha'.
- 36 MSL claimed compensation from the Secretary of State for the loss it had allegedly suffered as a result of the slaughter and destruction of the 1993 and 1994 fish, and the slaughter and forced early marketing of the 1991 fish. In May 1996, the Secretary of State informed the petitioner in the main proceedings that he considered that it had no legal right to compensation, and, moreover, that it would be inappropriate to make an *ex gratia* payment, on the ground that the Government had a long-established policy of not paying compensation to those subjected to measures taken for the control of fish diseases.
- 37 Booker commenced an action against the Secretary of State seeking judicial review of Regulation 7 of the Diseases of Fish (Control) Regulations 1994 and of the decision refusing compensation taken by the Secretary of State in May 1996. At first instance, the Lord Ordinary in the Court of Session (Scotland) (United Kingdom) found that the Secretary of State had acted illegally by failing to provide either legislative or administrative means for payment of any compensation where slaughter orders were made under that regulation.

38 The Secretary of State appealed against that decision. The Scottish Ministers, who had in law succeeded the Secretary of State, adopted his position in relation to the claim for compensation and proceeded with the appeal.

39 Since it took the view that the outcome of the main proceedings depended on the interpretation of Community law, the Court of Session (Scotland) decided to stay proceedings and to refer the following questions to the Court for a preliminary ruling:

‘1. Where, in implement of an obligation under Directive 93/53/EEC to provide control measures for an outbreak of a List II disease on an approved farm or in an approved zone, a Member State adopts a domestic measure the application of which results in the destruction and slaughter of fish, are the principles of Community law relating to the protection of fundamental rights, in particular the right to property, to be interpreted as having placed on a Member State the obligation to adopt measures providing for the payment of compensation:

(a) to an owner of fish which are destroyed; and

(b) to an owner of fish which are required to be slaughtered immediately, thereby necessitating the immediate sale of those fish by that owner?

2. If the Member State is required to adopt such measures, what are the criteria of interpretation needed by a national court to determine whether the measures that are adopted are compatible with the fundamental rights, in

particular the right to property, which the Court ensures and which derive in particular from the European Convention on Human Rights?

3. In particular, do the criteria require that the measures differentiate between the situation where the outbreak of the disease was due to the fault of the owner of the fish concerned and the situation where the owner was not at fault?’

*Case C-64/00*

40 Hydro Seafood operates several salmon farms in western Scotland. In 1998, those farms were affected by an outbreak of ISA. Pursuant to Regulation 5 of the Diseases of Fish (Control) Regulations 1994, the Secretary of State served several notices (hereinafter ‘the 1998 Notices’) on Hydro Seafood between May and July 1998 requiring the slaughter of its stocks of fish which were not yet of marketable size and the marketing of its stocks which were of such size.

41 Hydro Seafood complied with the 1998 Notices. It claimed however that, besides the loss resulting directly from the destruction and early sale of its fish stocks, it had incurred further significant costs through the stringent practical measures imposed by the 1998 Notices. Hydro Seafood therefore claimed compensation from the Secretary of State for its losses, which it estimated at GBP 14 million. The latter rejected the claim and refused any compensation.

42 In March 1999, Hydro Seafood commenced an action against the Secretary of State for judicial review of that decision refusing compensation. Having succeeded the Secretary of State, the Scottish Ministers adopted the same position.

43 Since it took the view that the main action raised similar but not identical questions to those referred to the Court in Case C-20/00, the Court of Session (Scotland) decided to stay proceedings and to refer the following questions to the Court for a preliminary ruling:

‘1. Where, in implement of an obligation under Directive 93/53/EEC to provide control measures for an outbreak of a List I disease, a Member State adopts a domestic measure the application of which results in the destruction and slaughter of fish, are the principles of Community law relating to the protection of fundamental rights, in particular the right to property, to be interpreted as having placed on a Member State the obligation to adopt measures providing for the payment of compensation:

(a) to an owner of fish which are destroyed; and

(b) to an owner of fish which are required to be slaughtered immediately, thereby necessitating the immediate sale of those fish by that owner?

2. If the Member State is required to adopt such measures, what are the criteria of interpretation needed by a national court to determine whether the

measures that are adopted are compatible with the fundamental rights, in particular the right to property, which the Court ensures and which derive in particular from the European Convention on Human Rights?

3. In particular, do the criteria require that the measures differentiate between the situation where the outbreak of the disease was due to the fault of the owner of the fish concerned and the situation where the owner was not at fault?
4. Is Directive 93/53/EEC invalid as being in breach of the fundamental right to property in not making provision for the payment of compensation to (a) an owner of fish which are destroyed and (b) to an owner of fish which are required to be slaughtered immediately, thereby necessitating the immediate sale of those fish by that owner, in circumstances where an outbreak of ISA has been confirmed?’

The first and second questions in Cases C-20/00 and C-64/00 and the fourth question in Case C-64/00

- 44 It should be noted, at the outset, that Directive 93/53 provides that, at farms infected by certain diseases, Member States are to adopt, among others, the following measures:

- in relation to List I diseases, all fish showing clinical signs of disease are to be regarded as high-risk material and must be destroyed under the supervision of the official service. All live fish must be killed and destroyed under the

supervision of the official service, or, in the case of fish which are of marketable size and show no clinical signs of disease, be slaughtered under the supervision of the official service with a view to their marketing or processing for human consumption (first paragraph of Article 6, subparagraph (a), of Directive 93/53);

- in relation to List II diseases, the restoration of a zone's approval under Directive 91/67, as amended, is subject to fulfilment of the requirements of Annex B to that directive, particularly the slaughter of all fish at the infected farms and the destruction of the infected or contaminated fish. The official service may, however, authorise the fattening of fish to be slaughtered until they reach commercial size (Article 9 of Directive 93/53).

- 45 In that context, the first two questions referred for a preliminary ruling in both Case C-20/00 and Case C-64/00, as well as the fourth question referred in Case C-64/00, are intended to ascertain, firstly, whether Directive 93/53, in so far as it imposes minimum control measures for List I diseases, is invalid because it infringes the fundamental right to property and, secondly, whether the measures adopted by a Member State against List I and List II diseases in implementing that directive are incompatible with that right, where neither the directive nor the national implementing measures provides for the award of compensation to affected owners.

### *Observations submitted to the Court*

- 46 All the interested parties which have submitted observations to the Court point out that fundamental rights are an integral part of the general principles of

Community law. They state, further, that the requirements arising from the protection of fundamental rights in the Community legal order are also binding on the Member States when they implement Community legislation and that such rights include the right to property, which is also enshrined in Article 1 of the First Protocol to the European Convention for the Protection of Human Rights and Fundamental Freedoms, signed at Rome on 4 November 1950 (hereinafter ‘the ECHR’).

- 47 Booker and Hydro Seafood submit that the principles of Community law on the protection of fundamental rights, in particular of the right to property, are to be interpreted as meaning that they require compensation to be paid to owners whose fish have been destroyed, either by being killed and destroyed or by being slaughtered in circumstances such as those in the main proceedings. They cite in that regard, in particular, the case-law of the European Court of Human Rights (*Sporrong and Lönnroth v. Sweden*, judgment of 23 September 1982, Series A No 52; *James and Others v. United Kingdom*, judgment of 21 February 1986, Series A No 98, and *Pressos Compania Naviera SA and Others v. Belgium*, judgment of 20 November 1995, Series A No 332).
- 48 According to the petitioners in the main proceedings, the existence and extent of the right to compensation are important elements in the balance between the general public interest and private rights so as to ensure that the protection accorded by Article 1 of the First Protocol of the ECHR against expropriation and deprivation of use of property is not illusory or wholly ineffective.
- 49 They state that they do not contend that the restrictions placed, in the circumstances of the main proceedings, on their right to property run counter to objectives of general interest pursued by the Community in the context of the common organisation of the aquaculture market. However, in the absence of any form of compensation, they submit that the measures taken by the United Kingdom Government constitute a disproportionate and intolerable interference impairing the very substance of that right.

- 50 Booker and Hydro Seafood submit also that, in so far as it affects a fundamental right such as the right to property, the complete absence of compensation for persons affected by national measures implementing a directive infringes the principle of proportionality.
- 51 Hydro Seafood also submits that there are no exceptional circumstances such as might justify an absolute refusal to compensate it for the losses suffered as a result of the measures in issue in the main proceedings.
- 52 The Scottish Ministers, the United Kingdom, French, Italian, Netherlands and Norwegian Governments as well as the Council and the Commission contend, on the contrary, firstly, that the Court of Justice has never held that the general principles of Community law require the payment of compensation in circumstances such as those in the main proceedings and, secondly, that such an absence of compensation is compatible with the case-law of the European Court of Human Rights.
- 53 The Scottish Ministers, the Netherlands Government and the Commission submit further that the losses suffered by the petitioners in the main proceedings result not from the destruction and slaughter ordered but from the outbreak of diseases regarding which the Community is justified in taking measures to control.
- 54 According to the French, Italian, Netherlands and Norwegian Governments as well as the Council and the Commission, where the destruction and slaughter of fish are justified by a Community objective of general interest and such measures are not so disproportionate in relation to the objective pursued as to impair the very substance of the right to property, they do not require the payment of compensation.

- 55 In relation to the validity of Directive 93/53, Hydro Seafood submits that, while that directive does not expressly provide for a system of compensation for farmers affected by measures which it imposes, it impliedly envisages one. If the Member States have neither the power nor the obligation to establish a system of compensation for such farmers, the relevant provisions of the directive should be held to be unlawful.
- 56 According to the Italian and Netherlands Governments as well as the Council and the Commission, the fact that Directive 93/53 makes no provision for compensating farmers does not mean that it infringes the right to property and thus is tainted by illegality.
- 57 The Netherlands Government also submits that, in the absence of Community provisions regulating the question, the principle and the form of such compensation are matters for each Member State.

### *Findings of the Court*

- 58 By adopting Directive 93/53, the Community legislature laid down animal health and preventive measures which Member States must take to prevent and to eliminate certain fish diseases in their territory.
- 59 It must be stated at the outset that no right of compensation for the benefit of owners whose fish have been destroyed or slaughtered following the implementation of such measures follows either from the scheme or from the terms of Directive 93/53.

- 60 It is true that Article 17 of Directive 93/53 provides that the conditions governing the Community's financial contribution towards the measures connected with the application of that directive are laid down in Decision 90/424. That decision makes provision for a financial contribution by the Community for the benefit of Member States which have, in particular, incurred costs in compensating owners whose animals have been slaughtered or destroyed in order to control certain diseases, within the framework of either emergency measures or eradication and monitoring programmes.
- 61 However, the list in Article 3(1) of Decision 90/424, which sets out the diseases subject to emergency measures, does not mention any fish disease.
- 62 Furthermore, by virtue of Article 3(2) of Decision 90/424, a Member State may obtain a financial contribution from the Community for emergency measures which are necessary in the case of outbreaks of the diseases listed in Article 3(1) only on condition that the measures immediately applied by it include, at least, in particular, swift and adequate compensation for farmers. It is therefore only if the Member State decides to pay such compensation and satisfies those requirements that it may obtain the financial contribution from the Community.
- 63 The Community financial measure which Article 24 of Decision 90/424 provides for the eradication and monitoring of diseases can apply only to the diseases listed in the annex to that decision. Since Decision 94/370 came into force, the only fish disease on that list has been infectious haematopoietic necrosis.

- <sup>64</sup> It is therefore necessary to determine whether, in the absence of compensation for affected farmers, Directive 93/53 is compatible with the fundamental right to property.
- <sup>65</sup> In that regard, according to settled case-law, fundamental rights form an integral part of the general principles of law, whose observance the Court ensures. For that purpose, the Court draws inspiration from the constitutional traditions common to the Member States and from the guidelines supplied by international treaties for the protection of human rights on which the Member States have collaborated or to which they are signatories (see, to that effect, Case 44/79 *Hauer* [1979] ECR 3727, paragraph 15). The ECHR has special significance in that respect (see, among others, Case C-274/99 P *Connolly v Commission* [2001] ECR I-1611, paragraph 37, and Case C-94/00 *Roquette Frères* [2002] ECR I-9011, paragraph 25).
- <sup>66</sup> The principles established by that case-law have been reaffirmed in the preamble to the Single European Act and in Article F(2) of the Treaty on European Union (Case C-415/93 *Bosman* [1995] ECR I-4921, paragraph 79). They are now set out in Article 6(2) EU pursuant to which the Union ‘shall respect fundamental rights, as guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms... and as they result from the constitutional traditions common to the Member States, as general principles of Community law’.
- <sup>67</sup> The right to property is one of the fundamental rights protected by the Court (*Hauer*, cited above, paragraph 17).
- <sup>68</sup> However, fundamental rights are not absolute rights but must be considered in relation to their social function. Consequently, restrictions may be imposed on the exercise of those rights, in particular in the context of a common organisation

of the markets, provided that those restrictions in fact correspond to objectives of general interest pursued by the Community and do not constitute, with regard to the aim pursued, a disproportionate and intolerable interference, impairing the very substance of those rights (Case 5/88 *Wachauf* [1989] ECR 2609, paragraph 18; Case C-177/90 *Kühn* [1992] ECR I-35, paragraph 16, and Case C-22/94 *The Irish Farmers' Association and Others* [1997] ECR I-1809, paragraph 27).

- 69 It is in the light of those criteria that the Court must assess the compatibility of the regime in issue in the main proceedings with the requirements arising from the protection of the fundamental right to property.
- 70 It is necessary, firstly, to identify the objectives pursued by Directive 93/53 and, secondly, to determine whether, taking account of such objectives, the destruction and slaughter measures provided for by that directive constitute, in the absence of compensation for affected owners, a disproportionate and intolerable interference impairing the very substance of the right to property.
- 71 The provisions of Directive 93/53 must be seen against the background of the common organisation of the market in aquaculture animals and products, which is closely connected with the structural policy of the Community in that field. Certain objectives pursued in that regard are apparent from Directive 91/67, as amended.
- 72 It follows from the entirety of Directive 91/67, as amended, that the policy implemented by the Community is intended to contribute to the completion of the internal market in aquaculture animals and products while avoiding the spread of contagious diseases of fish.

- 73 That directive therefore seeks to attain, within the framework of the guidelines laid down in Article 39 of the EC Treaty (now, after amendment, Article 33 EC), a double objective which is, firstly, to ensure, by the completion of the internal market, the rational development of the aquaculture sector and to increase its productivity and, secondly, to lay down, at Community level, health rules for that sector.
- 74 In order to attain that double objective, Directive 91/67, as amended, lays down general requirements relating to the placing on the market of aquaculture animals, including the species susceptible to List I and II diseases. It establishes a broad range of rules which apply both to the approval of zones and farms considered to be completely or partially clear of List II diseases, including VHS, and to the placing on the market of aquaculture animals and products.
- 75 In relation to List II diseases, Articles 5 to 7 and 9 of, as well as Annex A to, Directive 91/67, as amended, should be noted. Since the health situation of aquaculture animals is not the same throughout the territory of the Community, those provisions define and govern approved zones and approved farms which are entitled to a special animal health status, in order to facilitate the placing on the market of fish from such zones and farms.
- 76 In particular, Article 7 of Directive 91/67, as amended, provides that species of fish susceptible to List II diseases may be freely transported alive and placed on the market in the Community if they come from an approved zone or farm. In order to allow such placing on the market, that directive defines the conditions and the procedure which apply to the approval of a zone or farm and to the maintenance, suspension, restoration and withdrawal of approval.

- 77 It was in that context that Directive 93/53 was adopted. It is apparent from its preamble that it too fulfils a double function. Firstly, it enables the taking of control measures as soon as the presence, on a farm, of a List I or II disease is suspected, so that immediate and effective action can be implemented once the presence of the disease is confirmed. Secondly, as an outbreak of disease can quickly spread and become epizootic, causing the death of numerous fish as well as disturbances on such a scale that the profitability of aquaculture can be seriously reduced, that directive seeks to prevent the spread of the disease, in particular by carefully monitoring movements of fish and products liable to spread the infection.
- 78 Directive 93/53 therefore seeks to contribute to the completion of the internal market in aquaculture animals and products and forms part of a regime intended to introduce minimum Community measures for the control of certain fish diseases. Accordingly, the measures which that directive imposes are in conformity with objectives of general interest pursued by the Community.
- 79 As to whether, taking into account the objective sought and in the absence of compensation, the restrictions on the right to property resulting from those measures constitute a disproportionate and intolerable interference impairing the very substance of the right to property, it must be observed that those measures are urgent and are intended to guarantee that effective action is implemented as soon as the presence of a disease is confirmed and to eliminate any risk of the spread or survival of the pathogen.
- 80 Further, the measures referred to do not deprive farm owners of the use of their fish farms, but enable them to continue to carry on their activities there.

- 81 In effect, the immediate destruction and slaughter of all the fish enable owners to restock the affected farms as soon as possible.
- 82 Those measures therefore enable the resumption of the transportation and placing on the market in the Community of species of live fish susceptible to List I and II diseases, with the result that all interested parties, including fish farm owners, may benefit as a result.
- 83 Finally, as Booker itself acknowledged, the business which it carries on as an owner of a fish farm carries commercial risks. As the Scottish Ministers, the United Kingdom and Netherlands Governments and the Commission correctly maintained, the petitioners in the main proceedings can expect, as farmers, that a fish disease may break out at any moment and cause them loss. Such risk is inherent in the business of raising and selling livestock and is the consequence of a natural occurrence, so far as both List I and II diseases are concerned.
- 84 As to the extent of any loss, by reason of their condition, fish which show clinical signs of disease have no marketable value. So far as concerns fish which have reached a commercial size and could have been marketed or processed for human consumption since they were not showing, when slaughtered, any clinical sign of disease, any loss eventually suffered by farmers by reason of the immediate slaughter of that kind of fish arises from the fact that they have been unable to choose the most advantageous time for their sale. In fact, because of the risk of their presenting clinical signs of disease in future, it is impossible to determine a more advantageous time for their sale. So far as all other types of fish are concerned, it is not possible to establish whether they have any marketable value either, because of the risk that in the future they will develop clinical signs of disease.

- 85 Admittedly, the Community legislature may consider, in the context of its broad discretion in the field of agricultural policy (see Case C-315/93 *Flip and Verdegem* [1995] ECR I-913, paragraph 26), that full or partial compensation is appropriate for owners of farms on which animals have been destroyed and slaughtered. Nonetheless, the existence, in Community law, of a general principle requiring compensation to be paid in all circumstances cannot be inferred from that fact.
- 86 It follows from all the preceding considerations that the minimum measures of immediate destruction and slaughter laid down by Directive 93/53 in order to control List I diseases do not constitute, in the absence of compensation for affected owners, a disproportionate and intolerable interference impairing the very substance of the right to property.
- 87 Therefore, the reply to the fourth question referred in Case C-64/00 must be that examination of that question has disclosed no factor of such a kind as to affect the validity of Directive 93/53 by reason of its laying down minimum measures to control List I diseases without providing for compensation for owners affected by those measures.
- 88 As regards the application of Directive 93/53 by the Member States, it is settled case-law (see, in particular, *Wachauf*, cited above, paragraph 19, and Case C-2/92 *Bostock* [1994] ECR I-955, paragraph 16), that the requirements flowing from the protection of fundamental rights in the Community legal order are also binding on Member States when they implement Community rules. Consequently, Member States must, as far as possible, apply those rules in accordance with those requirements.

- 89 The United Kingdom adopted the minimum measures to control List I diseases required by Directive 93/53. It did not make use of the power accorded to the Member States by Article 9(3) of that directive permitting the fattening of fish infected by a List II disease until they reach commercial size, but imposed, with regard to List II diseases, measures equivalent to those required by the directive in respect of List I diseases.
- 90 In circumstances such as those in the main proceedings, on the one hand, the implementation by a Member State of compulsory control measures against List I diseases, which are identical to the minimum measures which the Community has imposed for those diseases and do not provide for compensation, does not constitute, having regard to the considerations set out in paragraphs 79 to 85 of this judgment, a disproportionate and intolerable interference impairing the very substance of the right to property.
- 91 On the other hand, the immediate destruction and slaughter of fish on a farm infected by a List II disease enable the restoration in a Member State, as quickly as possible, of the approval of a zone in a part of the territory of the Community in which that disease is not present. Such restoration enables species of live fish susceptible to those diseases to be placed on the market freely in the Community at the earliest opportunity and the prohibition, in an approved zone, of the placing on the market of those species of live fish which do not come from an approved zone or farm.
- 92 For the same reasons as those mentioned in paragraphs 79 to 85 and 91 of this judgment, in circumstances such as those in the main proceedings, the implementation by a Member State of control measures against List II diseases, which are similar to the minimum measures which the Community has laid down for List I diseases and which do not provide for compensation, corresponds to objectives of general interest pursued by the Community and does not constitute a disproportionate and intolerable interference impairing the very substance of the right to property.

- 93 Therefore, the reply to the first two questions referred in Cases C-20/00 and C-64/00 must be that measures for the immediate destruction and slaughter of fish implemented by a Member State in order to control List I and II diseases in the context of the application of Directive 93/53, which are, respectively, identical and similar to the minimum measures which the Community has laid down for List I diseases and which do not provide for compensation, are not, in circumstances such as those in the main proceedings, incompatible with the fundamental right to property.

The third question referred in Cases C-20/00 and C-64/00

- 94 By the third question referred in Cases C-20/00 and C-64/00, the national court asks whether the determination of the compatibility with the fundamental right to property of the measures adopted by a Member State in order to control List I and II diseases in the context of the application of Directive 93/53 may differ, depending on whether or not the outbreak of the disease is due to the fault of the fish owner.
- 95 Having regard to the replies given to the first and second questions in Cases C-20/00 and C-64/00, the reply to the third question in those cases must be that, in circumstances such as those in the main proceedings, the fact that the outbreak of the disease is due or not due to the fish owner's fault has no bearing on the compatibility with the fundamental right to property of the measures imposed by a Member State in order to control List I and II diseases in the context of the application of Directive 93/53.

## Costs

- <sup>96</sup> The costs incurred by the United Kingdom, French, Italian, Netherlands and Norwegian Governments and by the Council and the Commission, which have submitted observations to the Court, are not recoverable. Since these proceedings are, for the parties to the main proceedings, 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 answer to the questions referred to it by the Court of Session (Scotland) by orders of 11 January and 18 February 2000, hereby rules:

1. Examination of the fourth question referred for a preliminary ruling in Case C-64/00 has disclosed no factor of such a kind as to affect the validity of Council Directive 93/53/EEC of 24 June 1993 introducing minimum Community measures for the control of certain fish diseases, by reason of its laying down minimum measures to control diseases in List I in Annex A to Council Directive 91/67/EEC of 28 January 1991 concerning the animal health conditions governing the placing on the market of aquaculture animals and products, as amended by Council Directive 93/54/EEC of 24 June 1993, without providing for compensation for owners affected by those measures.

2. The measures for the immediate destruction and slaughter of fish implemented by a Member State in order to control List I and II diseases in the context of the application of Directive 93/53, which are, respectively, identical and similar to the minimum measures which the Community has laid down for List I diseases and which do not provide for compensation, are not, in circumstances such as those in the main proceedings, incompatible with the fundamental right to property.
  
3. In circumstances such as those in the main proceedings, the fact that the outbreak of the disease is due or not due to the fish owner's fault has no bearing on the compatibility with the fundamental right to property of the measures imposed by a Member State in order to control List I and II diseases in the context of the application of Directive 93/53.

Rodríguez Iglesias	Puissochet	Schintgen
Timmermans	Gulmann	Edward
La Pergola	Macken	Colneric
von Bahr	Cunha Rodrigues	

Delivered in open court in Luxembourg on 10 July 2003.

R. Grass

G.C. Rodríguez Iglesias

Registrar

President