JUDGMENT OF THE COURT (Fifth Chamber)

14 November 2002 *

In Case C-140/00,

Commission of the European Communities, represented by T. van Rijn and K. Fitch, acting as Agents, with an address for service in Luxembourg,

applicant,

v

United Kingdom of Great Britain and Northern Ireland, represented by R. Magrill, acting as Agent, and M. Hoskins, Barrister, with an address for service in Luxembourg,

defendant,

* Language of the case: English.

APPLICATION for a declaration that, in respect of each of the years 1991 to 1996, by:

— failing to put in place appropriate detailed rules for the utilisation of the quotas allocated to it,

— failing to carry out the inspections and other controls required by the relevant Community regulations,

— failing provisionally to close certain fisheries when quotas had been exhausted,

— failing to take administrative or penal action against the masters of vessels infringing the regulations or against any other person responsible for such infringement,

the United Kingdom of Great Britain and Northern Ireland has failed to comply with its obligations under Article 5(2) of Council Regulation (EEC) No 170/83 of 25 January 1983 establishing a Community system for the conservation and management of fishery resources (OJ 1983 L 24, p. 1) or, with effect from 1 January 1993, Article 9(2) of Council Regulation (EEC) No 3760/92 of 20 December 1992 establishing a Community system for fisheries and aquacul-

ture (OJ 1992 L 389, p. 1), as well as Article 1(1) of Council Regulation (EEC) No 2241/87 of 23 July 1987 establishing certain control measures for fishing activities (OJ 1987 L 207, p. 1) or, with effect from 1 January 1994, Article 2 of Council Regulation (EEC) No 2847/93 of 12 October 1993 establishing a control system applicable to the common fisheries policy (OJ 1993 L 261, p. 1), Article 11(2) of Regulation No 2241/87 or Article 21 of Regulation No 2847/93, Article 1(2) of Regulation No 2241/87, or Article 31 of Regulation No 2847/93,

THE COURT (Fifth Chamber),

composed of: M. Wathelet, President of the Chamber, C.W.A. Timmermans, A. La Pergola (Rapporteur), P. Jann and S. von Bahr, Judges,

Advocate General: C. Stix-Hackl,

Registrar: R. Grass,

having regard to the report of the Judge-Rapporteur,

after hearing the Opinion of the Advocate General at the sitting on 21 March 2002,

gives the following

Judgment

1 By application lodged at the Court Registry on 12 April 2000, the Commission of the European Communities brought an action under Article 226 EC for a declaration that, in respect of each of the years 1991 to 1996, by:

— failing to put in place appropriate detailed rules for the utilisation of the quotas allocated to it,

— failing to carry out the inspections and other controls required by the relevant Community regulations,

— failing provisionally to close certain fisheries when quotas had been exhausted,

— failing to take administrative or penal action against the masters of vessels infringing the regulations or against any other person responsible for such infringement,

the United Kingdom of Great Britain and Northern Ireland has failed to comply with its obligations under Article 5(2) of Council Regulation (EEC) No 170/83 of 25 January 1983 establishing a Community system for the conservation and management of fishery resources (OJ 1983 L 24, p. 1) or, with effect from 1 January 1993, Article 9(2) of Council Regulation (EEC) No 3760/92 of 20 December 1992 establishing a Community system for fisheries and aquaculture (OJ 1992 L 389, p. 1), as well as Article 1(1) of Council Regulation (EEC) No 2241/87 of 23 July 1987 establishing certain control measures for fishing activities (OJ 1987 L 207, p. 1) or, with effect from 1 January 1994, Article 2 of Council Regulation (EEC) No 2847/93 of 12 October 1993 establishing a control system applicable to the common fisheries policy (OJ 1993 L 261, p. 1), Article 11(2) of Regulation No 2241/87 or Article 21 of Regulation No 2847/93, Article 1(2) of Regulation No 2241/87, or Article 31 of Regulation No 2847/93.

Law

2 The purpose of Regulation No 170/83, according to the first paragraph of Article 1, is 'to ensure the protection of fishing grounds, the conservation of the biological resources of the sea and their balanced exploitation on a lasting basis and in appropriate economic and social conditions'.

3 In accordance with Articles 2(2)(d) and 3 of Regulation No 170/83, the measures adopted under that system may include the restriction of the fishing effort, in particular by limits on the 'total allowable catch' (hereinafter 'TAC'). Where TACs are deemed necessary, they are fixed each year through regulations adopted by the Council acting on a proposal from the Commission. Those regulations fix the TAC for the whole of the Community and the quota allocated to each Member State for the following calendar year. The TAC and the quotas are established by stock, that is to say, by species for a given zone.

4 Article 5(2) of Regulation No 170/83 provided:

'Member States shall determine, in accordance with the applicable Community provisions, the detailed rules for the utilisation of the quotas allocated to them....'

5 Similar provisions are laid down in Regulation No 3760/92, which repealed Regulation No 170/83 with effect from 1 January 1993.

6 Article 9(2) of Regulation No 3760/92 states:

'Member States shall inform the Commission each year of the criteria they have adopted for distribution and of the detailed rules for the use of the fishing availabilities allocated to them, in accordance with Community law and the common fisheries policy.'

7 Articles 1 and 11 of Regulation No 2241/87 impose specific obligations on Member States as regards the inspection of fishing activities and the management of quotas.

8 Article 1(1) and (2) of Regulation No 2241/87 provides:

'1. In order to ensure compliance with all the regulations in force concerning conservation and control measures, each Member State shall, within its territory

and within maritime waters subject to its sovereignty or jurisdiction, monitor fishing activity and related activities. It shall inspect fishing vessels and all activities whose inspection would enable verification of the implementation of this regulation, including the activities of landing, selling and storing fish and recording landings and sales.

2. If the competent authorities of a Member State observe, as a result of monitoring or inspection carried out by them under paragraph 1, that the relevant rules concerning conservation and control measures are not being complied with, they shall take penal or administrative action against the master of such a vessel or any other person responsible.'

9 Article 11(1) to (3) of the regulation provides:

'1. All catches of a stock or group of stocks subject to quota made by fishing vessels flying the flag of a Member State or registered in a Member State shall be charged against the quota applicable to that State for the stock or group of stocks in question, irrespective of the place of landing.

2. Each Member State shall determine the date from which the catches of a stock or group of stocks subject to quota made by the fishing vessels flying its flag or registered in that Member State shall be deemed to have exhausted the quota applicable to it for that stock or group of stocks. As from that date, it shall provisionally prohibit fishing for that stock or group of stocks by such vessels as well as the retention on board, the transhipment and the landing of fish taken after that date and shall decide on a date up to which transhipments and landings or final notifications of catches are permitted. The Commission shall forthwith be notified of this measure and shall then inform the other Member States.

3. Following notification under paragraph 2 or on its own initiative, the Commission shall fix, on the basis of the information available, the date on which, for a stock or group of stocks, the catches subject to TAC, quota or other quantitative limitation made by fishing vessels flying the flag of, or registered in, any Member State are deemed to have exhausted the quota, allocation or share available to that Member State or, as the case may be, to the Community.

When an assessment of the situation referred to in the first subparagraph is made, the Commission shall advise the Member States concerned of the prospects of fishing being halted as a result of a TAC's being exhausted. Fishing vessels flying the flag of, or registered in, a Member State shall cease fishing in respect of a stock or of a group of stocks subject to quota on the date on which the quota allocated for the stock or group of stocks in question to that Member State is deemed to have been exhausted; such vessels shall equally cease retention on board, transhipment, landing or arranging for transhipment and landing in respect of such catches taken after that date.'

10 Regulation No 2241/87 was replaced by Regulation No 2847/93 with effect from 1 January 1994.

11 Article 2 of that regulation provides:

'1. In order to ensure compliance with all the rules in force concerning conservation and control measures, each Member State shall, within its territory

and within maritime waters subject to its sovereignty or jurisdiction, monitor fishing activity and related activities. It shall inspect fishing vessels and investigate all activities thus enabling verification of the implementation of this regulation, including the activities of landing, selling, transporting and storing fish and recording landings and sales.

2. Fishing vessels, which may exercise activities, flying the flag of [a] third country and sailing in maritime waters subject to the sovereignty or jurisdiction of a Member State shall be subject to a system of communication of movements and of catches held on board.

Member States shall notify the Commission of the measures taken to ensure compliance with these procedures.

3. Each Member State shall monitor, outside the Community fishery zone, the activities of its vessels in cases where such control is required to ensure compliance with Community rules applicable in those waters.

4. In order to ensure that inspection is as effective and economical as possible, Member States shall coordinate their control activities. To that end, they may set up joint inspection programmes to allow the inspection of Community fishing vessels in the waters referred to in paragraphs 1 and 3. They shall take measures to permit their competent authorities and the Commission to be regularly informed on a reciprocal basis of the experience gained.'

12 Article 21(1) to (3) of Regulation No 2847/93 is identical to Article 11(1) to (3) of Regulation No 2241/87. Article 31 of Regulation No 2847/93, which replaced Article 1(2) of Regulation No 2241/87, provides:

'1. Member States shall ensure that the appropriate measures [are] taken, including administrative action or criminal proceedings in conformity with their national law, against the natural or legal persons responsible where [the] common fisheries policy ha[s] not been respected, in particular following a monitoring or inspection carried out pursuant to this regulation.

2. The proceedings initiated pursuant to paragraph 1 shall be capable, in accordance with the relevant provisions of national law, of effectively depriving those responsible of the economic benefit of the infringements or of producing results proportionate to the seriousness of such infringements, effectively discouraging further offences of the same kind.

3. The sanctions arising from the proceedings mentioned in paragraph 2 may include, depending on the gravity of the offence:

— fines,

— seizure of prohibited fishing gear and catches,

— sequestration of the vessel,

— temporary immobilisation of the vessel,

— suspension of the licence,

— withdrawal of the licence.

4. The provisions of this article shall not prevent the Member State of landing or transhipment from transferring prosecution of an infringement to the competent authorities of the Member State of registration with the agreement of the latter and on condition that the transfer is more likely to achieve the result referred to in paragraph 2. The Commission shall be notified of any such transfer by the Member State of landing or transhipment.'

Pre-litigation procedure

13 In accordance with the infringement procedure, the Commission sent the United Kingdom two letters of formal notice: on 19 March 1998 as regards the overfishing of certain stocks between 1991 and 1994, and on 19 February 1999 as regards the overfishing of certain stocks between 1995 and 1996.

14 The United Kingdom Government responded to the first letter of formal notice on 20 May 1998 and to the second of those letters on 4 May 1999.

15 Since it considered that the United Kingdom authorities had failed to take the measures necessary to resolve the problems of overfishing covered by its complaints, the Commission sent out two reasoned opinions on 26 August 1999 concerning overfishing between 1991 and 1994 and between 1995 and 1996 respectively, in which it requested the Member State to adopt the necessary measures to comply with those opinions within two months of their notification.

16 The United Kingdom authorities replied to those reasoned opinions by letters of 2 December 1999, in which they rejected all the Commission's complaints concerning several cases of overfishing between 1991 and 1996 in relation to the quotas allocated to that Member State for various stocks.

17 In those replies, the United Kingdom pointed out to the Commission a number of errors in the figures for the total catches of each stock which formed the basis for its conclusion that the quotas had been exceeded. In particular, according to the United Kingdom, catches of mackerel in Area IV in 1991, 1993 and 1994, and catches of cod in Areas I and IIb in 1996, were lower than those claimed by the Commission. It follows, according to that Member State, that there was no overfishing of the stocks in question during those four years.

18 The United Kingdom maintains that, as regards the figures for mackerel for the years 1991, 1993 and 1994, the differences in relation to the Commission's data could be due to the misattribution of mackerel caught in Area IVa (North Sea mackerel), as fixed by the International Council for the Exploration of the Sea (ICES), in the data initially notified to the Commission by the authorities of that Member State. As regards the 1996 figures for cod, the difference in relation to the Commission's data can be explained by the fact that catches taken at North Norway were initially wrongly attributed to the Svalbard archipelago by the United Kingdom authorities.

19 As regards the differences in the figures for catches, the Commission states that it cannot accept requests for amendment without substantiating evidence after infringement proceedings have been initiated. The United Kingdom Government contends, for its part, that it told the Commission, both prior to the pre-litigation procedure and during it, that it did not accept some of the figures which the Commission had put forward.

20 The Commission replies that the assessments on which its conclusions are based can be issued only in the light of the measures which could be taken under the system put in place by the United Kingdom Government for the years in question. For that period, the figures relating to the utilisation of quotas showed that action should have been taken to avoid overfishing and that no amendment of those data could be allowed for the purpose of deciding whether the Government had taken appropriate measures on the basis of the figures available to it at the time.

The application

21 The Commission's application contains tables listing the stocks which gave rise to 31 cases of overfishing or fishing in zones for which the United Kingdom had no quota (a single case in 1995). Each table lists, for every year in question, the zones and species involved in overfishing together with the quotas allocated to the United Kingdom and their amounts.

22 For each of the years 1991 to 1996, the Commission has put forward the following four complaints against the United Kingdom:

— the absence of appropriate detailed rules for the utilisation of quotas, in breach of Article 5(2) of Regulation No 170/83 and, with effect from 1 January 1993, Article 9(2) of Regulation No 3760/92;

— the absence of inspection and control measures, in breach of Article 1(1) of Regulation No 2241/87 and, with effect from 1 January 1994, Article 2 of Regulation No 2847/93;

— the belated closure of fisheries, in breach of Article 11(2) of Regulation No 2241/87 and, with effect from 1 January 1994, Article 21 of Regulation No 2847/93; and

— the failure to take administrative or penal action, in breach of Article 1(2) of Regulation No 2241/87 and, with effect from 1 January 1994, Article 31 of Regulation No 2847/93.

23 The first and second complaints should be considered jointly.

Failure to put in place appropriate detailed rules for the utilisation of quotas and to carry out the inspections and other controls required

Arguments of the parties

24 The Commission claims that the rules in force in the United Kingdom did not ensure compliance with quotas, the timely recording by fishermen of their landings, the swift processing of declarations of landings or of information contained in logbooks, nor enable closure of fisheries to be ordered sufficiently early to take account of quantities caught but not yet landed and of the lapse of time between the closure decision being taken and its coming into effect.

25 The United Kingdom did not ensure compliance with Community legislation on conservation and control measures. The measures taken pursuant to that legislation should, in order to be effective, have ensured that fishermen notify all their catches to the competent authorities and allow for the swift processing of that information so that the decision provisionally to close fisheries for a given stock could be made in time to prevent quotas from being exceeded. The system used by the United Kingdom from 1991 to 1996 did not enable precise information on fishing quotas to be obtained in good time.

26 The United Kingdom Government contends, first, that the Commission failed to provide sufficient evidence to satisfy its obligation to demonstrate overfishing for each specific year mentioned in the application. That objection is particularly serious since a Court judgment in infringement proceedings against a Member

State under Article 226 EC may result in a penalty being imposed on the Member State under Article 228(2) EC.

27 It is settled case-law of the Court that the Commission cannot rely on a mere presumption to prove that a Member State has failed to fulfil its obligations under Community law. In the present case, however, the Commission did not even attempt to assess the system which was used by that Member State from 1991 to 1996.

28 The Commission replies that all of the Community provisions referred to in its application are intended to ensure that the necessary measures are taken so that Member States comply with their quota obligations, and that it is they, rather than the Commission, which have the detailed information and the necessary resources to establish the precise form controls should take in order to be as effective as possible. It is for that reason that the Member States have considerable latitude in designing those controls. Therefore, in order to demonstrate that a Member State has failed to fulfil its obligations to set up a control system for quotas, the Commission need simply establish that the measures taken by the authorities of that State have not achieved their objective and that that failure is not due to unforeseeable causes.

29 Secondly, the United Kingdom contends that the Commission cited only a few cases of overfishing for each of the years in question. Since those cases of overfishing represented isolated incidents within a fundamentally sound system, they do not provide a basis for finding that the United Kingdom control system as a whole did not function properly. The United Kingdom adopted, in accordance with the Community legislation concerned, a system to ensure that fisheries were

managed so as to prevent quotas being exceeded for the most part. The mere fact that some inaccuracies were found in isolated cases does not constitute a valid legal basis for the very general declaration being sought by the Commission.

30 The United Kingdom also contends that, in some of the cases cited by the Commission, overfishing did not exceed 5% of the applicable quota. However, under Article 3(2) of Council Regulation (EC) No 847/96 of 6 May 1996 introducing additional conditions for year-to-year management of TACs and quotas (OJ 1996 L 115, p. 3), Member States' catches may exceed authorised landings by up to 5%, subsequently to be deducted from the quotas of the following years.

31 It follows that, taking into account the figures corrected by that Member State for four cases of overfishing and four cases where the applicable quotas were exceeded by less than 5%, the Commission's complaints are based on only 23 cases of serious overfishing in relation to the whole of the stocks subject to quotas for the years in question.

32 The United Kingdom maintains that, even leaving aside the cases where it challenges the figures put forward by the Commission and, therefore, the claim that quotas were exceeded, the Commission's complaints concern only 7.65% of the quotas managed by that Member State. That number contradicts the assertion that the individual cases of overfishing are indicative of problems inherent in the system of control put into effect by the United Kingdom.

33 In that regard, the Commission maintains that the period in question dates from before Regulation No 847/96 came into force. In addition, the United Kingdom does not deny that significant overfishing took place during that period and has not attempted to provide explanations as to why those cases of overfishing occurred.

Findings of the Court

34 It should be observed at the outset that Article 226 EC enables the Commission to institute proceedings for failure to fulfil obligations each time it forms the view that a Member State has failed to fulfil an obligation under Community law, without its being required to draw distinctions based on the nature or gravity of the infringement, since such proceedings are based on the objective finding that a Member State has failed to fulfil its obligations under the Treaty or secondary legislation (see Case 301/81 *Commission* v *Belgium* [1983] ECR 467, paragraph 8; Case C-209/88 *Commission* v *Italy* [1990] ECR I-4313, paragraph 13; Case C-71/97 *Commission* v *Spain* [1998] ECR I-5991, paragraph 14; and Case C-333/99 *Commission* v *France* [2001] ECR I-1025, paragraphs 32 and 33).

35 Article 5(2) of Regulation No 170/83 and, with effect from 1 January 1993, Article 9(2) of Regulation No 3760/92 provide that Member States are to adopt criteria 'for distribution and... detailed rules for the use of the fishing availabilities allocated to them, in accordance with Community law and the common fisheries policy'. In that context, Article 1(1) of Regulation No 2241/87 and, with effect from 1 January 1994, Article 2 of Regulation No 2847/93 provide that Member States are to take control measures to ensure compliance with all legislation adopted within the framework of the Community system for the conservation and management of fishery resources. The adoption of those measures is therefore necessary to ensure the functioning of that system and, in particular, compliance with the quotas allocated to the Member States.

36 In the present case, the Commission has provided, in support of its application, detailed data on stocks, by species of fish and zone, as well as the quotas allocated and the tonnage recorded for overfishing or unauthorised fishing. Those data are sufficient to establish seven cases of overfishing in 1991, totalling 9 222 tonnes;

four cases of overfishing, totalling 1 486 tonnes, in 1992; six cases of overfishing, totalling 4 404 tonnes, in 1993; three cases of overfishing, totalling 5 009 tonnes, in 1994; six cases of overfishing, totalling 424 tonnes, in 1995 and five cases of overfishing, totalling 971 tonnes, in 1996.

37 The first point to note is that the United Kingdom does not challenge 23 cases of significant overfishing out of those 31 cases of overfishing during the five years in question. Apart from four cases, it does not challenge the figures set out by the Commission in its application.

38 Secondly, as regards the four cases where, according to the United Kingdom, overfishing should not be taken into account because it did not exceed 5%, the reference to Article 3(2) of Regulation No 847/96 by that Member State cannot be taken into consideration in the present case, since that regulation came into force on 1 January 1997 and, in any event, does not apply to the fishing years in question.

39 Thirdly, as regards the four cases of overfishing where the United Kingdom challenges the Commission's data, the proper functioning of the Community regime for TACs and fishing quotas in fact depends on the reliability of the information gathered by the Member States, which is also an indispensable condition for ensuring that the Commission can carry out its supervisory responsibilities. Accordingly, the Commission is entitled to assert that the assessments on which its claims were based could be put forward only in the light of the measures which could be adopted under the system put in place by that Member State for the years in question, when the figures relating to the utilisation of quotas indicated that action was needed to avoid overfishing. The subsequent

correction of those data by that Member State cannot therefore invalidate the Commission's assessment of compliance with the obligations following from that system.

40 The scale of those figures and the reoccurrence of the situation which they describe indicate that the instances of overfishing could only have resulted, first, from the absence of appropriate detailed rules for the utilisation of fishing quotas and, secondly, from failure by the Member State concerned to comply with its monitoring obligations (see, to that effect, *Commission* v *France*, cited above, paragraph 35).

41 In those circumstances, the argument by the United Kingdom Government that the Commission is relying on a mere assumption and a limited number of cases of overfishing cannot be upheld. The fact that, pursuant to Article 228(2) EC, a penalty payment may be imposed on a Member State for failure to comply with a judgment of the Court which establishes an infringement does not affect the nature of the evidence which the Commission must put forward to demonstrate an infringement and may therefore not call into question the finding that the United Kingdom has failed to fulfil its obligations in the present case.

42 Therefore, in respect of each of the years 1991 to 1996, by failing to put in place appropriate detailed rules for the utilisation of the quotas allocated to it and to carry out the inspections and other controls required by the relevant Community regulations, the United Kingdom has failed to comply with its obligations under Article 5(2) of Regulation No 170/83 and, with effect from 1 January 1993, Article 9(2) of Regulation No 3760/92, as well as Article 1(1) of Regulation No 2241/87 and, with effect from 1 January 1994, Article 2 of Regulation No 2847/93.

Belated closure of fisheries

Arguments of the parties

43 The Commission submits that in all the cases of overfishing set out in the application, the United Kingdom failed to fulfil its obligation under Article 11(2) of Regulation No 2241/87 and, with effect from 1 January 1994, Article 21(2) of Regulation No 2847/93 provisionally to close fisheries when catches of a stock or group of stocks for which it has been allocated a quota are deemed to have been exhausted. The Commission states that it is settled case-law of the Court that the Member States are obliged to take all the necessary measures in time to prevent quotas from being exceeded and that they cannot invoke practical difficulties to justify failing to meet that obligation. In the present case, the closure of fisheries in some cases took effect only several weeks after quotas were exhausted, which shows that, in any event, those measures were not taken in time.

44 The United Kingdom Government contends that the fact that particular quotas were overfished in some cases does not entitle the Commission to bring infringement proceedings set out in highly general terms for the years in question. The United Kingdom in fact ensured that the overwhelming majority of quotas were complied with during the period in question and took specific measures to ensure that catches would cease in time to prevent overfishing.

45 It also contends that the situation shown in the monthly records of cumulative catches, as set out in the Commission's documents, is not necessarily consistent with the figures which were in fact available to the United Kingdom during the period in question. The divergence is due to the fact that the competent authorities of that Member State use data 'in real time' (declarations of landings

by vessels flying the flag of the United Kingdom landing in that State and abroad within 48 hours of completing landing) and that the information on landings notified to the Commission by other Member States and by third countries may not agree with the figures notified to the United Kingdom authorities by vessels flying its flag and landing their catches in other States.

Findings of the Court

46 The Court has already held that Article 11(2) of Regulation No 2241/87 requires Member States to adopt binding measures provisionally to prohibit all fishing activity even before quotas are exhausted. Article 21 of Regulation No 2847/93 lays down the same obligation with effect from 1 January 1994. Consequently, the Member States are required to adopt in time all the measures necessary to prevent the relevant quotas being exceeded, in order to ensure compliance with the quotas allocated to them for the purpose of conserving fishery resources (see Case C-62/89 *Commission* v *France* [1990] ECR I-925, paragraph 17; Case C-52/95 *Commission* v *France* [1995] ECR I-4443, paragraphs 29 and 30; and Joined Cases C-418/00 and C-419/00 *Commission* v *France* [2002] ECR I-3969, paragraph 58).

47 It is sufficient to note in that regard, in the light of paragraph 34 of the present judgment, that the United Kingdom does not deny that, in the cases of overfishing described by the Commission, either it had not issued any prohibition on fishing or the quotas had been exceeded by the time the relevant prohibition orders came into force.

48 Therefore, the United Kingdom's argument that the declaration of failure to fulfil obligations sought by the Commission is expressed too generally and that it in fact ensured compliance with the overwhelming majority of its quotas during the period in question cannot be upheld.

49 Secondly, the Court has consistently held that a Member State cannot rely on practical difficulties in order to justify its failure to adopt appropriate measures to prohibit fishing in time. On the contrary, it is required to overcome those difficulties by adopting such measures (see Case C-333/99 *Commission* v *France*, cited above, paragraph 44).

50 It follows that the practical difficulties put forward by the United Kingdom to explain the discrepancies between the data available to it and those which the Commission takes as its basis, such as landings in third countries or fluctuations in the quantities landed in other Member States or in third countries, cannot be taken into account.

51 In those circumstances, in respect of each of the years 1991 to 1996, by failing provisionally to close fisheries when quotas were exhausted, the United Kingdom failed to fulfil its obligations under Article 11(2) of Regulation No 2241/87 and, with effect from 1 January 1994, Article 21 of Regulation No 2847/93.

Failure to take penal or administrative action

Arguments of the parties

52 The Commission claims in its application that, even if Article 1(2) of Regulation No 2241/87 does not expressly require Member States to take penal or administrative action against the master of a vessel which is in breach of Community fisheries legislation or against any other person responsible for such a breach, they are required, under Article 10 EC, to take such measures where a serious breach of that legislation has occurred. The Commission argues that, in order to ensure that the obligations under Community fishery legislation are

complied with, it is essential that action be taken against those persons. That obligation is made even clearer in Article 31(2) of Regulation No 2847/93, which requires that sanctions should be capable of depriving those responsible of the economic benefits of their infringements and be proportionate to their seriousness, so as to have a deterrent effect.

53 The Commission claims that it is clear from the cases of overfishing which it has noted that, in many cases, catches continued to be notified for some time after closure of the fishery concerned. That is prima facie evidence that closure orders were breached and that such breaches were not the subject of any action. Practical difficulties cannot justify such a failure to act.

54 The United Kingdom submits that throughout the period in question its policy was to bring forward for prosecution any cases where the evidence would satisfy a criminal court that an offence had been committed. That argument is confirmed by the list annexed to the defence, showing the number of prosecutions taken and the official warnings given in respect of vessels which ignored a ban on fishing or fished in an area for which the United Kingdom did not have any quota.

55 The United Kingdom also refers to specific cases of overfishing cited by the Commission. It maintains that, in some of those cases, prosecutions did not succeed because it was not possible to establish with certainty that overfishing had taken place. In other cases, administrative action was taken. In still other cases, it was not considered appropriate to take penal or administrative action in the circumstances. In addition, the United Kingdom did not take action in certain cases because the national authorities had authorised continued fishing activities in anticipation of an exchange of quotas with the Federal Republic of Germany, which subsequently did not materialise.

Findings of the Court

56 First, where Community legislation relating to the conservation and control of fishery resources has been breached, the competent authorities of a Member State are required to take penal or administrative action against the master of the vessel concerned or against any other person responsible, pursuant to Article 1(2) of Regulation No 2241/87. Article 31 of Regulation No 2847/93 lays down the same obligation for Member States with effect from 1 January 1994, while specifying in paragraph 2 that those procedures 'shall be capable... of effectively depriving those responsible of the economic benefit of the infringements or of producing results proportionate to the seriousness of such infringements, effectively discouraging further offences of the same kind'.

57 If the competent authorities of a Member State were systematically to refrain from taking action against the persons responsible for such infringements, both the conservation and management of fishery resources and the uniform application of the common fisheries policy would be jeopardised (Case C-52/95 *Commission* v *France*, cited above, paragraph 35).

58 Consequently, as from the dates fixed by the Commission for the closure of fisheries during the years in question, the United Kingdom was required to take penal or administrative action against persons responsible for continuing fishing activities after they had been prohibited.

59 In the present case it is sufficient to note that, notwithstanding the information provided by the United Kingdom in the annex to its rejoinder, that Member State instituted proceedings against the persons responsible for infringements of Community legislation in only a few cases, although a significant number of cases

of overfishing were recorded for the years in question. In those circumstances, the argument put forward by the United Kingdom concerning the need for the Commission to provide specific evidence cannot, therefore, be upheld (see, to that effect, Case C-52/95 *Commission* v *France*, cited above, paragraph 36).

60 Secondly, according to settled case-law, a Member State cannot plead provisions, practices or situations in its internal legal system to justify non-compliance with obligations arising from rules of Community law (see Case C-52/91 *Commission* v *Netherlands* [1993] ECR I-3069, paragraph 36, and Joined Cases C-418/00 and C-419/00 *Commission* v *France*, cited above, paragraph 59). The specific arguments advanced by the United Kingdom to justify its failure to take penal or administrative action in certain cases therefore cannot be upheld.

61 Accordingly, in respect of each of the years 1991 to 1996, by failing to take penal or administrative action against the masters of vessels infringing the relevant Community regulations or against any other person responsible for such infringement, the United Kingdom failed to fulfil its obligations under Article 1(2) of Regulation No 2241/87 and, with effect from 1 January 1994, Article 31 of Regulation No 2847/93.

Costs

62 Under Article 69(2) of the Rules of Procedure, the unsuccessful party is to be ordered to pay the costs if they have been applied for in the successful party's pleadings. Since the Commission has asked for the United Kingdom to be ordered to pay the costs and the latter has been unsuccessful, it must be ordered to pay the costs.

On those grounds,

THE COURT (Fifth Chamber),

hereby:

1. Declares that, in respect of each of the years 1991 to 1996, by:

— failing to put in place appropriate detailed rules for the utilisation of the quotas allocated to it and to carry out the inspections and other controls required by the relevant Community regulations,

— failing provisionally to close certain fisheries when quotas were exhausted,

— failing to take administrative or penal action against the masters of vessels infringing those regulations or against any other person responsible for such infringement,

the United Kingdom of Great Britain and Northern Ireland has failed to comply with its obligations under Article 5(2) of Council Regulation (EEC)

No 170/83 of 25 January 1983 establishing a Community system for the conservation and management of fishery resources and, with effect from 1 January 1993, Article 9(2) of Council Regulation (EEC) No 3760/92 of 20 December 1992 establishing a Community system for fisheries and aquaculture, as well as Article 1(1) of Council Regulation (EEC) No 2241/87 of 23 July 1987 establishing certain control measures for fishing activities and, with effect from 1 January 1994, Article 2 of Council Regulation (EEC) No 2847/93 of 12 October 1993 establishing a control system applicable to the common fisheries policy, Article 11(2) of Regulation No 2241/87 and, with effect from 1 January 1994, Article 21 of Regulation No 2847/93, and Article 1(2) of Regulation No 2241/87 and, with effect from 1 January 1994, Article 31 of Regulation No 2847/93;

2. **Orders the United Kingdom of Great Britain and Northern Ireland to pay the costs.**

Wathelet Timmermans La Pergola

Jann von Bahr

Delivered in open court in Luxembourg on 14 November 2002.

R. Grass M. Wathelet

Registrar President of the Fifth Chamber