provisions prescribing catch quotas for Spanish fishermen such regulations are enforceable against them and the validity of the regulations may not be challenged on the basis of prior international agreements entered into between France and Spain.

3. A situation in which both Spanish fishermen and fishermen of Member States must comply with a system of catch quotas may not be classified as discriminatory even though the manner of verifying catches is different. Verification by the use of licensing system, as prescribed in Regulations Nos 554/81 and 1569/81, is intended to ensure that the catch quotas laid down for the fishing vessels of non-member countries are complied with since, in the case of such vessels, no checks can be carried out in the adjacent coastal ports as those vessels normally return to their ports of origin to land their catches.

In Joined Cases 50 to 58/82

REFERENCES to the Court under Article 177 of the EEC Treaty by the Tribunal de Grande Instance [Regional Court], Bayonne, for a preliminary ruling in the action pending before that court between

ADMINISTRATEUR DES AFFAIRES MARITIMES [Administrator of Maritime Affairs], BAYONNE, AND PROCUREUR DE LA RÉPUBLIQUE [Public Prosecutor]

and

JOSÉ DORCA MARINA, Pasajes de San Pedro, Spain, AND OTHERS,

on the validity of regulations of the Council laying down certain temporary measures for the conservation and management of fishery resources applicable to vessels flying the flag of Spain,

THE COURT (First Chamber)

composed of: A. O'Keeffe, President of Chamber, G. Bosco and T. Koopmans, Judges,

Advocate General: F. Capotorti
Registrar: H. A. Rühl, Principal Administrator

gives the following

# JUDGMENT

## Facts and Issues

The facts of the case, the course of the procedure and the observations submitted under Article 20 of the Protocol on the Statute of the Court of Justice of the EEC may be summarized as follows:

### I — Facts and written procedure

1. Mr Dorca Marina and certain other captains of fishing vessels registered in Spain were prosecuted before the Tribunal de Grande Instance [Regional Court], Bayonne, for fishing without holding the fishing licence required by the Community provisions applicable to vessels flying the flag of Spain or for contravening the conditions of the licences which they held.

They were discovered fishing off Bayonne within the French economic zone extending between 12 and 200 miles from the coast. The facts occurred on 28 March 1981 in Case 50/82 and on various dates in the period between 28 July and 21 September 1981 in Cases 51 to 58/82.

The judgments making the references show that the Tribunal de Grande Instance considered that the Community regulations in question, which restrict the fishing rights of Spanish nationals by prescribing various conditions, in particular that they should obtain a licence, are capable of modifying prior international obligations arising in particular from the London Fisheries Convention of 9 March 1964, the Agreement on Fisheries between France and Spain of 20 March 1967 and the Geneva Convention on Fishing and Conservation of the Living Resources of the High Seas of 29 April 1958.

In Case 50/82 the court found that the Agreement on Fisheries between the European Economic Community and the Government of Spain signed on 15 April 1980, which provided *inter alia* for the grant of licences for fishing vessels, was not yet in force on 28 March 1981, accordingly that Agreement did not appear to be provisionally applicable as it was capable of modifying the said prior international obligations.

In Cases 51 to 58/82 the court considered that Article 1 of the Agreement in fact referred only to the conditions for engaging in fishing and that accordingly it merely authorized the EEC and Spain to allocate fairly, in a spirit of non-discrimination and equality, such restrictions on fishing as might be required, and if necessary by means of licences. The Agreement in no way stated that such restrictions were to be applied solely to Spanish nationals.

Consequently, the Tribunal de Grande Instance, by judgments of 17 September (Case 50/82), 22 October (Cases 51, 52 and 58/82) and 5 November 1981 (Cases 53 to 57/82) decided to stay the

proceedings until the Court of Justice delivered a preliminary ruling on the question whether, having regard to prior international obligations, regulations of the Communities laying down certain interim measures for the conservation and management of fishery resources applicable to vessels flying the flag of Spain were valid, in so far as they laid down certain conditions for fishing operations carried out by Spanish nationals in the economic zone established by Decree No 77-130 of 11 February 1977 and whether, if valid, those regulations were enforceable against Spanish nationals.

2. The provisions of the regulations and international agreements involved in those cases may be summarized as follows:

(a) Pursuant to the Council Resolution of 3 November 1976 on certain external aspects of the creation of a 200-mile fishing zone in the Community with effect from 1 January 1977 (Official Journal 1981, C 105, p. 1) the Member States of the Community extended their fishing zones with effect from 1 January 1977 to 200 miles off their North Sea and North Atlantic coasts.

Thus in the case of France Decree No 77-130 of 11 February 1977, adopted in pursuance of Law No 76-655 of 16 July 1976, creates an economic zone off the North Sea, English Channel and Atlantic coasts of the territory of the French Republic, from the Franco-Belgian frontier to the Franco-Spanish frontier, from the outside limit of the territorial waters to a line 188 nautical miles beyond that limit.

Article 2 of the above decree provides:

"Subject to the provisions of the Treaty establishing the European Economic Community and instruments adopted in implementation thereof, fishing by foreign vessels in the above-mentioned economic zone is prohibited, in accordance with the Law of 1 March 1888 as amended.

However, notwithstanding these provisions, fishing permits may be issued to certain foreign vessels in accordance with the conditions laid down in the Treaty establishing the European Economic Community and the instruments adopted in implementation thereof, by international agreements and by internal French law."

Article 3 lays down the applicable penalties.

(b) After the Member States extended these fishing zones to 200 miles the exploitation of fishery resources in those zones by fishing vessels of non-member countries has been governed by Community measures relating to each of the countries concerned. Pending the conclusion of framework agreements on fisheries between the Community and those non-member countries interim measures were initially adopted.

Having regard to the material times in each of the present cases the Community régime applicable is

in Case 50/82 Council Regulation (EEC) No 554/81 of 27 February 1981 fixing certain interim measures for the conservation and management of fishery resources applicable to vessels flying the flag of Spain (Official Journal L 57, p. 1);

in Cases 51 to 58/82, Council Regulation (EEC) No 1569/81 of 1 June 1981 laying down for 1981 certain measures for the conservation and management of fishery resources applicable to vessels flying the flag of Spain (Official Journal L 154, p. 1).

Each of the above-mentioned regulations provides that fishing is subject to the holding on board of a licence issued by the Commission on behalf on the Communities. The catches which vessels flying the flag of Spain are authorized to make during the period in question and the number of licences which may be issued for such vessels is fixed in an annex to each regulation. Furthermore the regulations lay down a certain number of specific requirements for holders of licences.

(c) The framework agreement, namely the Agreement on Fisheries concluded between the EEC and Spain, was initialled on 23 September 1978 and signed on 15 April 1980. The Agreement was approved in the name of the Community by Council Regulation (EEC) No 3062/80 of 25 November 1980 on the conclusion of the Agreement on Fisheries between the European Economic Community and the Government of Spain (Official Journal L 322, p. 3). On completion of the ratification procedure in Spain the Agreement entered into force on 22 May 1981 (Official Journal 1981, L 204, p. 34).

It was provided in Article 12 of the Agreement that, pending its entry into force, the Agreement should apply provisionally from the date of its signature, 15 April 1980.

Articles 1 (1), 2, 3 and 4 of the Agreement are worded as follows:

Article 1

(1) The purpose of this Agreement is to establish the principles and rules which will govern, in all respects, the fishing activities of vessels of either party within the fishing zones falling under the jurisdiction of the other party.

...

Article 2

Each party shall grant access to the fishing zone falling under its jurisdiction to the fishing vessels of the other party under the conditions laid down by the following articles.

Article 3

(1) Each party shall determine each year, for the fishing zone falling under its jurisdiction, subject to adjustments necessitated by unforeseen circumstances, and on the basis of the need for rational management of the biological resources:

(a) the total allowable catch for individual stocks or complexes of stocks, taking into account the most reliable scientific information available to it, the interdependence of stocks, the work of appropriate international organizations and other relevant factors;

(b) after appropriate reciprocal consultations, the catch allotted to the fishing vessels of the other party and the zones in which these catches may be made. The two parties shall have as their objective the attainment of a satisfactory balance between their respective fishing possibilities in the fishing zones falling under the jurisdiction of the other party.

In determining these possibilities, each party shall take into account:

(i) the advantage of preserving the traditional characteristics of fishery activities in the frontier coastal areas;

(ii) the need to minimize the difficulties encountered by the party whose fishing possibilities may be reduced in the course of achieving the above-mentioned balance;

(iii) all other relevant factors.

(2) Each party shall be able to take any other measure to ensure the conservation and rational management of resources in the fishing zones falling under its jurisdiction. Such measures when taken following the annual fixing of the other party's fishing possibilities, should not be such as to compromise the effective operation of fishing.

Article 4

Each party may require that in the fishing zone falling under its jurisidiction fishing by vessels of the other party shall be subject to licence.

The competent authorities of each party shall communicate to the other party the name, registration number and other relevant particulars of vessels requesting authorization to fish in the fishing zone of the other party. This provision shall also apply to any vessel intended to aid or assist a fishing vessel in carrying out tasks directly related to the latter's fishing activity. The second party shall issue licences commensurate with the possibilites for fishing granted under Article 3 (1) (b).

3. The judgments of the Tribunal de Grande Instance, Bayonne, making the references to the Court were received at the Court Registry on 11 February 1982.

Pursuant to Article 20 of the Protocol on the Statute of the Court of Justice on the EEC, written observations were submitted by the following: the defendants in the main proceedings, represented by J. Tournaire, of the Bayonne Bar; the Government of the French Republic, represented by Gilbert Guillaume, Director of Legal Matters at the Ministry of Foreign Affairs, acting as Agent; the Council of the European Communities, represented by Daniel Vignes, Director in its Legal Department, acting as Agent, assisted by Mrs Moyra Sims, an Administrator in that department; and the Commission of the European Communities, represented by François Lamoureux, a member of its Legal Department, acting as Agent.

By order of 17 February 1982 the Court decided to join Cases 50 to 58/82 for the purposes of the oral procedure and the judgment.

By order of 29 June 1982 the Court, pursuant to Article 95 (1) and (2) of the Rules of Procedure, decided to refer the joined cases to the First Chamber.

Upon hearing the report of the Judge-Rapporteur and the views of the Advocate General, the Court decided to open the oral procedure without any preparatory inquiry.

## II — Summary of the written observations submitted to the Court

The *defendants in the main proceedings* state first of all that the judgments of the Tribunal de Grande Instance, Bayonne, making the references to the Court antedated the judgments of the Court of 8 December 1981 *(Crujeiras Tome and Yurrita,* Joined Cases 180 and 266/81 and *Arbelaiz Emazabel,* Case 181/80 [1981] ECR 2997 and 2961) in which it

was held that the new relations established by the Community regulations concerning Spanish fishermen replaced the prior international treaties and that the evidence submitted at that time to the Court was not of such a nature as to affect the validity of those regulations.

Nevertheless they claim that Regulation No 1669/81, which is at issue in Cases 51 to 58/82, is invalid, or at any rate inapplicable, for two reasons. First, the penalties provided for in Article 13 of that regulation for breach of the conditions on which licences are granted, namely withdrawal of the licence and the non-renewal thereof for a period of from 2 to 4 months, do not provide sufficient guarantees that the right to a hearing will be respected, as is required by Community law. In this connection the defendants in the main proceedings refer to the judgment of the Court of 27 October 1977 *(Moli,* Case 121/76 [1977] ECR 1971) in which it was stated that "when any administrative body adopts a measure which is liable gravely to prejudice the interests of an individual it is bound to put him in a position to express his point of view".

Secondly the Agreement on Fisheries of 15 April 1980 between the EEC and Spain merely authorizes the two parties to allocate equitably, in a spirit of non-discrimination and of equality, such restrictions on fishing as may be required, if necessary by means of licences. In so far as the restrictions are applied exclusively to Spanish fishermen, they entail a serious breach of their right to work and their right to freedom from discrimination on grounds of nationality, which are protected in particular by Article 14 of the European Convention for the Protection of Human Rights and Fundamental Freedoms of 4 November 1950, by Article 26 of the International Covenant on Civil and Political Rights concluded in New York on 19 December 1966 and by Articles 2 (2) and 6 of the International Covenant of New York of even date on Economic, Social and Cultural Rights.

The *French Government,* the *Council* and the *Commission* suggest that the judgment of 8 December 1981 in Joined Cases 180 and 266/80 *(Crujeiras Tomé and Yurrita* [1981] ECR 2997), which concerns a problem in every way the same as the one raised by the present cases, should be confirmed.

In this connection they explain that the facts in Case 50/82 fall within the period when the Agreement on Fisheries between the EEC and Spain was provisionally applicable and that the facts in Cases 51 to 58/82 occurred after the entry into force of the Agreement.

With regard to the Community regulations concerning the mesh-size of nets which have led to the convictions in the actual judgments making the references to the Court in Cases 50 and 51/82 but regarding which the Tribunal de Grande Instance has not expressly requested an answer from the Court, the Council and the Commission point out that they apply to all fishermen in the exclusive economic zone and that the Spanish authorities were made aware of this.

## III — Oral procedure

At the sitting on 16 September 1982 oral argument was presented by the following: J. Tournaire of the Bayonne

Bar, for the defendants in the main proceedings; Bernard Botte, Attaché at the Ministry of Foreign Affairs, acting as Agent, for the French Government; Daniel Vignes, a Director in the Legal Department of the Council, acting as Agent, for the Council of the European Communities; and F. Lamoureux, member of the Legal Department of the Commission, acting as Agent, for the Commission of the European Communities.

In the course of the hearing the *defendants in the main proceedings* reiterated in particular that they did not have opportunity to make known their point of view at the time when the penalties of withdrawal and non-renewal of their licences, which are provided for by Article 13 of Regulation No 1569/81, were imposed. The application of these penalties by the Commission on the sole basis of information furnished by the national authorities which found that the conditions of fishing had been infringed is thus contrary to the *audi alteram partem* principle.

In this connection the *French Government* referred to Article 7 of the Agreement on Fisheries between the EEC and Spain in accordance with which "within the fishing zone falling under its jurisdiction, each party may, in conformity with international law, take such measures as may be necessary to ensure that vessels of the other party comply with the provisions of this agreement". In its view that provision was well within the framework of the wide powers as to policing which Article 73 of the Draft Convention on the Law of the Sea attributed to coastal States. The right to withdraw the licence appeared necessary precisely in order to prevent fish stocks from being excessively exploited. Furthermore it was doubtful whether the principle which had been invoked and which had been developed in the context of litigation concerning the European civil service was applicable to a problem concerning fishery protection.

The *Commission* added on this point that the question of administrative penalties under Community law was not raised by the court making the reference which was concerned with penalties for criminal offences laid down by national legislation.

The Advocte General delivered his opinion at the sitting on 6 October 1982.

## Decision

1 By judgments of 17 September, 22 October and 5 November 1981, which were received at the Court on 11 February 1982, the Tribunal de Grande Instance [Regional Court], Bayonne, referred to the Court for preliminary ruling under Article 177 of the EEC Treaty a question as to whether, having regard to prior international obligations, regulations of the Communities laying down certain interim measures for the conservation and management of fishery resources applicable to vessels flying the flag of Spain are valid, in so far as they have laid down certain conditions for fishing operations

carried out by Spanish nationals in the economic zone established by French Decree No 77-130 of 11 February 1977 (Journal Officiel de la République Française of 12 February 1977, p. 864) and whether, if valid, those regulations are enforceable against Spanish nationals.

2 The question was raised in crimimal proceedings against certain masters of fishing vessels registered in Spain, who were charged with fishing within the French economic zone, without being in possession of a fishing licence, or with failing to comply with the conditions of the licence held by them or with fishing outside the zone for which the licence was issued.

3 The defendant in the main proceedings in Case 50/82 was discovered fishing on 28 March 1981 in the zone between 12 and 200 nautical miles from the baselines. The facts alleged against the other defendants, who were discovered fishing in the same zone, occurred between 28 July and 21 September 1981.

4 The requirement that Spanish fishermen should hold a licence is laid down in certain Community regulations and in particular, with regard to Case 50/82, in Council Regulation (EEC) No 554/81 of 27 February 1981 fixing certain interim measures for the conservation and management of fisheries resources applicable to vessels flying the flag of Spain (Official Journal L 57, p. 1) and, with regard to the other cases, in Council Regulation (EEC) No 1569/81 of 1 June 1981 laying down for 1981 certain measures for the conservation and management of fishery resources applicable to vessels flying the flag of Spain (Official Journal L 154, p. 1).

5 In all of the cases the defendants in the main proceedings maintain that the Community regulations at issue are invalid or in any event inapplicable in their case, on the ground that they are incompatible with the rights upon which the defendants may rely by virtue of international commitments previously entered into between France and Spain. For that purpose they rely in particular upon the Geneva Convention of 29 April 1958 on Fishing and Conservation of the Living Resources of the High Seas (United Nations Treaty Series, Vol. 559, No 8164) and upon the London Fisheries Convention of 9 March 1964 (United Nations Treaty Series, Vol. 581,

No 8432) which, since it recognized fishing rights in the 6 to 12-mile zone, must, according to the defendants, be understood as meaning that, after the extension of the fishery limits, the same regime extends up to 200 miles.

6 It must be observed that Regulation No 1569/81 was adopted after the entry into force on 22 May 1981 of the Agreement on Fisheries between the European Economic Community and the Government of Spain of 15 April 1980 (Official journal C 263, p. 1) and on the basis of that Agreement. Since the Agreement has superseded the prior international obligations which existed in this field between France and Spain, Spanish fishermen may not rely on such obligations in order to prevent the application of the regime established by the Agreement.

7 Regulation No 554/81 forms part of a series of Council regulations which, pending the entry into force of the Agreement, established for short periods interim provisions prescribing catch quotas for Spanish fishermen. The Court has already held, in particular in its judgment of 18 December 1981 *(Crujeiras Tomé and Yurrita,* Joined Cases 180/80 and 266/80 [1981] ECR 2997), that those regulations are enforceable against Spanish fishermen and that such fishermen may not rely on prior international obligations entered into by France and Spain in order to challenge its validity.

8 Consideration of the question raised has disclosed no factor of such a kind as to affect the validity of Regulations No 554/81 and No 1569/81. Those regulations are enforceable against Spanish nationals.

9 In the course of the procedure before the Court the defendants in the main proceedings also relied upon two other arguments in support of their claim that the two regulations are invalid.

10 They claim first of all that the provisions of those regulations, in so far as they prescribe that Spanish fishermen must hold a fishing licence and do not impose the same requirement for fishing by fishermen of the Member States,

are contrary to the principles of non-discrimination set out in the various conventions on the protection of human rights, and in particular in Article 14 of the European Convention for the Protection of Human Rights and Fundamental Freedoms.

11 Even if it is supposed that such provisions, which guarantee non-discrimination in the enjoyment of the rights and freedoms set out in the convention in which they appear, are applicable to economic activities such as fishing it is impossible to classify as discriminatory a situation in which both Spanish fishermen and fishermen of Member States must comply with a system of catch quotas even though the manner of verifying catches is different. Verification by the use of a licensing system is intended to ensure that the catch quotas laid down for the fishing vessels of non-member countries are complied with since, in the case of such vessels no checks can be carried out in the adjacent coastal ports as those vessels normally return to their ports of origin to land their catches.

12 The defendants in the main proceedings then claim that Article 13 of Regulation No 1569/81, which provides for the penalties of withdrawal of fishing licences and the postponement of the granting of new licences which the Commission may impose for failure to comply with the Community rules on fishing, is invalid. That article is said to contitute a breach of the *audi alteram partem* principle since no provision is made for the right of the fishermen in question to be heard before a penalty is imposed. In addition it is contended that the penalties provided for are excessive since they may be extended to all the vessels of a ship-owner who is found to have contravened the rules.

13 These arguments, however, concern the validity of Regulation No 1569/81 in relation to superior principles of law recognized within the Community legal order, a problem which does not come within the context of the preliminary question submitted to the Court.

## Costs

14 The costs incurred by the French Government and by the Council and the Commission of the European Communities, which have submitted observations to the Court, are not recoverable. As these proceedings are, in so far as the parties to the main proceedings are concerned, in the nature of 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 (First Chamber)

in answer to the question submitted to it by the Tribunal de Grande Instance, Bayonne, by judgments of 17 September, 22 October and 5 November 1981, hereby rules:

**Consideration of the question raised has disclosed no factor of such a kind as to affect the validity of Council Regulations (EEC) No 554/81 of 27 February 1981 (Official Journal L 57, p. 1) and No 1569/81 of 1 June 1981 (Official Journal L 154, p. 1). The provisions of those regulations are enforceable against Spanish nationals.**

O'Keeffe Bosco Koopmans

Delivered in open court in Luxembourg on 28 October 1982.

For the Registrar

H. A. Rühl
Principal Administrator

A. O'Keeffe
President of the First Chamber

## OPINION OF MR ADVOCATE GENERAL CAPOTORTI

(see Joined Cases 13 to 28/82, p. 3939)