

JUDGMENT OF THE COURT  
24 November 1992 \*

In Case C-286/90,

REFERENCE to the Court under Article 177 of the EEC Treaty by the Kriminal-og Skifteret (Criminal and Probate Court), Hjørring, for a preliminary ruling in the proceedings pending before that court between

**Anklagemyndigheden [Public Prosecutor]**

and

**Peter Michael Poulsen,**

**Diva Navigation Corp.,**

on the interpretation of Article 6(1)(b) of Council Regulation (EEC) No 3094/86 of 7 October 1986 (OJ 1986 L 288, p. 1), laying down certain technical measures for the conservation of fishery resources,

THE COURT,

composed of: O. Due, President, C. N. Kakouris, G. C. Rodríguez Iglesias and M. Žuleeg (Presidents of Chambers), G. F. Mancini, R. Joliet, F. A. Schockweiler, J. C. Moitinho de Almeida, F. Grévisse, M. Diez de Velasco and P. J. G. Kapteyn, Judges,

Advocate General: G. Tesauro,  
Registrar: H. A. Rühl, Principal Administrator

\* Language of the case: Danish.

after considering the written observations submitted on behalf of:

- Peter Michael Poulsen and Diva Navigation Corp., by B. Nielsen and C. Dyvig, of the Copenhagen Bar;
- the Danish Government, by J. Molde, Legal Adviser in the Ministry of Foreign Affairs, acting as Agent;
- the Commission, by R. C. Fischer and H. P. Hartvig, Legal Advisers, acting as Agents,

having regard to the Report for the Hearing,

after hearing the oral observations of Peter Michael Poulsen and Diva Navigation Corp., the Danish Government, represented by J. Molde and T. Lehmann, Director in the Legal Service of the Ministry of Foreign Affairs, and the Commission, at the hearing on 21 January 1992,

after hearing the Opinion of the Advocate General at the sitting on 31 March 1992,

gives the following

### Judgment

- 1 By order of 10 August 1990, received at the Court on 19 September 1990, the Kriminal-og Skifteret, Hjørring, referred to the Court for a preliminary ruling under Article 177 of the EEC Treaty five questions on the interpretation of Article 6 (1)(b) of Council Regulation (EEC) No 3094/86 of 7 October 1986, laying down certain technical measures for the conservation of fishery resources (OJ 1986 L 288, p. 1), (hereinafter 'the Regulation').
- 2 These questions were raised in the course of criminal proceedings brought by the Anklagemyndigheden (Danish Public Prosecutor) against Peter Michael Poulsen

(hereinafter ‘Mr Poulsen’) and Diva Navigation Corp. (hereinafter ‘Diva Navigation’), who are being prosecuted on a charge that the crew of the vessel ‘*Onkel Sam*’, of which Mr Poulsen is the master and Diva Navigation the owner, had retained, transported and stored on board salmon caught in the North Atlantic in contravention of the Regulation.

- 3 The ‘*Onkel Sam*’ is registered in Panama and flies the Panamanian flag. It belongs to Diva Navigation, a company governed by Panamanian law, and wholly owned by a Danish national. Mr Poulsen is the master of the vessel; like the rest of the crew, he is Danish and is paid in Denmark. Between voyages, the vessel is normally berthed in a Danish port.
- 4 At the beginning of 1990, the ‘*Onkel Sam*’ caught 22 332 kg of salmon in the North Atlantic outside the waters under the sovereignty and jurisdiction of the Member States. While under way to Poland in order to sell its cargo there, its carburettor became clogged and, in view of the difficult weather conditions, the master decided to head for a Danish port in order to carry out the necessary repairs. While the ‘*Onkel Sam*’ was moored in that port, it was inspected by the Danish fishery officers, its cargo was seized and then sold on the Danish market, and its master and also its owner were summoned to appear before the Kriminal-og Skifteret to answer a charge that they had contravened Article 6(1)(b) of the Regulation.
- 5 According to Article 1, the Regulation concerns the catching and landing of fish stocks in all maritime waters under the sovereignty or jurisdiction of the Member States and within one of Regions 1 to 8 defined in the Regulation.
- 6 By derogation from this provision, Article 6(1) of the Regulation provides, with regard to salmon and sea trout, that, even where those fish have been caught outside waters under the sovereignty or jurisdiction of the Member States in Regions 1, 2, 3 and 4, as defined in Article 1, they may not be retained on board, transhipped, landed, transported, stored, sold, displayed or offered for sale, but must be returned immediately to the sea.

7 The Kriminal-og Skifteret, being uncertain whether that provision was applicable in the case in question, requested the Court to give a preliminary ruling on the five following questions:

- (1) Must the prohibition in Article 6 of Regulation No 3094/86 be understood as covering all masters and possibly other crew members who are nationals of a Member State of the Communities, whatever the country in which the fishing vessel concerned is registered and whatever flag it flies, and regardless of where the vessel is located?
- (2) Must the prohibition in Article 6 of Regulation No 3094/86 be understood as covering the owners who are nationals of non-member countries, where catches are brought into Community territory only temporarily?

If the reply to question 1 is that the prohibition in Article 6 does not cover fishing by Community nationals on the high seas on board vessels registered in non-member countries, the Court is requested to answer the following questions:

- (3) Must registration in a non-member country of a fishing vessel which undertakes activities contrary to Regulation No 3094/86 be respected in relation to the prohibition in Article 6, regard being had to the fact that:
  - the vessel belongs to a Panamanian company wholly owned by an EC national;
  - the master and the other crew members are EC nationals;
  - the vessel is operated from a Member State of the Communities and
  - between voyages, the vessel normally lies in a harbour in an EC country?

(4) If the ship's registration must be respected, the Court is requested to state the areas in which a vessel registered in a non-member country falls within the prohibition on the transport and storage of salmon caught in the North Atlantic:

- (a) when the vessel is in European Community fishery waters;
- (b) when the vessel is in the territorial waters of a Member State;
- (c) when the vessel is in the inland waters of a Member State; or
- (d) not at all?

(5) If the ship's registration must be respected and the prohibition on the transport and storage of salmon caught in the North Atlantic is applicable, the Court is requested to state whether European Community law contains rules on compliance with the prohibition in respect of vessels from non-member countries that have put into port in a Member State because of an emergency.

Is it relevant in this connection whether the emergency arose within the geographical scope of the prohibition or outside it?

- 8 Reference is made to the Report for the Hearing for a fuller account of the facts of the case, the procedure and the written observations submitted to the Court, which are mentioned or discussed hereinafter only in so far as is necessary for the reasoning of the Court.
- 9 As a preliminary point, it must be observed, first, that the European Community must respect international law in the exercise of its powers and that, consequently, Article 6 abovementioned must be interpreted, and its scope limited, in the light of the relevant rules of the international law of the sea.

- 10 In this connexion, account must be taken of the Geneva Conventions of 29 April 1958 on the Territorial Sea and the Contiguous Zone (*United Nations Treaty Series*, vol. 516, p. 205), on the High Seas (*United Nations Treaty Series*, vol. 450, p. 11) and on Fishing and Conservation of the Living Resources of the High Seas (*United Nations Treaty Series*, vol. 559, p. 285), in so far as they codify general rules recognized by international custom, and also of the United Nations Convention of 10 December 1982 on the Law of the Sea (Third Conference of the United Nations on the Law of the Sea — *Official Documents*, vol. XVII, 1984, Document A/Conf. 62/122 and corrections, hereinafter ‘the United Nations Convention on the Law of the Sea’). It has not entered into force, but many of its provisions are considered to express the current state of customary international maritime law (see judgments of the International Court of Justice in the Delimitation of the Maritime Boundary in the Gulf of Maine Region Case, Canada v United States of America, ICJ [1984], p. 294, paragraph 94; Continental Shelf Case, Libyan Arab Jamahiriya v Malta, ICJ [1985], p. 30, paragraph 27; Military and Paramilitary Activity in and against Nicaragua Case, Nicaragua v United States of America, substantive issues, ICJ [1986], p. 111-112, paragraphs 212 and 214).
- 11 The object of the prohibition in question is to conserve protected species. Its basis is to be found in particular in a multilateral convention signed by the European Community in 1982, that is the Convention for the Conservation of Salmon in the North Atlantic (OJ 1982 L 378, p. 25), which prohibits fishing for salmon beyond the limits of the zones of fisheries jurisdiction of the coastal States. That Convention meets the obligation of all members of the international community to cooperate in conserving and managing the living resources of the high seas, as provided for by Article 118 of the United Nations Convention on the Law of the Sea. Moreover, Article 6 of the Geneva Convention of 29 April 1958 on Fishing and Conservation of the Living Resources of the High Seas recognizes the interest of coastal States in the living resources in the part of the high sea adjacent to the waters within their jurisdiction. In the light of the aims of the prohibition laid down in Article 6(1)(b) of the Regulation, this provision must be interpreted so as to give it the greatest practical effect, within the limits of international law.

## Nationality of the vessel

- 12 In its third question, the national court seeks to know whether a vessel registered in a non-member country may be treated, for the purpose of Article 6(1)(b) of the Regulation, as a vessel with the nationality of a Member State on the grounds that there is a genuine link between it and the Member State.
- 13 In answer to that question, under international law a vessel in principle has only one nationality, that of the State in which it is registered (see in particular Articles 5 and 6 of the Geneva Convention on the High Seas of 29 April 1958 and Articles 91 and 92 of the United Nations Convention on the Law of the Sea).
- 14 It follows that a Member State may not treat a vessel which is already registered in a non-member country and therefore has the nationality of that country as a vessel flying the flag of that Member State.
- 15 The fact that the sole link between a vessel and the State of which it holds the nationality is the administrative formality of registration cannot prevent the application of that rule. It was for the State that conferred its nationality in the first place to determine at its absolute discretion the conditions on which it would grant its nationality (see in particular Article 5 of the Geneva Convention on the High Seas of 29 April 1958 and also Article 91 of the United Nations Convention on the Law of the Sea).
- 16 It follows from these considerations that the answer to the third question must be that a vessel registered in a non-member country may not be treated, for the purpose of Article 6(1)(b) of Council Regulation (EEC) No 3094/86 of 7 October 1986 laying down certain technical measures for the conservation of fishery resources, as a vessel with the nationality of a Member State on the ground that it has a genuine link with that Member State.

## Applicability of Article 6 to nationals of a Member State on board a vessel flying the flag of a non-member country

- 17 In the first question the national court asks whether Article 6(1)(b) of the Regulation can be applied to the master and other members of the crew on the ground that they are nationals of a Member State, regardless of the country in which the vessel is registered and of the sea area where the vessel is located.
- 18 In that connection, it must be emphasized that the law governing the crew's activities does not depend on the nationality of the crew members, but on the State in which the vessel is registered and, where appropriate, the sea area in which the boat is located.
- 19 Besides, nothing in the text or reasoning of the Regulation suggests that the European Community meant to impose obligations on Community nationals by virtue of its personal jurisdiction.
- 20 Consequently, the answer to the first question must be that Article 6(1)(b) of Council Regulation (EEC) No 3094/86 of 7 October 1986 laying down certain technical measures for the conservation of fishery resources, may not be applied to the master and other crew members *qua* nationals of a Member State, irrespective of the State in which the vessel is registered and the sea area in which the vessel is located.

## Applicability of Article 6 in different sea areas

- 21 In its fourth question, the national court asks the Court to determine the sea areas in which Article 6(1)(b) of the Regulation is to be applied to a vessel registered in a non-member country.

- 22 In answer to that question, the abovementioned provision may not be applied to a vessel on the high seas registered in a non-member country, since in principle such a vessel is there governed only by the law of its flag.
- 23 It is true that in 1982 the European Community signed the abovementioned Convention for the Conservation of Salmon in the North Atlantic. However, that Convention may not be invoked against non-signatory States and cannot, therefore, be applied to vessels registered in those States.
- 24 As far as the other sea areas are concerned, the Community has the power to adopt rules classifying as illegal the transport and storage in the exclusive economic zone, the territorial sea, inland waters and ports of the Member States of salmon caught within the regions referred to in Article 6(1)(b) of the Regulation.
- 25 However, the jurisdiction of the coastal State in some of those areas is not absolute. Thus, although the territorial sea falls under the sovereignty of the coastal State, the latter must respect the right of innocent passage through it of vessels flying the flag of other States (Articles 14 to 23 of the Geneva Convention on the Territorial Sea and the Contiguous Zone of 29 April 1958; Articles 17 to 32 of the United Nations Convention on the Law of the Sea). As far as the exclusive economic zone is concerned, the coastal State must in exercising its powers observe in particular freedom of navigation (see Article 58(1) of the United Nations Convention on the Law of the Sea).
- 26 It follows that Community legislation may not be applied in respect of a vessel registered in a non-member country and sailing in the exclusive economic zone of a Member State, since that vessel enjoys freedom of navigation in that area.
- 27 Nor may it be applied in respect of such a vessel crossing the territorial waters of a Member State in so far as the vessel is exercising the right of innocent passage in those waters.

- 28 Conversely, Community legislation may be applied to it when it sails in the inland waters or, more especially, is in a port of a Member State, where it is generally subject to the unlimited jurisdiction of that State.
- 29 For those reasons, the answer to the fourth question must be that Article 6(1)(b) of Council Regulation (EEC) No 3094/86 of 7 October 1986 laying down certain technical measures for the conservation of fishery resources may in principle be applied to a vessel registered in a non-member country only when that vessel is in the inland waters or in the port of a Member State.

### Confiscation of the cargo

- 30 It is apparent from the order for reference that, in its second question, the national court seeks to ascertain whether it may order the confiscation of a cargo of salmon caught in the areas referred to in Article 6(1)(b) of the Regulation and kept on board a vessel registered in a non-member country and belonging to a company established in that State, where the cargo is in transit in waters under the jurisdiction of the European Community.
- 31 The confiscation of a cargo of fish forms part of the panoply of measures that Member States are bound to provide for in order to ensure that Community legislation is observed and to deprive those who contravene it of the financial benefit gained from such contravention. Confiscation is thus an ancillary measure which may be ordered only where there has been an infringement of Community legislation.
- 32 As is apparent from the answer given to the preceding questions, neither the nationality of the vessel's owner nor the temporary nature of the cargo's presence in waters under Community jurisdiction has any effect on the illegality of the transport.

- 33 Finally, since the prohibition on transporting and storing salmon caught in the areas mentioned in Article 6(1)(b) of the Regulation can in principle be applied to a vessel registered in a non-member country only when the vessel is in the inland waters or in the port of a Member State, confiscation of the cargo temporarily transported into waters under Community jurisdiction may be ordered only in that situation.
- 34 Consequently, the answer to the second question must be that the national court may in principle order the confiscation of a cargo of salmon caught in the areas referred to in Article 6(1)(b) of Council Regulation (EEC) No 3094/86 of 7 October 1986 laying down certain technical measures for the conservation of fishery resources, which is in transit in waters under Community jurisdiction and is kept aboard a vessel registered in a non-member country and belonging to a company established in that State, only when that vessel is in the inland waters or in the port of a Member State.

### **Existence of Community rules on distress**

- 35 In its fifth question, the national court asks whether Community law contains rules concerning compliance with the prohibition contained in Article 6(1)(b) of the Regulation in the case of vessels from non-member countries which have entered a port of a Member State owing to a situation of distress.
- 36 As to that, none of the regulations adopted by the Council for the purposes of establishing or implementing a Community scheme for the conservation and management of fishery resources contains any provision allowing a vessel in a situation of distress to escape the prohibition.
- 37 Moreover, the question concerning the legal consequences of the situation of distress does not concern the determination of the sphere of application of Community legislation, but rather the implementation of that legislation by the authorities of the Member States.

- 38 In those circumstances, it is for the national court to determine, in accordance with international law, the legal consequences which flow, for the purpose of the above-mentioned Article 6, from a situation of distress involving a vessel from a non-member country.
- 39 Therefore, the answer to the fifth question must be that Community law contains no rules on compliance with the prohibition contained in Article 6(1)(b) of Council Regulation (EEC) No 3094/86 of 7 October 1986 laying down certain technical measures for the conservation of fishery resources, with respect to vessels from non-member countries which have entered a port of a Member State because they are in distress. It is for the national court to determine, in accordance with international law, the legal consequences flowing from such a situation.

### Costs

- 40 The costs incurred by the Commission of the European Communities, which has 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 Kriminal-og Skifteret, by order of 10 August 1990, hereby rules:

1. A vessel registered in a non-member country may not be treated, for the purposes of Article 6(1)(b) of Council Regulation (EEC) No 3094/86 of 7 October 1986 laying down certain technical measures for the conservation of fishery resources, as a vessel having the nationality of a Member State on the ground that it has a genuine link with that Member State.
2. Article 6(1)(b) of Council Regulation (EEC) No 3094/86 of 7 October 1986 laying down certain technical measures for the conservation of fishery

resources may not be applied to the master and other crew members *qua* nationals of a Member State, irrespective of the State in which the vessel is registered and the sea area in which the vessel is located.

3. Article 6(1)(b) of Council Regulation (EEC) No 3094/86 of 7 October 1986 laying down certain technical measures for the conservation of fishery resources may in principle be applied to a vessel registered in a non-member country only when that vessel is in the inland waters or in a port of a Member State.
4. The national court may in principle order the confiscation of a cargo of salmon caught in the areas referred to in Article 6(1)(b) of Council Regulation (EEC) No 3094/86 of 7 October 1986 laying down certain technical measures for the conservation of fishery resources, which is in transit in waters under Community jurisdiction and is kept aboard a vessel registered in a non-member country and belonging to a company established in that State, only when that vessel is in the inland waters or in a port of a Member State.
5. Community law contains no rules on compliance with the prohibition contained in Article 6(1)(b) of Council Regulation (EEC) No 3094/86 of 7 October 1986 laying down certain technical measures for the conservation of fishery resources with respect to vessels from non-member countries which have entered a port of a Member State because they are in distress. It is for the national court to determine, in accordance with international law, the legal consequences flowing from such a situation.

Due                    Kakouris                    Rodríguez Iglesias                    Zuleeg

Mancini                    Joliet                    Schockweiler

Moitinho de Almeida                    Grévisse                    Diez de Velasco                    Kapteyn

Delivered in open court in Luxembourg on 24 November 1992.

J.-G. Giraud

O. Due

Registrar

President

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