

Press and Information Division

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Judgment of the Court of Justice in Case C-263/02 P

Commission v Jégo-Quére & Cie SA

**THE COURT OF JUSTICE HAS CONFIRMED ITS CASE-LAW RELATING
TO THE CIRCUMSTANCES IN WHICH AN INDIVIDUAL MAY SEEK THE
ANNULMENT OF A COMMUNITY REGULATION**

It has set aside the judgment of the Court of First Instance which had held that an action of that kind was admissible and which called into question the system for reviewing the legality of Community measures of general application.

The fishing company Jégo-Quére & Cie, established in France, was involved in fishing mainly for whiting, to the south of Ireland. It used nets of a mesh size of 80 mm, which were prohibited by a Commission regulation of 2001, the aim of which was to renew hake stocks.¹ It brought an action before the Court of First Instance of the European Communities for annulment of two of the provisions of that regulation, which imposed minimum mesh sizes on vessels operating in certain areas for the different net fishing techniques employed.

On 3 May 2002, the Court of First Instance held the action to be admissible, thereby breaking with case-law which held that natural or legal persons may not challenge a measure of general application unless they are affected by it by reason of certain attributes peculiar to them or by reason of a factual situation which differentiates them from all other persons. As grounds for this relaxation of the requirements as to the admissibility of actions for annulment brought by individuals it gave the necessity of providing them with an effective means of judicial protection which is not available under national law. The Court of First Instance thus adopted a new definition of the requirement of individual concern: the Community provision must affect the

1 Regulation (EC) No 1162/2001 of 14 June 2001 (OJ 2001 L 159, p. 4)

individual's legal position in a way which is both definite and immediate, by restricting his rights or imposing obligations on him.

The Commission brought an appeal against that judgment before the Court of Justice, arguing that the Court of First Instance should have held that the action was inadmissible.

The Court of Justice reaffirmed that the Treaty has established a complete system of legal remedies designed to ensure effective protection of the rights of the citizen under the Community legal order.

The Court noted that individuals must be able to exercise the rights given to them by the Community legal order and to bring proceedings in order to have their claim decided upon. The EC Treaty has established a complete system of legal remedies and procedures designed to ensure review of the legality of acts of the institutions and has entrusted such review to the Court of Justice and the Court of First Instance. Under that system, natural or legal persons to whom a Community measure is addressed which directly and individually concerns them may challenge it before the Community judicature by way of an action for annulment.

By contrast, the annulment of a Community measure of general application, such as a regulation, cannot be obtained by an individual directly before the Community judicature.

However, natural or legal persons who are prevented from challenging a regulation directly before the Community courts are not thereby denied all possibility of bringing effective proceedings. Two possibilities are open to them:

- **if they are involved in proceedings before the Community courts which indirectly challenge such a regulation**, they may contest its validity by way of an incidental plea
- or they may raise the invalidity of the regulation **before the national courts and ask them to refer the matter to the Court of Justice** on the basis that there is an issue as to the validity of Community law.

In that respect, the Court points out that it is not its task to act in substitution for the Member States, who have a duty to ensure judicial protection through systems of legal remedies and procedures which enable natural and legal persons to challenge before the courts the legality of a national measure adopted in implementation of a regulation. It is not within the Court's powers, in proceedings brought before it for the annulment of a regulation, to consider whether this protection is effectively guaranteed and, if it is not, to hold that proceedings brought by an individual are admissible. That would lead the Community judicature to interpret national procedural law and thus go beyond its jurisdiction.

The Court adds that the fact that the regulation in question applies directly, without intervention on the part of the national authorities, does not of itself mean that an operator directly concerned by it can only contest the validity of the regulation if he has first contravened it. It is possible at a national level for such an operator to seek

from the competent authorities a measure under that regulation which he may contest before the national court, enabling him to challenge the regulation indirectly.

Moreover, if the interpretation of the notion of "individual concern" means that account must be taken of the various circumstances that may distinguish an applicant individually, that cannot have the effect of setting aside that concept, which is expressly laid down in the Treaty. The Community judicature would also go beyond their jurisdiction in such a case.

In the light of all those arguments, the Court has set aside the judgment of the Court of First Instance of 3 May 2002 and declared the application for annulment by Jégo-Quéré & Cie to be inadmissible.

Unofficial document, for media use only, which does not bind the Court of Justice.

Available languages: English, French and German.

*The full text of the judgment can be found on the internet (www.curia.eu.int).
In principle it will be available from midday CET on the day of delivery.*

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