

Press and Information Division

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Judgment of the Court in Joined Cases C-20/00 and C-64/00

*Reference for a preliminary ruling: Booker Aquaculture Ltd and Hydro Seafood GSP Ltd v
The Scottish Ministers*

**NO AUTOMATIC COMPENSATION FOR FISH FARMERS WHO ARE REQUIRED
BY COMMUNITY LAW TO DESTROY THEIR STOCKS WHICH ARE INFECTED
BY A CONTAGIOUS DISEASE**

A Community directive, and the national measures implementing it, which do not provide for compensation for the owners of the infected fish, do not infringe the right to property if they correspond to objectives of general interest pursued by the Community and do not constitute a disproportionate and intolerable interference impairing the very substance of that right.

Two Community directives seek to control certain fish diseases. A directive of 1991 established a list of diseases among which are infectious salmon anaemia ("ISA") and viral haemorrhagic septicaemia ("VHS").

In the event of an outbreak of such diseases, a directive of 1993 requires, in certain circumstances, the killing and destruction of all the fish in the affected farms, save, under certain conditions, fish that have reached commercial size and show no clinical sign of disease, which may be marketed for human consumption after being slaughtered and eviscerated.

No provision is made for compensating owners of fish farms affected by ISA or VHS.

In the United Kingdom, the Community legislation was implemented by regulations of 1992 and 1994.

Two fish farms in Scotland were affected: one, Booker Aquaculture, by an outbreak of VHS in 1994; the other, Hydro Seafood, by an outbreak of ISA in 1998. Both farms were required, under ministerial orders, to destroy fish that had not reached commercial size and to market prematurely, after their evisceration, fish that had reached that size. Both Booker and Hydro

sought compensation from the Scottish public authorities for the losses suffered. Those claims were rejected.

Both undertakings brought legal proceedings against the public authorities. The Court of Session, before which the cases were brought, asked the Court of Justice of the EC whether the right to property requires farmers, whose fish have had to be destroyed under the 1993 directive, to be compensated.

At the outset, the Court states that no right of compensation for the benefit of owners whose fish have been destroyed follows either from the scheme or from the terms of the 1993 directive. The Court must therefore determine whether, in the absence of provision for compensation, the directive is compatible with the fundamental right to property.

The Court recalls that **fundamental rights** are not absolute, but must be considered in relation to their social function. **Restrictions may be imposed** on the exercise of a fundamental right provided that they **correspond to objectives of general interest** pursued by the Community and **do not constitute a disproportionate and intolerable interference** impairing the very substance of that right.

The Court applies itself to ascertaining the objective of the Community rules in question and considers that they seek to ensure the development of the aquaculture sector and to lay down health rules at Community level. In that context, the 1993 directive has to enable control measures to be taken as soon as the presence of a disease is suspected and the monitoring of movements of fish liable to spread the infection. The Court concludes that **the measures imposed by that directive are in conformity with objectives of general interest pursued by the Community.**

As to whether the restrictions constitute a disproportionate and intolerable interference, the Court observes first that the measures prescribed by the 1993 directive are urgent in order to eliminate any risk of the spread of the diseases. Further, it holds that such measures do not deprive owners of the use of their farms, but promote the continuation of their activities by enabling them to restock the affected farms as soon as possible. Finally, fish farming carries commercial risks, such as diseases. Furthermore, although the Community legislature may consider compensation appropriate, in certain circumstances, for owners whose animals have been destroyed, the existence, in Community law, of a general principle requiring compensation to be paid in all circumstances cannot be inferred from that fact.

Therefore, the Court concludes that the measures imposed by **the 1993 directive** in order to control fish diseases, **do not**, in the absence of compensation for affected owners, **constitute a disproportionate and intolerable interference** impairing the very substance of the right to property.

With regard to the implementation by a Member State of such disease control measures which do not provide for compensation, it does not, for the same reasons, impair the right to property.

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