



The Commission's early ban on bluefin tuna fishing in 2008 cannot give fishermen a right to compensation

The Court of Justice holds that the action brought by Italian fishermen before the General Court was manifestly unfounded since they rely, in support of their claim, on a period of time that had unlawfully been granted to Spanish fishermen

Mr Salvatore Aniello Pappalardo and a number of Italian companies own vessels authorised to fish for bluefin tuna with purse seine nets. Fishing quotas were allocated to them for 2008. By a 2008 regulation,¹ the Commission decided that fishing for bluefin tuna, normally authorised until 30 June 2008, would be prohibited from 16 June 2008 for seiners flying the flags of Greece, France, Italy, Cyprus and Malta (Article 1) and from 23 June 2008 for those flying the flag of Spain (Article 2). As the bans imposed by the regulation took effect on different dates for Spanish seiners and for other seiners, the Court of Justice declared the regulation to be partly invalid, such invalidity being limited to Article 2.²

In 2013, Mr Pappalardo and the companies concerned brought an action for damages before the General Court of the European Union, by which they claimed more than €6.5 million by way of compensation for harm allegedly suffered, arguing that the regulation had resulted in discrimination against them.

In the judgment under appeal,³ the General Court dismissed the action, holding that the imposition of two different dates for the ban on fishing for Greek, French, Italian, Cypriot and Maltese seiners, on the one hand, and for Spanish seiners, on the other, did not, in itself, constitute a manifest breach of the principle of non-discrimination. The 2008 regulation addressed the general-interest objective of averting a serious threat to the conservation and recovery of the bluefin tuna stock in the Eastern Atlantic and the Mediterranean,⁴ and not that of protecting the rights linked to the economic activity of fishing enjoyed by certain seiners vis-à-vis others.

Mr Pappalardo and the companies concerned then brought an appeal, asking the Court of Justice to set aside the General Court's judgment and uphold their claim for compensation. By their appeal they complain that the General Court made an error of law in its analysis of the principle of *res judicata*. They argue that the General Court had in fact declared in an earlier order⁵ that there was no need to adjudicate on Italy's action for annulment of Article 1 of the regulation given that the regulation had been held to be invalid in its entirety. Mr Pappalardo and the companies concerned also maintain that the General Court made an error of law in its application of the requirement relating to the unlawful conduct of the Commission.

¹ Commission Regulation (EC) No 530/2008 of 12 June 2008 establishing emergency measures as regards purse seiners fishing for bluefin tuna in the Atlantic Ocean, east of longitude 45 °W, and in the Mediterranean Sea (OJ 2008 L 155, p. 9).

² Case [C-221/09](#) AJD Tuna see Press Release No [22/11](#)). The scope of that judgment was confirmed by in Joined Cases [C-12/13 P](#) and [C-13/13 P](#) *Buono and Others v Commission and Syndicat des thoniers méditerranéens and Others v Commission* see Press Release No [137/14](#)).

³ Case [T-316/13](#) *Pappalardo and Others v Commission* see Press Release No [46/16](#)).

⁴ Case [C-611/12 P](#) *Giordano v Commission and Buono*, cited above.

⁵ Order in Case [T-305/08](#) *Italy v Commission*.

By today's judgment, the Court dismisses the appeal, observing, in the first place, that the force of *res judicata* extends only to the matters of fact and law actually or necessarily settled by a judicial decision. Consequently, since the General Court did not decide — in the above-mentioned order declaring that there was no need to adjudicate — on Italy's action for annulment of the 2008 regulation, there is no ground for complaining that it made an error of law by examining, in the judgment under appeal, the appellants' claim for compensation on the basis of the judgments in *AJD Tuna* and *Buono* and *Giordano*.⁶ Nor could that order give rise to any legitimate expectations on the part of Mr Pappalardo and the companies concerned.

In the second place, the Court points out that the principle of equal treatment must be reconciled with the principle of legality, according to which **a person may not rely, in support of his claim, on an unlawful act committed in favour of a third party**. Consequently, the fact that purse seiners flying the Spanish flag **unlawfully had the benefit** of an extra week of fishing cannot give rise to a right to compensation for Greek, French, Italian, Cypriot and Maltese seiners.

Since the illegality affecting the 2008 regulation, which worked in favour of Spanish seiners, did not concern the situation of Mr Pappalardo and the appellant companies, they could not rely on it in support of their claim.

NOTE: An appeal, on a point or points of law only, may be brought before the Court of Justice against a judgment or order of the General Court. In principle, the appeal does not have suspensive effect. If the appeal is admissible and well founded, the Court of Justice sets aside the judgment of the General Court. Where the state of the proceedings so permits, the Court of Justice may itself give final judgment in the case. Otherwise, it refers the case back to the General Court, which is bound by the decision given by the Court of Justice on the appeal.

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The [full text](#) of the judgment is published on the CURIA website on the day of delivery.

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⁶ See the first paragraph and footnotes 2 and 4.