

Case T-12/96

Area Cova SA and Others

v

Council of the European Union  
and Commission of the European Communities

(Fisheries — Conservation of marine resources — Convention on Future  
Multilateral Cooperation in the North-West Atlantic Fisheries — Greenland  
halibut — Catch quota granted to the Community fleet — Action for  
annulment — Inadmissibility)

Order of the Court of First Instance (Third Chamber), 8 July 1999 . . . . . II-2304

Summary of the Order

1. *Actions for annulment — Natural or legal persons — Measures of direct and individual concern to them — Regulation No 2565/95 concerning the stopping of fishing for Greenland halibut by vessels flying the flag of a Member State — Action brought by the owners of fishing vessels and by associations representing the collective interests of such owners — Inadmissible*  
(EC Treaty, Art. 173, fourth para. (now, after amendment, Art. 230, fourth para., EC); Commission Regulation No 2565/95)

2. *Plea of illegality — Incidental plea — Where the main action is inadmissible — Inadmissibility of the plea of illegality*  
 (EC Treaty, Art. 184 (now Art. 241 EC))

1. The action brought by owners of fishing vessels, established in a Member State, for annulment of Regulation No 2565/95 concerning the stopping of fishing for Greenland halibut by vessels flying the flag of a Member State — by which the Commission recorded that the 1995 Community quota was exhausted and called a halt to fishing for Greenland halibut in sub-areas 2 and 3 of the North-West Atlantic Fisheries Organisation (NAFO) — is inadmissible.

The contested Regulation, which is applicable *erga omnes*, has not affected the applicants by reason of certain attributes peculiar to them or by virtue of circumstances which differentiate them, having regard to that Regulation, from all the other operators to whom it may apply.

When the Community authorities adopted the contested measure they were not obliged to take account of the applicants' particular circumstances. The fact that the institution which is the author of a measure is acquainted with the persons concerned by it is not in itself, regardless of whether there is a concomitant obligation of that kind, a factor which distinguishes a person individually. Similarly, the mere fact that the applicants participated, as advisers of the Commission, in the

negotiations preceding the adoption by the NAFO Fisheries Commission of a total allowable catch for Greenland halibut is not capable of distinguishing them individually, because none of the provisions of the applicable Community legislation requires the Commission, before finding that the quota is exhausted and declaring a halt to fishing, to follow a procedure in which persons of the category to which the applicants belong would be entitled to claim possible rights or even to be heard.

Furthermore, the alleged effects on the applicants' financial interests do not differentiate them appreciably from any other economic operator concerned by the contested Regulation, since in the last analysis that measure has not adversely affected specific rights held by them.

The action brought by three associations, representing the collective interests of owners of fishing vessels, for annulment of the same Regulation is also inadmissible. An association formed to promote the collective interests of a category of persons cannot be considered to be individually concerned, for the purposes of the fourth paragraph of Article 173 of the Treaty (now, after amendment, Article 230, fourth paragraph, EC), by a measure

affecting the general interests of that category. It is not entitled, therefore, to bring an action for annulment on behalf of its members where they cannot do so individually.

association did not take on the role of negotiator (which was reserved for the contracting parties) and the relevant legislation does not grant them any right of a procedural nature.

Although the presence of particular circumstances, such as the role played by an association in a procedure which has led to the adoption of an act within the meaning of Article 173 of the Treaty, may establish the admissibility of an action brought by an association whose members are not directly and individually concerned by that act, in particular where its position as negotiator has been affected by the act, that is not the position where the applicant

2. The possibility afforded by Article 184 of the Treaty (now Article 241 EC) of pleading the inapplicability of a regulation, or of a measure of general application forming the legal basis of the contested implementing measure, does not constitute an independent right of action and recourse may be had to it only as an incidental plea. That provision may not be invoked in the absence of an independent right of action.