

JUDGMENT OF THE COURT OF FIRST INSTANCE (Fifth Chamber)

11 December 2001 *

In Case T-46/00,

Kvitsjøen AS, established in Fosnavag (Norway), represented by K. Storalm, J. Hoekstra and G. Vanquathem, lawyers, with an address for service in Luxembourg,

applicant,

v

Commission of the European Communities, represented by T. van Rijn, acting as Agent, assisted by F. Tuytschaever, lawyer, with an address for service in Luxembourg,

defendant,

APPLICATION for the annulment of the Commission decision of 22 December 1999 withdrawing from the Norwegian fishing vessel *Kvitsjøen* its licence and special fishing permit for Community waters and refusing to grant it that licence and permit before 30 June 2000,

* Language of the case: Dutch.

THE COURT OF FIRST INSTANCE
OF THE EUROPEAN COMMUNITIES (Fifth Chamber),

composed of: P. Lindh, President, R. García-Valdecasas and J.D. Cooke, Judges,
Registrar: J. Plingers, Administrator,

having regard to the written procedure and further to the hearing on 8 May
2001,

gives the following

Judgment

Legislative framework

- 1 Article 2(1) of Council Regulation (EC) No 50/1999 of 18 December 1998 laying down, for 1999, certain measures for the conservation and management of fishery resources applicable to vessels flying the flag of Norway (OJ 1999 L 13, p. 59) provides:

‘Vessels fishing within the quotas fixed in Article 1 shall comply with the conservation and control measures and all other provisions governing fishing in the zones referred to in that Article.’

2 Article 3(7) and (8) of Regulation No 50/1999 provides:

‘Licences and special fishing permits shall be withdrawn in the event of any failure to meet the obligations laid down in this Regulation.

For a period not exceeding 12 months, no licence and special fishing permit shall be issued for any vessel in respect of which the obligations laid down in this Regulation have not been met.’

3 Footnote 14 to Annex I to Regulation No 50/1999 states that ‘catches of sole shall be limited to by-catches only’.

4 Article 4, first paragraph, of Council Regulation (EC) No 894/97 of 29 April 1997 laying down certain technical measures for the conservation of fishery resources (OJ 1997 L 132, p. 1) provides:

‘No device shall be used by means of which the mesh in any part of the fishing net is obstructed or otherwise effectively diminished.’

5 Part D of the annex to Council Regulation (EC) No 1447/1999 of 24 June 1999 establishing a list of types of behaviour which seriously infringe the rules of the common fisheries policy (OJ 1999 L 167, p. 5) mentions, as one example of such a type of behaviour, ‘using or keeping on board prohibited fishing gear or devices affecting the selectiveness of gear’.

- 6 Article 10 of Council Regulation (EC) No 1627/94 of 27 June 1994 laying down general provisions concerning special fishing permits (OJ 1994 L 171, p. 7) provides:

‘1. Member States shall immediately notify the Commission of any recorded infringement concerning a vessel flying a third-country flag.

2. Following notification as referred to in paragraph 1, the Commission may suspend or withdraw the fishing licence and special fishing permits issued... and may refuse to issue a new fishing licence and special fishing permit to the vessel concerned. The Commission’s decision shall be notified to the third country.

3. The Commission shall immediately notify the inspection authorities of the Member States concerned of the measures taken pursuant to paragraph 2.’

- 7 Article 5 of Commission Regulation (EC) No 2943/95 of 20 December 1995 setting out detailed rules for applying Council Regulation (EC) No 1627/94 laying down general provisions concerning special fishing permits (OJ 1995 L 308, p. 15) provides:

‘Member States shall notify any infringements detected..., indicating as a minimum the name of the vessel involved, its external marking, its international radio call sign, the third country of the flag flown, the names and addresses of the master and the owner, a detailed statement of the facts of the case, details of any judicial, administrative or other action undertaken and any final decision in law concerning the infringement.’

8 Article 6 of Regulation No 2943/95 provides:

‘1. The Commission shall consider all notified infringements committed by third-country vessels, assessing the seriousness of each case in the light of judicial and administrative decisions by the competent authorities in the Member States and in particular of the commercial benefits which the vessel owner may have enjoyed and the impact of the infringement on fishery resources.

In respect of the vessel concerned, and without prejudice to the provisions of any fishery agreement with the third-country flag State, the Commission may — after giving the vessel owner the opportunity to express his views on the alleged infringement — decide on the basis of the seriousness of the case to:

- suspend the special fishing permit,

- withdraw the special fishing permit,

- remove the vessel concerned from the list of vessels eligible for a special fishing permit in the following calendar year.

2. The Commission’s decision may not be taken within the 14-day period following receipt by the owner of notification of the alleged infringement.’

Facts underlying the application

- 9 The applicant, Kvitsjøen AS, is a Norwegian company established to undertake the operation of vessels engaged in commercial fishing at sea and all related commercial and industrial activities.
- 10 By a decision of 2 February 1999 a fishing licence and special fishing permit were issued by the Commission to the Norwegian fishing vessel M-600-HOE *Kvitsjøen* authorising it to fish in 1999 for cod, haddock, plaice and whiting in ICES sub-area IV and for saithe in ICES sub-areas IIIa and IV, in accordance with Article 3 of Regulation No 50/1999.
- 11 During an inspection carried out at sea on 7 October 1999, the General Inspectorate of the Netherlands Ministry of Agriculture, Natural Resources and Fisheries ('the General Inspectorate') confirmed the presence of blinders allowing the legal mesh size of 100 mm for nets to be reduced. An average mesh size of 47 mm was confirmed on the blinder attached to the port side and an average mesh size of 45 mm on that attached to the starboard. On foot of those findings the vessel was escorted to the port of Harlingen (Netherlands) where its catch was confiscated. This catch (8 210 kg) consisted mainly of sole (3 640 kg) and plaice (4 288 kg).
- 12 By letter of 13 October 1999 the General Inspectorate informed the Commission of this incident and of the fact that the *Kvitsjøen* had been reported for infringement of the Community rules on fishing.
- 13 In that letter the General Inspectorate also informed the Commission that the *Kvitsjøen* had been reported on 1 October 1999 on suspicion of fishing directly for sole. During unloading in the port of Harlingen, it had appeared that the catch

(9 273 kg) consisted mainly of sole (4 605 kg), along with plaice (3 902 kg) and other types of fish (766 kg).

- 14 By letter of 14 October 1999 the Commission first pointed out to the applicant that the company was obliged, under Articles 1 and 2 of Regulation No 50/1999, to comply with the conservation and control measures and all provisions governing fishing in Community waters and that it had to limit its catches of sole to by-catches when engaged in fishing activities not specifically mentioned in Annex I to that regulation. The Commission then pointed out that Article 4 of Regulation No 894/97 prohibits the use of devices by which the mesh in any part of the fishing net is obstructed or otherwise effectively diminished.

- 15 The Commission went on in that letter to draw the applicant's attention to the information which it had received from the General Inspectorate concerning the presence of blinders reducing the legal size of net mesh and relatively significant catches of sole.

- 16 The Commission concluded its letter by pointing out that it intended, in accordance with Article 3(7) and (8) of Regulation No 50/1999, to initiate the procedure under Article 6 of Regulation No 2943/95, in view of the seriousness of the infringement and the economic benefit which the vessel owner was able to derive from the very serious implications which the facts confirmed would have for plaice and sole stocks in ICES area IV, with a view to withdrawing the licence and special fishing permit of the *Kvitsjøen* for the remaining period of their validity, and with the intention of not issuing any new licence or special fishing permit before 30 June 2000. The Commission concluded its letter by informing the applicant that it could submit to the Commission its observations on the infringement committed, in accordance with Article 6(2) of Regulation No 2943/95, within 10 days of receipt of the letter.

- 17 By letter of 15 October 1999 the Fisheries Directorate of the Netherlands Ministry of Agriculture, Natural Resources and Fisheries confirmed to the Commission the infringements found by the General Inspectorate and informed it of certain suspicions concerning previous irregularities committed by the *Kvitsjøen*.
- 18 In reply to the Commission's letter of 14 October 1999, which it received on 22 October 1999, the applicant, by letter of 1 November 1999, expressed its regret at having fished with illegal mesh sizes and stated that, having already been deprived of the economic benefit of the infringement by the confiscation of the catch, it considered withdrawal of the permit to be disproportionate to the infringement committed.
- 19 The Commission, by letters of 22 December 1999, notified the applicant (SG(99)D/10761) and, in accordance with Article 10(2) of Regulation No 1627/94, the Office of the Permanent Representative of Norway in Brussels (SG(99)D/10760) of its decision to withdraw the *Kvitsjøen's* licence and special fishing permit with effect from the fifth day after the date of its respective letters and not to issue any new licence or special fishing permit before 30 June 2000 ('the contested decision'). The authorities of the Member States concerned, that is to say, the Kingdom of Belgium, the Kingdom of Denmark, the Federal Republic of Germany, the French Republic, Ireland, the United Kingdom of Great Britain and Northern Ireland, and the Kingdom of the Netherlands, were also notified of that decision.

Procedure and forms of order sought by the parties

- 20 Those are the circumstances in which the applicant, by application lodged with the Court Registry on 28 February 2000, brought the present action.

21 Following the report of the judge-rapporteur, the Court decided to open the oral procedure. The parties presented oral argument and replied to the questions put by the Court at the public hearing held on 8 May 2001.

22 The applicant claims that the Court should:

— declare the action to be admissible and well founded;

— declare the contested decision to be null and void;

— make the appropriate order as to costs.

23 The Commission claims that the Court should:

— dismiss the action as being unfounded;

— order the applicant to pay the costs.

Substance

- 24 In support of its action, the applicant invokes, in substance, four pleas in law: first, infringement of the *audi alteram partem* principle and infringement of the 'principle of open administration'; second, infringement of the procedural rules laid down in Article 5 of Regulation No 2943/95; third, infringement of the sanctions procedure set out in Article 6 of Regulation No 2943/95 and infringement of the principle of proportionality; and, fourth, misuse of power.

The first plea in law: infringement of the audi alteram partem principle and infringement of the 'principle of open administration'

Arguments of the parties

- 25 The applicant points out that, according to settled case-law, compliance with the *audi alteram partem* principle in any procedure liable to result in a measure adversely affecting the party concerned must be regarded as being a fundamental obligation under Community law.
- 26 It submits that since 1990 the Netherlands authorities have been requesting the Commission to take action against Norwegian trawlers fishing in Community waters, especially, in their view, for sole, by punishing them in particular by withdrawal or suspension of fishing permits.
- 27 The Netherlands authorities, so the applicant contends, took more than nine years to collect the necessary information and set up a file, a period during which an in-depth investigation by the Commission ought to have taken place.

However, the applicant was at no time the subject of such an investigation and never received any request for information.

- 28 In its reply, the applicant adds that the contested decision represents no more than the conclusion of a campaign which the Netherlands authorities have been waging against it for years. It submits that it has not been informed of the allegations made against it and had therefore no reasonable period, measured in terms of the duration of the investigation, within which to prepare its defence in detail. That being so, the administrative action lacked the requisite degree of transparency.
- 29 Questioned on this matter at the hearing, the applicant argued that the Commission was not entitled to rely on arguments derived from the investigation conducted by the Netherlands authorities, given that the applicant had not itself been apprised of the existence of that investigation and that nothing had been publicly stated in that regard.
- 30 The applicant goes on to criticise the Commission for having based itself on inaccurate factual data supplied to it by the Netherlands Ministry. Having omitted to check the accuracy of those data, the Commission failed to act, *vis-à-vis* the applicant, with the care and diligence which one is entitled to expect. In this connection, the applicant cites, *inter alia*, a judgment of the Economische Kamer van het Gerechtshof te Arnhem (Chamber dealing with economic offences within the Regional Court of Appeal, Arnhem) of 6 March 1995 against a former master of the *Kvitsjøen*, at that time operating under the registration number F 600 M. In that judgment, the Netherlands court dismissed the charges brought by the public prosecutor's department and acquitted the accused of the charges levelled against him of fishing with the use of blinders over the period from 20 September 1993 to 11 March 1994, charges referred to by the Netherlands Government in its letter of 15 October 1999 to the Commission.
- 31 The Commission takes the view that the applicant's argument cannot be upheld because the Commission itself scrupulously complied with the relevant legislative provisions and did not infringe any of the rights to a fair hearing.

Findings of the Court

- 32 It is notable in this case that, during the inspection of 7 October 1999, the *Kvitsjøen* was found to be fishing with the use of blinders reducing the legal dimensions of 100 mm for net mesh, in contravention of Article 4 of Regulation No 894/97 (see paragraph 4 above) and, consequently, that it had also breached Article 2 of Regulation No 50/1999 requiring compliance with all provisions governing fishing activities within Community waters.
- 33 In accordance with Article 3(7) of Regulation No 50/1999, the Commission must withdraw licences and special fishing permits where there has been non-compliance with the obligations laid down in that regulation. Article 3(8) further provides that, for a period not exceeding 12 months, no licence or special fishing permit may be issued for any vessel in respect of which the obligations laid down in Regulation No 50/1999 have not been met.
- 34 The Commission was therefore entitled to open a procedure for the imposition of a sanction following the infringement committed by the *Kvitsjøen*, which was discovered during the inspection made on 7 October 1999 and notified to the Commission by letter of 13 October 1999.
- 35 Further, in the letter of 14 October 1999 from the Commission, the applicant was invited to submit its observations on that infringement, in accordance with Article 6 of Regulation No 2943/95.
- 36 As the applicant therefore did have an opportunity to submit its observations, as it did by letter of 1 November 1999, its rights to a fair hearing were respected.

- 37 That being so, the applicant cannot object to having been the subject of an investigation into alleged infringements of the prohibition on fishing directly for sole, which it claims had been carried out by the Netherlands authorities over nine years or more. Even if there had been such an investigation, it would not be relevant in the present case because the *Kvitsjøen* was fishing illegally, as was confirmed on 7 October 1999, a fact which by itself, due to the notification by the Netherlands authorities under Article 5 of Regulation No 2943/95, led to the Commission's intervention pursuant to Article 6 of that regulation.
- 38 From this it also follows that the arguments alleging infringement of the principle of sound administration and a supposed principle that administrative action must be open are entirely irrelevant. In those arguments, the applicant relies only on events arising after the infringement discovered on 7 October 1999, whereas, pursuant to the aforementioned provisions, that infringement by itself led to the opening of the sanction procedure in this case.
- 39 It follows that this plea in law must be rejected.

The second plea in law: infringement of the procedural rules set out in Article 5 of Regulation No 2943/95

Arguments of the parties

- 40 The applicant points out that Article 5 of Regulation No 2943/95 obliges Member States to send certain information to the Commission in any case where an infringement has been confirmed (see paragraph 7 above).

- 41 It is clear, the applicant argues, from the letter which the General Inspectorate sent to the Commission on 13 October 1999 that certain items of that information were not forwarded, even though it was obligatory to do so.
- 42 Although the letter of 13 October 1999 contained certain required information, it fails to mention the name of the vessel, its international radio call sign, or the names and addresses of the master and owner.
- 43 As against this, the Commission argues that there is no provision which states that failure to set out the matters mentioned in Article 5 of Regulation No 2943/95 will render the notification void, that those matters are listed exhaustively, or even that such information must be notified to the Commission in writing. The notification in the present case complies with Article 5 of Regulation No 2943/95 because the letter of 13 October 1999 enabled the Commission to identify the vessel responsible for the infringement and also contains a clear description of the facts confirmed and the circumstances in which those facts occurred.

Findings of the Court

- 44 The third recital in the preamble to Regulation No 2943/95 highlights the need to establish a cooperation procedure among the competent authorities of the Member States in order to facilitate the exchange of information in cases where Community rules have not been complied with.
- 45 To that end, Article 5 of Regulation No 2943/95 requires certain items of information to be notified to the Commission so as to enable that institution to know, *inter alia*, the vessel responsible for the infringement, the nature of the infringement, and any punitive action already taken at national level.

- 46 It is clear from those provisions that the purpose of the information required under Article 5 of Regulation No 2943/95 is to make it possible to determine accurately the nature of the infringement and the vessel responsible.
- 47 Suffice it in the present case to hold that the information provided by the Netherlands authorities enabled the Commission adequately to identify the infringement and the vessel responsible. The applicant, moreover, is not suggesting that the finding that the *Kvitsjøen* was fishing with the use of blinders which reduced the legal size of 100 mm for net mesh was based on incomplete information or vitiated by an error of fact.
- 48 That being so, this plea in law must be rejected.

The third plea in law: infringement of the procedure relating to sanctions under Article 6 of Regulation No 2943/95 and infringement of the principle of proportionality

Arguments of the parties

- 49 The applicant first submits that it is being accused of two infringements, one concerning direct fishing for sole and the other concerning fishing with nets below the permitted mesh size. In the applicant's view, it is clear from the Commission's letter of 14 October 1999 that the contested decision does not follow exclusively from an investigation into illegal fishing with banned nets but is also based on allegations of direct fishing for sole.

- 50 So far as direct fishing is concerned, the applicant claims that it is being criticised for not having limited its catches of sole to by-catches, as provided for in footnote 14 of Annex I to Regulation No 50/1999. The applicant submits that this condition was complied with, since its sole catches amounted to less than 50% of the total catch.
- 51 With regard to fishing with nets below the permitted mesh size, the applicant submits that the relative legislation is of only limited importance for the conservation of fishery resources.
- 52 Furthermore, it contends, the facts in issue occurred in autumn, that is to say, in October 1999, whereas springtime is the period of growth for sole fry and fry of other fish species. The facts of which the applicant stands accused cannot therefore have had such serious consequences for the maintenance and management of fishery resources as the defendant alleges.
- 53 Furthermore, the Commission's contention is irrelevant since it relates to fishing for fish that have not reached the minimum length, which is not the position in the present case, since the catches in question involve fish that were of the legally permitted length.
- 54 The applicant also points out that, notwithstanding systematic checks and various written reports made against it, no criminal penalty has as yet been imposed on it for fishing with nets below the legal mesh size. Its catches were confiscated on one single occasion. In addition, this matter is but rarely the subject of criminal prosecution by the courts of the Member States, or receives only the mildest of penalties.

- 55 Second, the applicant argues that a sanction such as that imposed on it constitutes a manifest interference with its commercial assets and even a real threat to its existence.
- 56 It argues in this connection that a sanction of this kind has never previously been imposed, whether on vessels flying the flags of non-member countries or on those flying the flag of a Member State, even for considerably more serious infringements having an appreciably graver impact on fishery resources.
- 57 The applicant accordingly takes the view that the sanction imposed in this case is manifestly disproportionate in relation to the infringements committed and is patently in breach of the procedure relating to sanctions as set out in Regulation No 2943/95. It argues in this regard that it is difficult to argue that the interference with its commercial assets and the serious threat to its existence are proportionate to the infringement committed. The applicant claims that it faces a real threat of being wound up in view of the fact that its bank is now refusing it any credit. The same objective, it argues, could be achieved by different means, such as criminal sanctions at national level, fines which, although equally effective for the purpose of preserving fishery resources, would be less radical in their impact.
- 58 The Commission emphasises that the present case is based on only one infringement, namely that of fishing with the use of mesh-obstructing blinders, which in itself constitutes a serious infringement of the provisions that govern fishing.
- 59 The Commission states, first, that it applied the only sanction possible under Article 3(7) and (8) of Regulation No 50/1999 and, second, that it did not impose that sanction at the maximum possible level, corresponding to a ban on fishing vessels flying the flag of a non-member country fishing in Community waters for a period of approximately two years.

- 60 The Commission states in this regard that the seriousness of the facts, in particular the expected financial profit, the disastrous consequences of those facts for the conservation of fishery resources and the fact that at the date on which the contested decision was adopted no national penalty had been imposed, justifies the sanction imposed.

Findings of the Court

- 61 The Court would point out at the outset that, in its letter to the applicant (SG(99)D/10761), the Commission referred, in regard to the description of the infringement, to its letter of 14 October 1999 (see paragraph 14 above).
- 62 As regards, first, the applicant's argument to the effect that the Commission relied on two separate infringements of the Community rules, the Court would point out that, as already held in relation to the first plea in law, the sanctions procedure arising out of the *Kvitsjøen's* infringement was opened by the Commission after its discovery by inspection on 7 October 1999. Although the Commission does indeed refer to the catch of sole in its letter of 14 October 1999, the Commission chose, for the infringement of the Community provisions leading to the opening of the procedure under Article 6 of Regulation No 2943/95, only the infringement of Article 4 of Regulation No 894/97 prohibiting the use of devices by means of which the mesh in any part of a net may be obstructed or otherwise effectively diminished.
- 63 The Court notes that, in its letter of 14 October 1999, the Commission did not allege that the applicant had directly fished for sole. Next, it must be borne in mind that each time the Commission refers to the catch of sole, it does so in relation to an infringement that consists in the reduction of the legal mesh size. Finally, when it announces that it intends to open the procedure provided for in Article 6 of Regulation No 2943/95, the Commission refers only to the use or keeping on board of prohibited fishing gear or devices affecting the selectiveness

of gear. As such, it takes account of the sole catch only for the purpose of measuring the financial profit and the consequences for fish resources arising from the use of prohibited equipment.

- 64 It must also be noted that it is common ground that Article 4 of Regulation No 894/97 was indeed infringed.
- 65 The question that arises in connection with the present plea in law is, therefore, whether the fact that the applicant used blinders obstructing or reducing the lawful mesh size could legitimately be penalised by withdrawal of the licence and the special fishing permit and by the ban on obtaining a new licence and permit for six months.
- 66 In this regard, Regulation No 50/1999 imposes a variety of obligations on vessels fishing in Community waters, and especially that of compliance with conservation and control measures and with all provisions governing fishing in Community waters (Article 2(1)).
- 67 Non-compliance with one of those obligations will result in the withdrawal, or prohibition on the issue of, a licence '[f]or a period not exceeding 12 months' (Article 3(7) and (8)).
- 68 The obligation to comply with conservation and control measures and all provisions governing fishing in Community waters (Article 2(1)) is a matter of crucial importance within the framework of Regulation No 50/1999. It is thus within that context that it is necessary to examine whether there has been an

infringement of the sanctions procedure under Article 6 of Regulation No 2943/95 or the principle of proportionality.

- 69 Under Article 6 of Regulation No 2943/95 the Commission may, depending on the gravity, decide to suspend the special fishing permit, withdraw the special fishing permit, and may remove the vessel concerned from the list of vessels eligible for a special fishing permit in the following calendar year.
- 70 In accordance with the principle of proportionality, the penalty for failing to comply with a Community obligation must not exceed 'what is appropriate and necessary to attain the objective sought' (see Case 122/78 *Buitoni* [1979] ECR 677, paragraph 16).
- 71 There is nothing in this case to suggest that the Commission did not comply with the procedure set out in Article 6 of Regulation No 2943/95 or that it adopted a sanction incompatible with the principle of proportionality.
- 72 In the first place, the rules relating to net mesh sizes represent one of the objectives of Community policy in regard to conservation of fishery resources (see Regulation No 894/97, in particular the second recital in its preamble). The use of devices affecting the selectiveness of nets thus constitutes, according to Part D of the annex to Regulation No 1447/1999, behaviour which seriously infringes the rules of the Common Fisheries Policy. The applicant has no justification therefore for arguing that those rules are of merely limited importance for the conservation of fishery resources, and its arguments to that effect are, in any event, ineffective because they do not justify disregarding the undisputed infringement of obstructing or diminishing the legal mesh size.

- 73 Second, it is common ground that, when the contested decision was adopted, no national sanction had been imposed. It was for that reason unnecessary for the Commission to assess the scope of its decision by reference to national sanctions.
- 74 Third, as the Commission has pointed out, since fishing with blinders reducing lawful mesh size maximises the catch, the vessel owner was able to profit financially from the infringement which it committed.
- 75 In the light of its impact on fishery resources and, in particular, its impact on plaice and sole in ICES area IV, the seriousness of the infringement was therefore established. That being so, the Commission was quite entitled to impose the penalty in question.
- 76 Because the procedure provided for under Article 6 of Regulation No 2943/95 and the principle of proportionality were both complied with, this plea in law must be rejected.

The fourth plea in law: misuse of power

Arguments of the parties

- 77 The applicant submits that the confirmation of the infringement of 7 October 1999 and the resulting sanction amount to dilatory proceedings aimed at withdrawing or suspending its fishing permits.

- 78 In the applicant's opinion, it follows indisputably from the letters of 7 May 1993 and 28 July 1997 sent by the Netherlands Ministry of Agriculture, Natural Resources and Fisheries to the Commission that the reason for the 'offensive' organised by the Netherlands authorities is not to penalise a simple infringement but rather to keep Norwegian fishing vessels out of Community waters in order to be able to reserve the sole quota for other vessels.
- 79 The applicant adds that no solution can be provided by an individual penalty but can be found only at Community level in conjunction with the various parties involved.
- 80 The applicant accordingly alleges that the Commission has misused its power by giving in to the demands of the Netherlands authorities.
- 81 Against this, the Commission argues that, under established case-law, there is a misuse of power only where an institution seeks to achieve objectives other than those for which the power which it holds was conferred on it. In this case, it exercised its power pursuant to Article 3(7) and (8) of Regulation No 50/1999 in order to punish a serious infringement of the provisions governing fishing. It therefore did not seek to achieve objectives that were not covered by that regulation.

Findings of the Court

- 82 According to settled case-law, in order for a measure to amount to a misuse of powers, an applicant must establish, on the basis of objective, relevant and consistent factors, that the contested measure was taken with the purpose of

achieving ends other than those stated (Case C-323/88 *Sermes* [1990] ECR I-3027; Case C-84/94 *United Kingdom v Council* [1996] ECR I-5755, paragraph 69; Case T-143/89 *Ferriere Nord v Commission* [1995] ECR II-917, paragraph 68).

83 The applicant has failed to demonstrate that such is the position in the present case. As has been held above, the Commission used its power, in accordance with Article 3(7) and (8) of Regulation No 50/1999, to penalise an infringement of the provisions governing fishing. There is nothing which establishes that the contested decision was taken to achieve other ends.

84 The present plea in law must therefore be rejected.

85 It follows from all of the foregoing that the present action must be dismissed.

Costs

86 Under Article 87(2) of the Rules of Procedure the unsuccessful party must be ordered to pay the costs if they have been applied for in the successful party's pleadings. Since the applicant has been unsuccessful, it must be ordered to pay the costs, in accordance with the form of order sought by the Commission.

On those grounds,

THE COURT OF FIRST INSTANCE (Fifth Chamber),

hereby:

1. Dismisses the action;
2. Orders the applicant to pay its own costs and those of the Commission.

Lindh

García-Valdecasas

Cooke

Delivered in open court in Luxembourg on 11 December 2001.

H. Jung

Registrar

J.D. Cooke

President