

Press release issued by the Registrar

INADMISSIBILITY DECISION
COOPERATIEVE PRODUCENTENORGANISATIE VAN DE NEDERLANDSE
KOKKELVISSERIJ U.A. v. THE NETHERLANDS

A Chamber of the European Court of Human Rights has **declared inadmissible** the application lodged in the case of *Cooperatieve Producentenorganisatie van de Nederlandse Kokkelvisserij U.A. v. the Netherlands* (application no. 13645/05) concerning the applicant association's complaint about the unfairness of proceedings before the Court of Justice of the European Communities with regard to its right to dredge cockles in a tidal wetland area, the Wadden Sea. (The decision is available only in English.)

The applicant

The applicant, Cooperatieve Producentenorganisatie van de Nederlandse Kokkelvisserij U.A., is an association of individuals and enterprises based in Kapelle (the Netherlands) engaged in mechanical cockle fishing. Until December 2004 the association's members dredged cockles in the Wadden Sea, which is a protected area under domestic law.

Summary of the facts

In July 1999 and July 2000 the Deputy Minister of Agriculture, Nature Conservation and Fisheries granted licences to the applicant association entitling its members to harvest a certain quota of cockle meat from the Wadden Sea in the autumn months.

Two non-governmental organisations, the Wadden Sea Society (*Waddenvereniging*) and the Netherlands Society for the Protection of Birds (*Vogelbescherming Nederland*), lodged objections to the granting of those two licences. They claimed that mechanical cockle fishing caused long-term and possibly irreversible damage to ecologically vulnerable areas and that the quota set was too high in relation to the feeding needs of seabirds, in particular oystercatchers.

Both objections were dismissed by the Deputy Minister, who considered that an irreversible impact on the Wadden Sea environment had not been established.

On appeal, the Administrative Jurisdiction Division of the Council of State joined the cases and, although it rejected the NGOs' arguments regarding the impact on the Wadden environment and wildlife, accepted that questions arose concerning the interpretation and application of the Netherlands' Nature Conservation Act in the light of European Community law, in particular, Article 6 of Council Directive 92/43/EEC of May 1992 on the conservation of natural habitats and of wild fauna and flora (the "Habitats Directive"). The Council of State then sought a preliminary ruling from the Court of Justice of the European Communities (ECJ) under Article 234 of the Treaty establishing the European Community (formerly Article 177 of the EEC Treaty).

On 29 January 2004 the advisory opinion of the ECJ's Advocate General was read out in public. It stated the view that mechanical cockle fishing carried out for many years but for which a licence was granted annually for a limited period should only be authorised if the competent national authorities had made certain that the project's activity would not adversely affect the integrity of the site.

The applicant association requested leave to submit a written response to that opinion or, in the alternative, to have the oral proceedings reopened. On 28 April 2004 the ECJ refused that request. It found that the applicant association had submitted no precise information which made it appear either useful or necessary to reopen the proceedings pursuant to Rule 61 of the ECJ's Rules of Procedure.

The ECJ delivered judgment in September 2004; its reasoning essentially followed that of the advisory opinion.

Ultimately, in December 2004 the Administrative Jurisdiction Division annulled the applicant association's cockle-fishing licences on the ground that, in the absence of scientific proof that such fishing did not have a significant impact on the natural habitat, they contravened the Habitats Directive.

Since then, mechanical cockle fishing in the Netherlands waters of the Wadden Sea has apparently entirely ceased.

Complaints

The applicant association complained that its right to adversarial proceedings had been violated as, in its preliminary ruling proceedings, the ECJ had refused to allow the association to respond to the Opinion of the Advocate General. The association relied on Article 6 § 1 (right to a fair hearing) of the European Convention on Human Rights.

Procedure

The application was lodged with the European Court of Human Rights on 8 April 2005.

Decision of the Court¹

Article 6 § 1

The Court proceeded on the assumption that Article 6 of the Convention was applicable, leaving open, in particular, the question to what extent it could be invoked by the applicant association (which strictly speaking was an intervening third party in the proceedings before the Administrative Jurisdiction Division of the Council of State and the ECJ).

In so far as the applicant association's complaint was to be understood as directed against the European Community itself, the application had to be rejected, the European Community at present not being a party to the European Convention.

¹ This summary by the Registry does not bind the Court.

However, the Court still had to consider the Netherlands' responsibility with regard to the applicant association's complaint, particularly in view of the fact that the ECJ's intervention had been actively sought by a domestic court in proceedings before it.

The Court referred to its case-law, according to which there was a presumption that a Contracting Party has not departed from the requirements of the Convention where it had taken action in compliance with legal obligations flowing from its membership of an international organisation as long as that organisation offered protection of fundamental rights in a manner which could be considered at least equivalent to that provided by the Convention. It therefore had to examine whether the procedure before the ECJ had been accompanied by sufficient guarantees of fair procedure.

The Court noted that the ECJ, under Rule 61 of its Rules of Procedure, could reopen the oral proceedings after hearing the Advocate General's opinion, either of its own initiative or at the request of the parties. Indeed, the applicant association had submitted such a request for reopening; as apparent from the ECJ's decision of 28 April 2004, it had only been refused because the applicant association had not shown that reopening the proceedings was useful or necessary.

Following the ECJ's ruling, the Council of State could have sought a new preliminary ruling from the ECJ. Otherwise, had the applicant been able to show beyond reasonable scientific doubt that mechanical cockle fishing would not adversely affect natural habitat in the Wadden Sea, the Council of State could have decided in its favour.

The Court could not therefore find that the applicant association had shown that the fair trial guarantees available to it in this case had been manifestly deficient. It had therefore failed to rebut the presumption that the procedure before the ECJ provided equivalent protection of its fundamental rights.

Accordingly, in so far as it was directed against the Netherlands, the application had to be rejected as manifestly ill-founded.

The decision is available today on the Court's Internet site (<http://www.echr.coe.int>).

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The European Court of Human Rights was set up in Strasbourg by the Council of Europe Member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.