



Criminal sanctions and IUU fishing: The case of Spain

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ARTICLE INFO

Keywords:

Fisheries crime
IUU
Law enforcement
Administrative sanctions
Criminal sanctions

ABSTRACT

This article sets the scene for the contributions in this Special Issue on *Criminal sanctions and IUU fishing: the case of Spain*. The objective of the collection of papers included in this special issue is to stimulate an academic conversation about whether or not it would be appropriate to intensify the application of criminal sanctions in Spain for serious cases of illegal fishing. There are two main reasons to justify the connection of this international debate on the best legal means to fight against illegal fishing with the particular case of Spain. The first is the significance of the Spanish distant-water fleet, both in terms of the EU and on an international scale. The second reason is the current context of fisheries law reform in Spain.

IUU fishing generates a significant negative impact on the ecological sustainability of the marine environment. As a result, SDG 14.4 has come to reflect the commitment of States to “end overfishing, illegal, unreported and unregulated (IUU) fishing and destructive fishing practices”.

After the coming into force of the IUU Regulation [1], the EU developed a strategy against illegal fishing which has, fundamentally, been based on the strengthening the powers port States have at their disposal, with the aim of limiting the access of illegal catches to the supply chain [2]. At the same time, EU Member States have been obliged to adapt their internal laws in order to increase the intensity of the sanctions imposed upon individuals and companies for serious infringements of fisheries law.

Article 44 of the IUU Regulation gives States the option of imposing both administrative and criminal sanctions for serious infringements with the sole condition that they be effective, proportionate and act as a deterrent. However, the 20 Member States with maritime fishing powers have mainly opted to apply administrative rather than criminal law when sanctioning illegal fishing. Ireland is the only State to impose solely criminal sanctions, whereas Lithuania, Poland and Slovenia only apply administrative measures. Other States apply a mixed system, with Belgium, the Netherlands and Malta mainly applying criminal sanctions, while Latvia, Estonia, Germany, Denmark, Finland, France, Greece, Spain, Romania, Sweden, Bulgaria, Croatia and Cyprus employ administrative sanctions on the whole [3]. This situation can be considered to be reasonable as, in general, administrative proceedings are quicker and more effective. Furthermore, this approach is also coherent with the principle of minimum intervention of criminal law [4].

Despite this legislative landscape in the EU countries, the trend

towards considering serious forms of illegal fishing as a crime has gained ground around the world in recent years. This can be explained, first of all, by the fact that certain international organisations, such as INTERPOL and UNODC, have documented the connection between irregular fishing activity and organised transnational crime via the incorporation of criminal techniques such as human trafficking, slavery, tax evasion, money laundering, customs fraud, corruption and the trafficking of stolen goods [5]. On the other hand, in terms of comparative law, some relevant States (such as Norway, Indonesia and South Africa) have developed laws oriented towards the criminalisation of illegal fishing. Last but not least, it should also be pointed out that there is a solid doctrinal trend which advocates the criminal prosecution of the most serious forms of illegal fishing [6].

The objective of the collection of papers included in this special issue is to stimulate an academic conversation about whether or not it would be appropriate to intensify the application of criminal sanctions in Spain for serious cases of illegal fishing. There are two main reasons to justify the connection of this international debate on the best legal means to fight against illegal fishing with the particular case of Spain. The first is the significance of the Spanish distant-water fleet, both in terms of the EU and on an international scale. The second reason is the current context of fisheries law reform in Spain.

Spain is the most important distant-water fishing State within the EU. It has a highly internationalised fleet, such that Spanish vessels operating in non-EU waters (i.e., on the high seas and in the EEZs of third States) are responsible for more than half of the total catches of the national fleet [7]. The Spanish Government and the representatives of the Spanish distant-water fleet argue that Spain has become a leader on a

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<https://doi.org/10.1016/j.marpol.2022.105341>

Received 6 October 2022; Accepted 17 October 2022

Available online 26 October 2022

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European and global level in the fight against IUU fishing (vid. in this special issue, I. Artime, “Spain: A pioneering country in the fight against the infringement of the international legal regime for fisheries”). Despite this presumed exemplary character of the Spanish punitive system, it is still not possible to criminally prosecute in Spanish courts serious infringements of illegal fishing carried out by Spanish companies and crews on the high seas via mechanisms of transnational organised crime.

The Spanish system of administrative sanctions can be said to have achieved a high state of development following the coming into force of *Law 33/2014, of 26 December, on Maritime Fishing of the State* [8] and *Royal Decree 182/2015, of 13 March, approving the proceedings for the sanctioning regime over maritime fisheries in external waters* [9]. Indeed, the application of this advanced sanctioning system marked a significant international milestone due to the high amount of the economic sanctions imposed (vid. in this special issue, G. Oanta, “The application of administrative sanctions in the fight against IUU fishing: an assessment of Spanish practice”).

However, the Spanish system of criminal sanctions for fisheries offences is quite underdeveloped. From the point of view of the substantive applicable law, the provisions established in the Criminal Code for cases of illegal fishing (Arts. 334–336) are obsolete due to the fact that they are essentially reserved for sanctioning the fishing of protected species. Thus, it is practically impossible to apply this law as far as the fishing of commercial species is concerned. The possibility of carrying out a reform of the Criminal Code in order to enable the prosecution of the most serious forms of illegal fishing is explored in the papers by Jorge Urbina (“Towards an international legal definition of the notion of fisheries crime”) and Valeije (<https://www.sciencedirect.com/science/article/pii/S0308597X22003748>).

The inadequate regulation contained in the Criminal Code is not the only reason why fisheries crimes cannot be satisfactorily prosecuted in Spain. A further reason is the fact that jurisdictional problems arise when such activity is carried out on the high seas. Spanish courts have been extremely restrictive concerning the criminal prosecution of large-scale illegal fishing carried out by Spanish operators in international waters via the use of transnational criminal structures and flags of convenience. As can be seen in the Supreme Court Judgment 5654/2016 [10], concerning the Vidal Armadores case, in the opinion of the Spanish judges, the Convention for the Conservation of Antarctic Marine Living Resources did not provide sufficient legal basis to criminally proceed against Vidal Armadores. The paper by Mercedes Rosello (“Regional fishery management organisations measures and the imposition of criminal and administrative sanctions in respect of high seas fishing”) rightly points out the importance of clearly defining standards of conduct and unequivocally assigning penal enforcement routes through treaty law to provide a positive basis for the exercise of extraterritorial criminal jurisdiction. The Spanish Supreme Court also refused to apply the principle of personality of criminal law, since the principle of double criminality was not applicable to vessels with a flag of convenience owned by Spanish nationals (J.M. Sánchez, “The criminal prosecution of illegal fishing and the jurisdiction of Spanish courts”).

In summary, Spanish legislation applicable to illegal fishing demonstrates a clear preference for administrative sanctions and a minimal use of criminal sanctions. However, as Valeije points out in her contribution to this special issue, according to the jurisprudence of the ECHR there is a serious risk that administrative sanctions imposed by the Spanish administration can be so high as to become disproportionate and come to be considered equivalent to criminal sanctions.

As previously stated, in addition to the importance of the Spanish distant-water fleet, there is a second significant reason which explains the publication of this special issue. The Spanish government is currently immersed in a programme of legislative reform which implies the drafting of four bills aimed at updating the State’s fisheries legislation within the framework of the European Union’s Common Fisheries Policy. Along with the bill on Sustainable Fishing and Fisheries Research,

which has already been presented [11], a future bill regarding the Modernisation of Control and Inspection and of the Sanctioning Regime in fisheries activity has been announced. In this context of legislative reform, it seems appropriate to promote an academic debate regarding the appropriateness (or lack thereof) of improving the existing legal mechanisms to pursue serious forms of fisheries crime carried out via the structures of transnational organised crime.

The preliminary analysis of the draft bill on Sustainable Fishing, which has been passed by the Spanish government and is still awaiting parliamentary approval, demonstrates the will of the government to keep on giving preference to administrative, rather than criminal, sanctions when it comes to fighting against illegal fishing. This approach is, to a large extent, similar to that adopted by the EU. As Fajardo points out in her contribution to this special issue (“To criminalise or not to criminalise IUU fishing: The EU’s choice”), in the recently proposed recast Directive on environmental crime [12], the European Commission ended up discarding the idea of including serious illegal fishing as an environmental crime, even though this option was taken into consideration during the process of drafting the proposal.

Funding

This work has received financial support from the Spanish State Research Agency, Ministry of Science and Innovation (DOI: 10.13039/501100011033) within the framework of the research project “The implementation of SDG 14 in Spain and the EU: regulatory challenges for international cooperation and maritime security (ESPODS14)” (PID2019–109680RB-I00).

Declaration of Competing Interest

None.

Data availability

No data was used for the research described in the article.

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