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# The Spanish legal process for prosecuting illegal fishing: A story of success?

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## 1 Spain - leader in the fight against illegal, unreported and unregulated fishing

Illegal, unreported, or unregulated (IUU) fishing has become one of the greatest threats to the sustainable exploitation of marine resources and to oceanic biodiversity.<sup>1,2</sup> The European Union (EU) and the different Member States should use all available means to stop IUU due to its worldwide environmental and socio-economic impacts: it destroys marine habitats, depletes fish stocks, contributes to unfair competition between fishers and weakens coastal communities.<sup>3</sup>

Council Regulation (EC) No. 1005/2008 of 29 September 2008, establishing a community system to prevent, deter and eliminate illegal, unreported and unregulated fishing (the IUU Regulation) lays down a number of measures to fight illegal fishing. Since the IUU Regulation entered into force on 1 January 2010, Spain has worked actively to ensure its coherent application. In particular it has improved its Maritime Fisheries Law, Law 3/2001, 23 March 2001 (the Fisheries Law)<sup>4</sup>, including by making the administrative procedure more effective for imposing sanctions for involvement in IUU fishing activities.

Spain is considered one of the Member States with the most efficient implementation of the IUU Regulation.<sup>5,6</sup> Examples of the country's great progress in its application include issuing significant deterrent sanctions against Spanish citizens and organisations that have taken part in illegal fishing activities.<sup>7</sup>

Spain has examples of high profile successful prosecutions. In relation to the prosecution of IUU fishing in Antarctic waters, operations Sparrow I and Sparrow II resulted in combined penalties of more than 25 million euros on Spanish nationals.

However, the Spanish legal system establishes two different procedures for prosecuting the involvement in illegal fishing activities:

- An administrative procedure
- A criminal procedure

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<sup>1</sup> Recital 3 of the IUU Regulation.

<sup>2</sup> The 2019 Science-Policy Platform on Biodiversity and Ecosystem Services (IPBES) identifies fishing activities as a major cause of biodiversity loss in the marine environment. Chapter 2.1 of the IPBES Global Assessment on Biodiversity and Ecosystem Services determines that: *Illegal activities constitute major threats to nature and livelihoods. In maritime regions, they add to depletion of fish stocks. Coastal zones of developing countries are particularly susceptible to illegal, unreported or unregulated (IUU) fishing that peaked during the mid-1990s. In 2011, IUU was estimated at 26m or 33% of global catch including fish and other marine fauna and 20-32% by weight of wild-caught seafood imported to the US. IUU is highest off West Africa, estimated at ~40% of total catch, with 32% in the Southwest Atlantic and as much as 1.5 tons/year in Indonesia (Fig. 2.1.8). Note that 70% of vessels known to be linked to IUU are flagged under tax-haven jurisdictions.* On [https://www.ipbes.net/system/tdf/ipbes\\_global\\_assessment\\_chapter\\_2\\_1\\_drivers\\_unedited\\_31may.pdf?file=1&type=node&id=35278](https://www.ipbes.net/system/tdf/ipbes_global_assessment_chapter_2_1_drivers_unedited_31may.pdf?file=1&type=node&id=35278)

<sup>3</sup> European Commission. Directorate-General for Maritime Affairs and Fisheries Policy Development and Co-Ordination. *Handbook on the practical application of Council Regulation (EC) No. 1005/2008 of 29 September 2008 establishing a Community system to prevent, deter and eliminate illegal, unreported and unregulated fishing (The IUU Regulation)*. P.6. At [https://ec.europa.eu/fisheries/sites/fisheries/files/docs/body/handbook\\_original\\_en.pdf](https://ec.europa.eu/fisheries/sites/fisheries/files/docs/body/handbook_original_en.pdf)

<sup>4</sup> By Law 33/2014 that modifies the Fisheries Law.

<sup>5</sup> *Vid. Improving Performance in the Fight against Illegal, Unreported and Unregulated (IUU) Fishing. Spain – Leading Implementation of the EU's Regulation to Combat Illegal Fishing.* At [http://www.iuuwatch.eu/wp-content/uploads/2015/07/IUU\\_SPAIN\\_Brief\\_ENG\\_FINAL\\_June\\_HIGH.pdf](http://www.iuuwatch.eu/wp-content/uploads/2015/07/IUU_SPAIN_Brief_ENG_FINAL_June_HIGH.pdf)

<sup>6</sup> The Spanish government reached exactly the same conclusions in the biannual report submitted by it to the Commission to monitor the application of the IUU Regulation in Spain for the period 2016-2017.

<sup>7</sup> *Vid. The EU IUU Regulation Building on success EU progress in the global fight against illegal fishing.* P.6. On [http://www.iuuwatch.eu/wp-content/uploads/2016/02/IUU\\_report\\_090216\\_web.singles.pdf](http://www.iuuwatch.eu/wp-content/uploads/2016/02/IUU_report_090216_web.singles.pdf)

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In this briefing, we will explore the different Spanish processes for prosecuting nationals<sup>8</sup> for involvement in IUU fishing.<sup>9</sup> **What has been the basis of the prosecutions undertaken so far? And, are there further improvements to the Spanish systems that could be made?**

## 2 The Spanish procedures for prosecuting nationals for involvement in IUU fishing

### 2.1 The administrative procedure

#### 2.1.1 Violations regarding IUU fishing and the accompanying sanctions

The Fisheries Law classifies the infringements regarding maritime fishing into three categories: minor, serious and very serious infringements.<sup>10</sup> It classifies the specific violations mentioned in the IUU Regulation<sup>11</sup> as serious and very serious infringements.<sup>12</sup>

- **Serious infringements related to maritime fisheries in external waters**<sup>13</sup>
  - Any minor infringement related to IUU fishing
- **Very serious infringements related to maritime fisheries in external waters**<sup>14</sup>
  - Participation in transshipments or joint fishing operations
  - Participation in the exploitation, management and ownership
  - Any serious infringement related to IUU fishing
- **Serious infringements related to the planning and management of the fisheries sector and to the marketing of fisheries products**<sup>15</sup>
  - Any serious infringement that implies a breach of obligations under International Treaties or rules of third countries, related to IUU fishing

There are common requirements to all the above mentioned infringements. Firstly, the entity to be prosecuted must be a person or legal entity legally connected to stateless ships, ships flying the flag of countries qualified as flags of convenience, or to vessels of third countries identified by the Regional Fisheries Management Organisations (RFMOs) or other International

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<sup>8</sup> This report is focussed on the ways of prosecuting Spanish nationals because, although Spain has jurisdiction over IUU fishing activities by non-nationals within the territory and maritime waters under Spanish sovereignty or jurisdiction (art. 91 of the Fisheries Law), Operations Sparrow I and II and Operation Yuyus relate to activities by Spanish nationals in external waters.

<sup>9</sup> This report is limited to Operations Sparrow I and II, because Operations Banderas and Tarantelo are ongoing and therefore don't have a final resolution yet.

<sup>10</sup> Articles 102 to 104 of the Fisheries Law.

<sup>11</sup> These are mentioned in Article 42 of the IUU regulation that considers as serious infringements: (a) the activities considered to constitute IUU fishing in accordance with the criteria set out in Article 3 and (b) the conduct of business directly connected to IUU fishing, including the trade in or the importation of fishery products and (c) the falsification of documents referred to in this Regulation or the use of such false or invalid documents.

<sup>12</sup> For more information on the Spanish system of infringements and sanctions, vid. ClientEarth. *The Control and Enforcement of Fisheries in Spain*. At <https://www.documents.clientearth.org/wp-content/uploads/library/2017-09-29-the-control-and-enforcement-of-fisheries-in-spain-ce-en.pdf>

<sup>13</sup> Article 100.1.l of the Fisheries Law.

<sup>14</sup> Article 101. k), l) and m) of the Fisheries Law.

<sup>15</sup> Article 104.1. c) of the Fisheries Law.

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Organisations. Secondly, they must have engaged in IUU fishing activities, breached measures for the conservation and management of fishery resources or engaged in commercial, corporate or financial activities, related to such actions.

The Fisheries Law determines the sanctions that may apply for serious and very serious infringements:<sup>16</sup>

- Public admonition
- Financial penalties:
  - From 601 to 60,000 euros, in the case of serious infringements
  - From 60,001 to 600,000 euros, in the case of very serious infringements
- Assignment of points
- Inability to exercise or develop fishing activities
- Seizure of the ship, the gear, the fishing equipment, the fish caught
- Seizure of the products of fishing or of the products or goods obtained in the commission of the infractions
- Seizure of fishing gears or tools
- Seizure of catches, products from fisheries or products or goods obtained in the commission of the offence
- Suspension, withdrawal or non-renewal of authorisations, licenses or permits
- Prohibition of obtaining loans, subsidies or public aids
- Seizure of the vessel
- Temporary immobilisation of the vessel, the suspension of the status of authorised economic operator
- Limitation or cancellation of fishing rights or possibilities

### 2.1.2 Key points of the administrative procedure

#### 1. Where is the procedure set out?

- The Fisheries Law: Title V establishes the sanctioning regime regarding maritime fishing, whose application corresponds to the competent bodies of the National Administration. It also establishes the basic regulations of the sanctioning regime in matters of management of the fisheries sector and the commercial activity of fishery products, whose development, legislation and enforcement corresponds to the competent bodies of the Autonomous Regions (AARR).
- Royal Decree 182/2015, of 13 March 2015, approving the proceedings for the sanctioning regime over maritime fisheries in external waters (RD 182/2015).
- The Spanish Administrative Procedure Law 39/2015, of 1 October 2015.

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<sup>16</sup> Article 105 and 106 of the Fisheries Law.

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## 2. Who are the competent authorities?<sup>17</sup>

- For infringements related to maritime fisheries: the Government Delegates in the AARR from the National Administration.
- For infringements related to the planning, management and marketing of the fisheries sector: the competent bodies of each AARR.
- Under technical, economical, legal or territorial circumstances: the procedure may be initiated by the General Secretariat of Fisheries from the Ministry of Agriculture, Fisheries, Food and Environment.

## 3. What acts are in scope?<sup>18</sup>

Punishable acts are those committed:

- Within the territory and maritime waters under Spanish sovereignty or jurisdiction; or
- By persons on board ships flying the national flag.

## 4. Who can be prosecuted?<sup>19</sup>

- The responsibility for infractions rests with the persons or legal entities that commit the offences themselves or through other legal entities in which they exercise corporate control, even if they are integrated into temporary unions of companies, groups or communities of goods without personality.
- The following can also be found jointly responsible: the owners of vessels, charterers, importers and their representatives, tugboats, consignees, holders of fishing market concessions, those responsible for the first sale, wholesale markets, those in charge of fattening facilities, captains and skippers or people who direct fishing activities, transporters and the owners of companies that commercialise or transform fisheries products.

## 5. How long after the offence happened can the sanctioning proceeding be initiated and the sanctions imposed?<sup>20</sup>

- Infringements: for serious infringements a sanctioning procedure must be initiated within two years and for very serious infringements it must be initiated within three years.
- Sanctions: serious sanctions must be imposed within two years and very serious sanctions within three years.

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<sup>17</sup> Article 3 RD 182/2015.

<sup>18</sup> Article 90 of the Fisheries Law.

<sup>19</sup> Article 91 of the Fisheries Law.

<sup>20</sup> Article 93 of the Fisheries Law.

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Due to the international component of the different violations related to IUU fishing, these short periods may mean that it is often impossible to prosecute the most serious infringements.<sup>21</sup>

## 6. How long can the sanctioning procedure last?<sup>22</sup>

- The maximum period for serious and very serious infringements is nine months from the initiation of the sanction procedure to the resolution.
- A delay in the process will result in it being closed, as no process may last more than nine months. A new process may be opened only if the infringement's limitation period has not yet ended.

## 7. Are there any provisional measures that can be adopted?<sup>23</sup>

- Provisional measures can be adopted due to emergency reasons or for the purpose of immediately safeguarding a legally protected interest, for example, suspending the fishing authorisation of the relevant vessels during the administrative procedure, to protect a specific fish stock.
- The Fisheries Law allows for, in cases of serious and very serious infringements:
  - Suspension of fishing authorisations
  - Boarding and retention of the vessel
  - Seizure of gears, fishing gears, catches or fisheries products and goods obtained in the commission of the offence
  - Any others considered in any other IUU regulation

## 2.2 The criminal procedure

### 2.2.1 The relationship between the administrative and the criminal process<sup>24</sup>

The *non bis in idem* principle is a general principle of the Spanish Law. This means that if the competent administrative authority foresees the possibility of pursuing a criminal proceeding in relation to the same facts, they will suspend the administrative procedure until there is a final resolution to the criminal proceeding or an early termination of the proceeding.<sup>25</sup> It also implies that the administrative authorities are bound by any fact declared proven by a final criminal judicial decision.

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21 ClientEarth. The Control and Enforcement of Fisheries in Spain. P. 21. On <https://www.documents.clientearth.org/wp-content/uploads/library/2017-09-29-the-control-and-enforcement-of-fisheries-in-spain-ce-en.pdf>

<sup>22</sup> Article 14 of the RD 182/2015.

<sup>23</sup> Article 97 of the Fisheries Law.

<sup>24</sup> Article 11 of the RD 182/2015.

<sup>25</sup> E.g. through a resolution of permanent or temporary stay of the proceeding (arts.634 and following of the Royal Decree of 14 September 1882 of the Criminal Procedure Law).

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If at any time during the administrative procedure the competent administrative bodies deem that the facts could also constitute a criminal offence, they have an obligation to inform the Public Prosecutor's Office.

### 2.2.2 Offences and penalties regarding IUU fishing

The Spanish Criminal Code<sup>26</sup> does not mention any specific violations concerning IUU fishing. Notwithstanding this fact, there are some criminal offences that may involve these kinds of acts:

- **Environmental crimes - offences related to the flora and fauna**
  - Article 334: Hunting or fishing of endangered species, hindering their reproduction or migration, destruction or alteration of their habitat, trading or trafficking them.
  - Article 335: Hunting or fishing of species specifically prohibited by specific norms.
  - Article 336: The use of poison, explosive devices or other instruments or equipment with a similar destructive, non-selective effect on the fauna to hunt or fish.

The punishment for these criminal offences is imprisonment from four months to two years or a fine from eight to twenty-four months<sup>27</sup> and, in all cases, being barred from a profession or trade and being barred from the right to hunt or fish for a term of one to five years.

- **Economic crimes**
  - Article 301: Money laundering to acquire, possess, use, convert, or conveys assets, knowing they originate from a criminal activity. The punishment is imprisonment from six months to six years and a fine of between one and three times the value of the goods and may also include being barred from a profession or trade for a term of one to three years and an order of temporary or definitive closing of the business or premises.
  - Article 392: Document forgery. The punishment is imprisonment from six months to three years and a fine from six to twelve months.
  - Article 570 ter.: The constitution, financing or forming of criminal organisations or groups. The punishment shall be of imprisonment from three months to four years and a fine from six to twelve months.

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<sup>26</sup> Organic Law 10/1995, of 23 November, of Criminal Code (the Criminal Code)

<sup>27</sup> In the Spanish Legal system punishment by fine shall be imposed, except if the Law states otherwise, by the day-fine system. The daily quota shall be a minimum of 2 and a maximum of 400 euros, except in the case of fines imposed on legal persons, in which the daily quota shall have a minimum of 30 and a maximum of 5,000 euros. Judges or Courts of Law shall duly determine the extent of the punishment within the limits established for each offence and pursuant to the rules of the Criminal Code. They shall also set the amount of these quotas in the judgement, for which they shall only take into account the financial situation of the convict, deducting revenue, family obligations and charges and his other personal circumstances from his assets (vid. Article 50 of the Criminal Code).

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## 3 Two examples of administrative procedures: a 25 million euros story of success

### 3.1 Operation Sparrow I<sup>28,29</sup>

- In January 2015, New Zealand identified vessels, linked to Spanish companies, illegally fishing for Patagonian toothfish (also known as Chilean Seabass) in the Antarctic Ocean. These companies were allegedly linked to vessels included in the illegal fishing list of the Convention for the Conservation of Antarctic Marine Living Resources (CCAMLR).
- Operation Sparrow involved the inspection of several branches of a network of companies, related to the international business structure of Vidal Armadores. Vidal Armadores is a charterer and family-owned company, based in A Coruña (Galicia).
- The operation was carried out by the Ministry of Agriculture, Fisheries, Food and Environment,<sup>30</sup> through the inspection services of the General Secretariat of Fisheries, in collaboration with Interpol and the authorities of New Zealand, Australia, Cape Verde and Belize.
- The final resolution of the proceeding concerned nine companies that were part of Vidal Armadores' corporate structure (VIDAL ARMADORES SA, VIARSA ENERGIA SL, VIARSA CARTERA SL, PRIMARY CAPITAL SL, GALLEGA DE PESCA SOSTENIBLE SL, ALIMENTA DE TUNIDOS SL, ALIMENTA CORPORACIÓN, PROPEGARVI and PROYECTOS Y DESARROLLOS SOSTENIBLES SL). These companies were declared responsible for several infractions regarding IUU fishing. Sanctions were also imposed on seven people linked to these companies for several related offences, including obstruction of the inspection and destruction of documents.
- These companies were sanctioned for the existence of a business network that, using other foreign companies, allowed the management and exploitation of the vessels KUNLUN (IMO 7322897), YONGDING (IMO 9042001), SONGHUA (IMO 9319856) and TIANAI (IMO 7905039), which had been included in the EU's IUU vessels list.<sup>31</sup>
- The resolution imposed economic sanctions for a total amount of 17.84 million euros, disqualification from conducting fishing operations for between 5 and 23 years, as well as a prohibition from obtaining public subsidies and other public benefits for between 5 and 26 years.

### 3.2 Operation Sparrow II<sup>32</sup>

- The Ministry of Agriculture, Fisheries, Food and Environment inspected the offices of several companies in the provinces of A Coruña and Pontevedra in July 2015. During

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<sup>28</sup> Press release from the Ministry of Agriculture and Fisheries, Food and Environment related to the resolution of the disciplinary proceeding initiated as a result of the Sparrow I operation, from March 17 2016

<sup>29</sup> Also vid. [https://www.elconfidencial.com/espana/2017-02-10/supremo-deja-impune-pesca-pirata-alta-mar-asi-escapo-clan-vidal-justicia\\_1327354/](https://www.elconfidencial.com/espana/2017-02-10/supremo-deja-impune-pesca-pirata-alta-mar-asi-escapo-clan-vidal-justicia_1327354/)

<sup>30</sup> Now the Ministry of Agriculture, Fisheries and Food.

<sup>31</sup> On the Commission Implementing Regulation (EU) No 672/2013 of 15 July 2013, amending Regulation (EU) No 468/2010 establishing the EU list of vessels engaged in illegal, unreported and unregulated fishing.

<sup>32</sup> Press release from the Ministry of Agriculture Fisheries, Food and Environment related to the resolution of the disciplinary proceeding 1/2017/SGP, initiated as a result of the Sparrow II operation, from 6 April 2018.

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these proceedings, they obtained documentation that revealed the existence of a business network allegedly connected to the ownership, management and exploitation, by Spanish nationals and legal entities, of vessels THUNDER (IMO 6905408) and TCHAW (IMO 6818930), which had undertaken illegal fishing.

- Both vessels had been identified by various international organisations, such as CCAMLR and the Western Central Atlantic Fisheries Commission (WECAFC), as vessels involved in IUU fishing, and were included in the EU's IUU vessels list .
- In order to cover their trail, structures involving companies of different nationalities were created and the vessels' names were changed regularly. Thus, the THUNDER vessel (IMO 6905408) has also used the names BATU I, RAZ, MING NO. 5, WUHAN No 4, KUKO, TYPHOON, TYPHOON-1, RANGE, RUBIN, ARTIC RANGER and VESTURVON, while the TCHAW (IMO 6818930) was also known as VIKING, REX, CONDOR, INCA, BLUE SWAN, PESCAMEX IV, PESCAMEX III, AROSA CUARTO and PESCACISNE.
- The sanctioning resolution declared the Spanish legal entities FRIGORIFICOS FLORINDO E HIJOS SL, BACAMAR SA and PESQUERA PIÑEIRO SL, as well as eight people, responsible for several infractions regarding maintaining relationships with vessels that were prohibited by national, community and international regulations.
- These sanctions amounted to a total fine of 8,261,001 euros. Disqualification from fishing activities for between 11 and 12 years, and the prohibition of obtaining subsidies and public aid for between 12 and 14 years were also used.

**Operations Sparrow I and II are real examples of the successes of a Member State in the prosecution of IUU fishing. As a result of these operations, combined penalties of more than 25 million euros have been imposed on Spanish nationals and the vessels added to the CCAMLR IUU vessel list.**

## 4 The criminal process against Vidal Armadores: impunity in external waters

Together with the administrative route, opened as a consequence of Operation Sparrow, six members of the Vidal family have been accused before the Spanish National High Court, of crimes against the environment, money laundering, forgery, falsification and involvement in a criminal group.

### 4.1 The process before the Central Court of Instruction

- As a result of an operation by Interpol, together with fourteen other countries and the Spanish Guardia Civil,<sup>33</sup> it was estimated that the illegal fishing of toothfish connected to the international business structure of Vidal Armadores group would have led to a profit of more than 10 million euros per season, and thus over time the group may have accrued profits of more than 100 million euros, for more than 3,500 tons.<sup>34</sup>

<sup>33</sup> The so-called Operation Yuyus.

<sup>34</sup> Vid. [https://www.elconfidencial.com/espana/2017-02-10/supremo-deja-impune-pesca-pirata-alta-mar-asi-escapo-clan-vidal-justicia\\_1327354/](https://www.elconfidencial.com/espana/2017-02-10/supremo-deja-impune-pesca-pirata-alta-mar-asi-escapo-clan-vidal-justicia_1327354/)

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- The Spanish Public Prosecutor's Office initiated a criminal prosecution in relation to the facts which occurred on 6 January 2015, when a New Zealand patrol boat approached the fishing vessel KUNLUN, that was fishing under the flag of Equatorial Guinea, in international waters of the Southern Ocean. Days later, on 13 January, New Zealand patrol boats also approached two other fishing boats under the same flag. The three vessels were fishing toothfish with traditional gear - trawling or gillnets - in the area regulated under CCAMLR.
- Six people linked to the Vidal Armadores group (the Defendants) were accused before the National High Court of crimes against the environment (Article 335 and 336), money laundering (Article 301), involvement in a criminal group (Article 570 ter.) and forgery and falsification (Article 392) (the alleged offences).
- On 7 April 2016, the Defendants put forward a strike-out claim in which they argued that the Spanish Courts did not have jurisdiction and that the National High Court did not have competence to make a decision because of the facts to which the case referred.<sup>35</sup>
- On 9 May 2016, the Central Court of Instruction rejected these arguments.

#### 4.2 The process before the Criminal Division of the National High Court

- The Defendants' appeal against the resolution of 9 May 2016 was allowed by the Central Court of Instruction.
- On 15 June 2016, the National High Court dismissed the appeal. Therefore, it accepted its competence and the jurisdiction of the Spanish Courts and refused leave to appeal this decision.<sup>36</sup>

#### 4.3 The process before the Criminal Chamber of the Supreme Court

- The Defendants appealed before the Criminal Chamber of the Supreme Court, based on a single ground of appeal: unlawfulness - for infringement of Article 23 of the Law of the Judiciary.<sup>37,38</sup>
- **The Supreme Court concluded that the courts of Spain had no jurisdiction to hear the case, overturned the previous ruling by the National High Court, dismissed the case and dropped all the criminal charges against Vidal Armadores (Judgment 974/2016).**
- The Supreme Court based the decision on the following arguments:
  - Regarding the territorial limits to the application of the Spanish Criminal Law:<sup>39</sup>

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<sup>35</sup> Writing of April 7, 2016, deduced by the appellant and other accused before the Central Court of Instruction No. 3, in Preliminary Proceedings No. 114/15

<sup>36</sup> Resolution from June 15, 2016, from the Fourth Section of the Criminal Division of the National High Court No. 333/2016.

<sup>37</sup> STS 5654/2016 - ECLI: EN: TS: 2016: 5654 Body: Supreme Court. Criminal Chamber Headquarters: Madrid Section: 1 Resource No.: 1331/2016 Resolution No.: 974/2016 Date of Resolution: 12/23/2016 Procedure: Criminal - Criminal Abbreviated Procedure Speaker: MANUEL MARCHENA GOMEZ Type of Resolution: Judgment

<sup>38</sup> Organic Law 6/1985, of July 1, of the Judiciary (Law of the Judiciary)

<sup>39</sup> The territoriality principle is included in Article 23. 1. of the Law of the Judiciary: In the criminal order, the Spanish jurisdiction will be responsible for knowing the causes of crimes and misdemeanours committed in Spain or committed on board Spanish ships or aircraft, notwithstanding the provisions of international treaties to which Spain is a party.

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- The active personality principle that associates the application of the criminal law of a State with the status of citizens undertaking the criminal action does not affirm the jurisdiction of the Spanish Courts and Tribunals.<sup>40</sup>
- The problem is that the extension of Spanish jurisdiction requires that the State where the acts were committed consider the imputed conduct as a crime.
- However, in this case, the underlying crimes were executed in external waters, where the alleged offences cannot be prosecuted.<sup>41</sup>
- Regarding the transnational prosecution of the crime of money laundering:
  - The crime of money laundering cannot be made out in the absence of a qualifying principal offence. As the crimes were executed in external waters where the alleged offences cannot be prosecuted, this prevented a finding of money laundering. Given money laundering requires the profits to come from a crime (the antecedent crime), an antecedent crime must be an element of the statutory definition of the crime of money laundering; therefore, absent this element the crime of money laundering cannot be punished.

The Supreme Court, Judgment 974/2016: ***"However, no matter how much interest the legislator reveals in circumventing the ordinary limits in the application of the criminal law, one cannot speak of a money laundering activity if the profits do not come from a crime. The need for an antecedent crime - literally 'a criminal activity' says art. 301 of the Criminal Code- operates as a fundamental requirement, and without this the case collapses"***.

However, in relation to this last point, it is a controversial interpretation of the law. Article 301.4 of the Criminal Code establishes that *"the guilty party shall also be punished even if the crime from which the goods originated, or the acts punishable in the preceding paragraphs, were committed, totally or partially, in abroad"*. The article suggests that money laundering is subject to the criterion of international prosecution (no matter if the acts are committed in Spain or abroad).

- In March 2017, Oceana and Greenpeace filed an application for annulment of the proceedings related to the question of the court's jurisdiction. They argued that, despite being a party to the case, they were not informed of the appeal presented by the Defendants.
- On 26 April 2017, the Supreme Court dismissed the application for annulment of the proceedings, refusing to review the case. Therefore, their previous judgment is upheld:

<sup>40</sup> The personality principle is included on Article 23. 2. of the Law of the Judiciary: The Spanish jurisdiction will also know of crimes that have been committed outside the national territory, provided that the criminally responsible were Spaniards or foreigners who had acquired Spanish nationality after the commission of the act and the following requirements were met:

a) That the act is punishable at the place of execution, unless, by virtue of an international Treaty or a normative act of an international organisation of which Spain is a party, this requirement is not necessary, without prejudice to the provisions of the following sections.

b) That the aggrieved or the Public Prosecutor interpose a complaint before the Spanish Courts.

c) That the offender has not been acquitted, pardoned or punished abroad, or, in the latter case, has not complied with the sentence. Only if it has been fulfilled in part, will it be taken into account to reduce proportionally the corresponding one.

<sup>41</sup> Only the following can be prosecuted in external waters: piracy, terrorism, illegal trafficking of toxic drugs, narcotics or psychotropic substances, trafficking in human beings, crimes against the foreign citizens rights, crimes against the safety of maritime navigation and others under international treaties (Article 23.4.d of the Law of the Judiciary).

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the lack of jurisdiction of the courts of Spain and the dismissal of the case and all criminal charges against the Defendants.

**It must be highlighted that the administrative proceeding is independent of the actions taken by the courts of justice. The courts deal with different types of offences to those which are administratively sanctioned. Therefore, despite the criminal charges against the owners of Vidal Armadores being dropped, the administrative fines and suspensions placed on associated companies and individuals reportedly remain unaffected**

#### 4.4 The separate opinion of Magistrate Antonio del Moral García

Magistrate Antonio del Moral García presented a dissenting opinion in Supreme Court Judgment No. 974/2016, based on the following conclusions: :

- The Supreme Court has **no competence to decide the appeal at this point in the proceedings**. The judgment would have had to be deferred to after an appeal against the sentence or the dismissal order, but not before that stage.<sup>42</sup>
- The Spanish criminal courts **do have jurisdiction** because the people investigated have Spanish nationality and apparently reside in Spain. This allows for the competence of the Spanish criminal jurisdiction as a result of the principle of personality.
- Furthermore, that the alleged offences cannot be prosecuted in external waters is irrelevant. Fishing activities should be considered committed in the vessel and not from the vessel, so it is the flag of the ship, which determines its nationality and thus determines jurisdiction.
- The main decision does not explain why **the crimes of falsehood**, which were also an object of investigation and whose place of commission does not appear to be outside of Spain, were also judged to be **beyond the court's competence**.

*Magistrate Antonio del Moral García, dissenting opinion, Judgment 974/2016: "It is not correct to infer that territory on land, water or in space, located at the margin of all national sovereignty becomes even now in the 21st century, cities without law, where everything can be done, except the crimes that govern the principle of universal justice. Well, that would mean that acts such as firing shots from a ship on the high seas at castaways struggling not to drown from a ship without flag, would be outside Spanish jurisdiction although the perpetrators are Spanish, reside in Spain and return to Spanish territory afterwards".*

<sup>42</sup> The resolution contested does not have access to cassation. A writ issued by the Instructor in the stage of preliminary proceedings of an abbreviated procedure that rejects the request of the defence for the case to be closed and the investigation to be closed in virtue of the alleged lack of jurisdiction of our Courts (Article 23 LOPJ ). After the refusal of the reform, the appeal is granted (Article 766 LECrim) which is dismissed by Order issued by the Criminal Chamber of the National Court, which states, in my opinion, with all reason, that there is no further recourse. The Supreme Court resolving a cassation decrees ex novo (that is, not by way of confirming a previous resolution) the dismissal of a preliminary proceeding in process. The appeal serves to correct the interpretation of the law made by the lower courts. The doors of the cassation have to be opened only when the lower courts have already said their last word, that is, when the process in the previous instance ends. This general criterion obeys the current art. 847.2. LECrim.

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## 5 Conclusions and recommendations

**Conclusion 1:** Through Operations Sparrow I and II, which resulted in the highest ever administrative fines seen in the EU for IUU fishing, Spain, adopting punitive actions against nationals and companies engaged in IUU fishing activities, has evidenced its leadership.

Recommendations:

- Spain must continue to move forward with the prosecution of nationals involved in IUU fishing, in order to retain its position of leadership and set an example of good practice to other Member States.
- Spain must create, within the State Security Forces, a specific unit for IUU fishing and provide all necessary human and material resources so that it can continue to effectively control the fishing activities of its nationals all around the world.
- The various international bodies involved in the fight against IUU fishing must coordinate their IUU fishing control activities with shared electronic databases, clear strategies and structured plans that result in the lowest possible level of IUU fishing practices at an international level.

**Conclusion 2:** The ruling of the Spanish Supreme Court in the case against Vidal Armadores shows the existence of significant limitations in Spain's criminal procedure when it comes to IUU practices.

Recommendations:

- The Spanish Criminal Code should be amended to explicitly reference offences related to IUU fishing, including where the offence takes place in either national or international waters.
- The jurisdiction of the Spanish courts to hear cases for such offences should be confirmed either by an amendment to the Spanish Law of the Judiciary or by the signature of an EU or international treaty.<sup>43</sup>
- Spain should provide specific training for judges and magistrates on IUU fishing activities and the specific, technical particularities of this category of crimes.

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<sup>43</sup> If an international treaty explicitly gives jurisdiction to a country to prosecute crimes occurring in external waters then the Spanish Courts would have jurisdiction to hear such cases based on Article 23.4.p) of the Law of the Judiciary: This article states that the Spanish jurisdiction will be competent for the offences committed by nationals or foreigners outside the national territory that can be classified, according to Spanish law, as one of the following crimes (...) p) Any other offence whose prosecution is imposed on a mandatory basis by a Treaty in force for Spain or by other normative acts of an International Organization of which Spain is a member, in the cases and conditions determined therein.

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**Conclusion 3:** There are some loopholes in the legislation related to the administrative process for prosecuting IUU-related offences that must be closed.

Recommendations:

- The competent administrative authorities must ensure that their resolutions imposing penalties on those responsible for IUU fishing become effective, ensuring the complete and timely payment of the fines.
- Spain should provide specific training to all national authorities and officials on the particularities of the infringements, sanctions and procedures related to IUU fishing.
- The Spanish Fisheries Law should be amended to extend the limitation periods of infringements and sanctions, as the relatively short periods currently stipulated may not allow for the effective prosecution of those most serious infringements of fisheries laws.

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## Nieves Noval

Lawyer, Sustainable Seafood

García de Paredes 76 duplicado,  
1º Dcha. 28010 Madrid

+34 911 231 520

nnoval@clientearth.org

<https://www.clientearth.org>

<https://www.es.clientearth.org>

ClientEarth is a non-profit environmental law organisation based in London, Brussels, Berlin, Beijing, Madrid and Warsaw. We are activist lawyers working at the interface of law, science and policy. Using the power of the law, we develop legal strategies and tools to address major environmental issues.

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### Berlin

Rue du Trône 60  
5ème étage  
1050 Bruxelles  
Belgique

### Brussels

Rue du Trône 60  
5ème étage  
1050 Bruxelles  
Belgique

### Madrid

García de Paredes 76 duplicado,  
1º Dcha.  
28010 Madrid  
España

### Beijing

2-506 Kunsha Center  
No.16 Xinyuanli  
Chaoyang District  
Beijing 100027 China

### London

274 Richmond Road  
London  
E8 3QW  
UK

### Warsaw

ul. Żurawia 45  
00-680 Warszawa  
Polska

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