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Judgment of the Court of Justice in Case C-369/07

*Commission v Greece*

**THE COURT IMPOSES TWO-FOLD PENALTY ON GREECE FOR NON-RECOVERY  
OF STATE AID TO OLYMPIC AIRWAYS HELD ILLEGAL IN 2005**

*Penalty payment of EUR 16 000 per day and lump sum payment of EUR 2 million*

In 2002, the Commission took the view that certain aid granted by Greece to Olympic Airways (OA) was incompatible with the common market for failing to comply with certain conditions initially laid down. The aid had to be recovered without delay. Faced with inertia from Greece, the Commission first made an application to the Court in 2003. A judgment holding that Greece had failed to fulfil its obligations was delivered in 2005<sup>1</sup>.

Following difficulties encountered by Greece in implementing that judgment, the Commission brought a new action before the Court, seeking a declaration that Greece had not complied with the Court's judgment and the imposition of a periodic penalty payment and a lump sum penalty payment against Greece.

The Commission considers that there remains to be recovered EUR 41 million of capital contribution for restructuring aid, EUR 2.5 million of rentals due to certain airports, and EUR 61 million in respect of the tax to be paid by passengers on leaving all Greek airports ("the spatosimo tax").

Greece then claimed that a certain number of OA's debts towards the State had been set off against compensation awarded to the company by an arbitration award of 2006 on account of damage suffered by OA: premature expulsion from the former Elliniko airport, relocation to the new Athens international airport, additional operating costs and delay in the construction of installations.

The Court today delivers a second judgment on failure to fulfil obligations, accompanied by a dual financial penalty: a periodic penalty payment and a lump sum penalty payment.

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<sup>1</sup> Judgment of 12 May 2005 in Case C-415/03

### *The periodic penalty payment*

The Court recalls that this penalty is justified for as long as the failure to fulfil obligations arising from non-compliance with a previous judgment subsists, after the time-limit set in the reasoned opinion and until the examination of the facts by the Court.

In the absence of Community provisions on the procedure for recovering aid unduly paid, recovery must be effected in accordance with the rules laid down by national law.

The Member State is thus free to choose the means whereby it will fulfil that obligation, but it must provide all necessary information to allow the Commission to verify that the means chosen constitute an appropriate implementation of that decision.

The Court accepts that set-off may constitute an appropriate means of repaying State aid and that, for the purposes of the present procedure, Greece has demonstrated the existence of a debt in favour of OA. It then examines whether set-off has been actually carried out. It considers that Greece has proved repayment of the EUR 41 million in aid by way of capital contribution to OA, and of part of the "spatosimo" tax (in the amount of EUR 38 million) and part of the aid relating to airport rentals (in the amount of EUR 654 688). On the other hand, it considers that Greece has not provided evidence that set-off has been carried out in relation to the rest of the aid concerning the "spatosimo" tax and the aid relating to airport rentals.

The Court finds that Greece's failure to fulfil obligations has lasted for more than four years. It concerns the common market, the establishment of which is an essential task of the European Community. Moreover, the control of aid to air transport is of considerable importance, since that market is, by its nature, a cross-border market. However, the amounts of aid in respect of which Greece has not proved repayment constitute only a relatively small part of the total sum.

The Court therefore imposes upon Greece a periodic penalty payment of **EUR 16 000 per day of delay in implementing the judgment of 2005, counting from one month after the delivery of the present judgment, in order to allow Greece to demonstrate that it has ended the failure to fulfil obligations.**

### *The lump sum payment*

The Court recalls that cumulation of the two penalties is based on the capability of each to fulfil its own objective and depends on the circumstances of each case. The amount of this sum must be determined by reference to the persistence of the failure to fulfil obligations (since the first judgment establishing that failure) and to the public and private interests in question.

The Court, on a just assessment of the circumstances of this case, determines the amount of the lump sum penalty payment at **EUR 2 million**.

The periodic penalty payment and the lump sum penalty payment are to be paid into the 'European Community own resources' account.

*Unofficial document for media use, not binding on the Court of Justice.*

*Languages available: CS DE EL ES EN FR IT HU NL RO*

*The full text of the judgment may be found on the Court's internet site*

*<http://curia.europa.eu/jurisp/cgi-bin/form.pl?lang=EN&Submit=rechercher&numaff=C-369/07>*

*It can usually be consulted after midday (CET) on the day judgment is delivered.*

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*Pictures of the delivery of the judgment are available on EbS "Europe by Satellite",  
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