



The Italian statute governing the civil liability of judges for causing damage to individuals by acting in breach of EU law is itself contrary to EU law

The exclusion of State liability, or the limitation of State liability to cases of intentional fault or gross negligence, is contrary to the general principle that Member States are liable for an infringement of EU law by a court whose decision is not open to appeal

Under EU law, a Member State must make good damage caused to individuals as a result of infringements of EU law which are attributable to it, whichever State body is responsible for the damage; that principle applies also where the infringement has been committed by the judiciary.

The need to ensure that citizens have effective judicial protection for rights conferred by EU law means that State liability may be incurred where an infringement of EU law comes about as a result of the way in which rules of law have been interpreted by a national court whose decision is not open to appeal.

In the present case, the Commission claims that the Italian statute on compensation for damage caused in the exercise of judicial functions and the civil liability of judges is incompatible with the case-law of the Court of Justice concerning the liability of Member States for an infringement of EU law by one of their courts adjudicating at last instance.

The Commission alleges that Italy has made it impossible for the State to be held liable for damage caused to individuals where the infringement of EU law comes about as a result of the way such a court has interpreted provisions of law or assessed the facts and evidence and that, in other cases, where the issue is not the interpretation of provisions of law or the assessment of facts and evidence, it has limited the cases where State liability can be incurred to those involving intentional fault or gross negligence.

Exclusion of State liability

The Court finds first of all that the Italian statute excludes, in a general manner, State liability in respect of the interpretation of law and the assessment of facts or evidence.

As the Court has already ruled¹, EU law precludes such general exclusion of State liability for damage caused to individuals as a result of an infringement of EU law attributable to a court adjudicating at last instance, where the infringement in question results from an interpretation of provisions of law, or an assessment of facts or evidence, carried out by that court.

Moreover and above all, the Court finds that Italy has not established that the Italian legislation is interpreted by the Italian courts as merely imposing a limit on State liability and not as ruling it out altogether.

Limitation of State liability

The Court points out that a Member State is required to make good damage caused to individuals as a result of an infringement of EU law by State bodies, where three conditions are met: (i) the

¹ Case [C-173/03](#) *Traghetti del Mediterraneo* (see also Press Release No [49/06](#)).

rule of EU law infringed must confer rights on the individuals; (ii) the **infringement must be sufficiently serious;** and (iii) there must be a **direct causal link** between the breach of the obligation on the State and the damage sustained by the individual.

The same conditions apply as regards State liability for damage which has been caused by a decision of a national court against which there is no possibility of appeal. Thus, a 'sufficiently serious breach of a rule of EU law' arises **where the national court has manifestly infringed the applicable law**². National law may define the nature or the degree of a breach resulting in State liability but on no account may it impose stricter requirements.

As it is, the Court of Justice finds that it has been sufficiently demonstrated by the Commission that the condition, laid down in the Italian statute, requiring 'gross negligence', as interpreted by the Italian Court of Cassation, amounts to the imposition of requirements stricter than those entailed by the condition requiring a 'manifest infringement of the applicable law'. Italy, on the other hand, has not succeeded in establishing that the interpretation of that statute by the Italian courts is consistent with the case-law of the Court.

In conclusion, the Court finds that, in so far as it rules out the possibility of the State incurring liability for an infringement of EU law by a court whose decision is not open to appeal, where the infringement comes about as a result of the way in which that court has interpreted provisions of law or assessed the facts or evidence, and in so far as it limits State liability in this connection to cases involving intentional fault or gross negligence, the Italian legislation is incompatible with the general principle of the liability of Member States for a breach of EU law.

NOTE: An action for failure to fulfil obligations directed against a Member State which has failed to comply with its obligations under European Union law may be brought by the Commission or by another Member State. If the Court of Justice finds that there has been a failure to fulfil obligations, the Member State concerned must comply with the Court's judgment without delay.

Where the Commission considers that the Member State has not complied with the judgment, it may bring a further action seeking financial penalties. However, if measures transposing a directive have not been notified to the Commission, the Court of Justice can, on a proposal from the Commission, impose penalties at the stage of the initial judgment.

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The [full text](#) of the judgment is published on the CURIA website on the day of delivery.

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² Case [C-224/01 Köbler](#) (see Press Release No [79/03](#)).