



Press and Information

Court of Justice of the European Union

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Judgment in Case C-241/11
Commission v Czech Republic

The Czech Republic is ordered to pay a lump sum of €250 000 for failure to comply with a judgment of the Court concerning occupational retirement provision

In the absence of a second pillar (supplementary pension offered by certain employers for their staff) in the Czech pension system, the Court considers that that infringement had a limited effect on the internal market

The Member States are free to organise their pension systems and to decide on the role played by each of the three ‘classic pillars’ of pension systems in their territory. The first pillar includes statutory pensions paid by the State and financed by contributions from employers and workers, the second concerns the provision of occupational retirement benefits financed by employers’ contributions and the third represents individual supplementary pensions.

Although the Member States have freedom in regulating this field, the EU adopted a directive¹ relating to institutions for occupational retirement provision, in particular in order to enable them to operate across borders.

The Czech Republic – whose pension system does not include a second pillar and which prohibits the establishment in its territory of institutions for occupational retirement provision – had initially failed to transpose certain provisions of the directive, to the extent that they imposed obligations on the Member States in the territory of which such institutions are established. The Court of Justice, hearing an infringement action brought by the Commission against the Czech Republic, held, in its judgment² that the Czech Republic had failed to fulfil its obligations under the directive. According to the Court, even though the Czech pension system does not include a second pillar, that Member State was required to reproduce all the rules of that directive within a precise and transparent legal framework so that, in particular, all persons in that Member State and in the EU are aware of their rights and obligations in the event that the Czech Republic decides to supplement its pension system by a second pillar.

Subsequently, the Commission found that the Czech Republic had failed to comply with that judgment and requested it to comply with it by 28 January 2011 at the latest. As the Czech Republic failed to adopt the necessary provisions by that date, the Commission again referred the matter to the Court. During the proceedings before the Court, the Czech Republic finally complied with the judgment in question following the publication and entry into force, on 31 August 2011, of a law which fully transposes the directive into national law. The Commission, nevertheless, retained its claim for an order requiring that Member State to pay a lump sum of just over €3.3 million for the period of non-compliance between the delivery of the 2010 judgment and the entry into force of that law.

The Court points out that the Member States are obliged to set in motion immediately the action required to give effect to a judgment establishing a failure to fulfil obligations and that that action must be completed as soon as possible. That is all the more the case, according to the Court, since the entry into force of the Treaty of Lisbon, which abolished one of the stages of the

¹ Directive 2003/41/EC of the European Parliament and of the Council of 3 June 2003 on the activities and supervision of institutions for occupational retirement provision (OJ 2003 L 235, p. 10).

² Case [C-343/08](#) *Commission v Czech Republic*.

procedure which the Commission may initiate in the event of non-compliance with such a judgment. In the present case, 19 months elapsed between the date of delivery of the first judgment (14 January 2010) and that of the publication and entry into force of the Czech law (31 August 2011) which brought the national legislation into conformity with EU law.

Consequently, **the Court considers that it is justified in ordering the Czech Republic to pay a lump sum. Concerning the amount of that sum, the Court notes that, in the absence of a second pillar in the Czech pension system, the infringement had a limited effect on the internal market for occupational retirement provision. In those circumstances, since the Czech Republic cooperated in good faith with the Commission and transposed the directive, the Court set the amount of the lump sum to be paid by that Member State at €250 000.**

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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