



Court of Justice of the European Union

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Judgments in Case C-611/12 P and in Joined Cases C-12/13 P and C-13/13 P

Giordano v Commission and Buono and Others v Commission and Syndicat des thoniers méditerranéens and Others v Commission

Press and Information

The Commission did not act unlawfully by prohibiting French fishermen in 2008 from fishing bluefin tuna before the end of the validity of fishing licences

The Commission had the right to decide on emergency measures to avoid a serious threat to the conservation and recovery of bluefin tuna stock, with the result that the fishermen affected by those measures cannot claim damages for the harm suffered

For 2008, the French authorities granted special fishing licences to Mr Jean-François Giordano, to Mr Jean-Luc Buono and to other fishermen in order to authorise them to catch, within the limits of the individual quotas set, bluefin tuna in the Mediterranean and the Atlantic. On 12 June 2008, the Commission took emergency measures seeking to prohibit French fishermen from fishing bluefin tuna in the Mediterranean and in the Atlantic ocean as from 16 June 2008. The French authorities therefore revoked the fishing licences from that date, so that the fishermen were no longer able to carry out their activity between 16 and 30 June 2008 (date of the end of validity of the licences). Considering that they had suffered harm because of that prohibition, Mr Giordano, Mr Buono along with other fishermen and the syndicat des thoniers méditerranéens (STM), brought actions for damages seeking to establish the non-contractual liability of the Commission.

By judgments of 7 November 2012,¹ the General Court rejected the action, on the ground that one of the three conditions for liability of the EU to be incurred was not satisfied (namely the actual and certain nature of the harm). According to the General Court, the quotas did not confer any guarantee to the fishermen of being able to fish the full quota which had been allocated to them so that it cannot be excluded that, even if they had been able to fish up to the deadline of the initial fishing licence, the fishermen might not have reached their quota. Therefore, according to the General Court, the harm could not be considered to be real and certain. Various fishermen and the STM brought an appeal before the Court of Justice in order to request that the judgments of the General Court be set aside.

In Case C-611/12 P delivered today (*Giordano v Commission*), the Court considers that the **General Court erred in law by finding that Mr Giordano's harm was not actual and certain**. Indeed, the Court states that, in reaching that conclusion, the General Court relied on considerations which were not related to the actual nature and certainty of the harm. **The Court therefore sets aside judgment T-114/11 of the General Court while dismissing Mr Giordano's claim for damages**. According to the Court, Mr Giordano has failed to establish a further condition for EU liability to be incurred, namely the existence of a sufficiently serious breach of a rule of law intended to confer rights on individuals. The Court notes in that regard that the Commission may, without having to wait for an allocated quota to be exceeded, adopt emergency measures as soon as there is evidence of a 'serious threat to the conservation of living aquatic resources or to the marine ecosystem resulting from fishing activities and requiring immediate intervention'.² Therefore the Commission did not act unlawfully, to the extent that it could legitimately restrict the freedom to pursue fishing activities to avoid a serious threat to the conservation and recovery of bluefin tuna

¹ Case [T-114/11](#) *Giordano v Commission* and Case [T-574/08](#) *Syndicat des thoniers méditerranéens and Others v Commission*

² Article 7(1) of Council Regulation (EC) No 2371/2002 of 20 December 2002 on the conservation and sustainable exploitation of fisheries resources under the Common Fisheries Policy (OJ 2002 L 358, p. 59).

stock in the Atlantic and Mediterranean. In addition, Mr Giordano could expect that urgent measures may be taken, since such measures are provided for by EU law.³

In Joined Cases C-12/13 P (*Buono and Others v Commission*) and C-13/13 P (*STM and Others v Commission*), **the Court dismisses the appeals of Mr Buono, the STM and the other fishermen**. In essence, the Court upholds judgment T-574/08 of the General Court on all points, while noting a procedural error that does not affect the final result. The General Court had in fact allowed the STM and the fishermen to rely on a judgment of the Court which was delivered after the original action had been brought (that is, the judgment of 17 March 2011 in *AJD Tuna*, Case C-221/09)⁴. The Court considers that that judgment does not constitute a new element of law which arose during the proceedings before the General Court. In fact, that judgment only confirmed a legal situation of which the STM and fishermen were aware when they brought their action (as the judgment in *AJD Tuna* does not change anything with regard to the fact that the prohibition on fishing enacted for French fishermen as from 16 June 2008 remains valid).

NOTE: An appeal, on a point or points of law only, may be brought before the Court of Justice against a judgment or order of the General Court. In principle, the appeal does not have suspensive effect. If the appeal is admissible and well founded, the Court of Justice sets aside the judgment of the General Court. Where the state of the proceedings so permits, the Court of Justice may itself give final judgment in the case. Otherwise, it refers the case back to the General Court, which is bound by the decision given by the Court of Justice on the appeal.

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The full text of the judgments [C-611/12 P](#), [C-12/13 P](#) and [C-13/13 P](#) are published on the CURIA website on the day of delivery.

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Pictures of the delivery of the judgment are available from "[Europe by Satellite](#)" ☎ (+32) 2 2964106

³ Articles 7(1) and 26(4) of Regulation No 2371/2002.

⁴Case [C-221/09](#). *AJD Tuna*, see also Press Release No. [22/11](#).