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Press and Information

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Judgment of the Court of Justice in Case C-173/03

Traghetti del Mediterraneo SpA v Repubblica italiana

THE COURT CONFIRMS THAT A MEMBER STATE IS LIABLE FOR DAMAGE CAUSED TO AN INDIVIDUAL BY A MANIFEST INFRINGEMENT OF COMMUNITY LAW ATTRIBUTABLE TO A SUPREME COURT

Such liability cannot be limited solely to cases of intentional fault and serious misconduct on the part of a court if such a limitation were to lead to an exclusion of liability in cases where a manifest infringement of Community law was committed. Liability may also be incurred where the manifest infringement of Community law results from an interpretation of provisions of law or an assessment of facts or evidence.

In 1981, the maritime transport undertaking *Traghetti del Mediterraneo* ('TDM') brought proceedings against a competing undertaking, *Tirrenia di Navigazione*, before the Tribunale di Napoli. TDM sought compensation for the damage that its competitor had allegedly caused it through its policy of low fares on the maritime cabotage market between mainland Italy and the islands of Sardinia and Sicily, made possible by public subsidies.

TDM submitted in particular that the conduct in question constituted unfair competition and abuse of dominant position prohibited by the Treaty.

The action for compensation was dismissed by all the Italian courts seized of the case, namely, at first instance, the Tribunale di Napoli, then, on appeal and on appeal in cassation, the Corte d'appello di Napoli and the Corte suprema di cassazione. Taking the view that the judgment of the latter court was founded on an incorrect interpretation of the Community rules, the administrator of TDM, which had in the meantime been put into liquidation, brought proceedings against the Italian Republic before the Tribunale di Genova. That action sought compensation for the damage suffered by TDM as a result of the errors of

interpretation committed by the supreme court and of the breach of its obligation to make a reference for a preliminary ruling to the Court of Justice of the European Communities.

In those circumstances, the Tribunale di Genova asked the Court of Justice whether Community law and, in particular, the principles laid down by the Court in the *Köbler* judgment¹ preclude national legislation such as the Italian Law² which, on the one hand, excludes all liability of a Member State for damage caused to individuals by an infringement of Community law committed by a national court adjudicating at last instance, where that infringement is the result of an interpretation of provisions of law or of an assessment of the facts and evidence carried out by that court, and, on the other hand, also limits such liability solely to cases of intentional fault and serious misconduct on the part of the court.

Firstly, the Court observes that the principle that a **Member State is obliged to make good damage caused to individuals as a result of breaches of Community law for which it is responsible applies to any case in which a Member State breaches Community law, whichever is the authority of the Member State whose act or omission was responsible for the breach.**

It then notes that the essential role played by the judiciary in the protection of individuals' rights under Community law would be weakened if individuals could not, under certain conditions, obtain compensation for damage caused by an infringement of Community law attributable to a court of a Member State adjudicating at last instance. In such a case, individuals must be able to rely on State liability in order to obtain legal protection of their rights.

The Court finds that interpretation of provisions of law and assessment of facts and evidence constitute an essential part of judicial activity and may lead, in certain cases, to a manifest infringement of the applicable law.

To exclude any possibility that State liability may be incurred where the infringement allegedly committed by the national court relates to its interpretation of provisions of law or its assessment of facts or evidence would amount to depriving the principle of State liability of all practical effect and lead to a situation where individuals would have no judicial protection if a national court adjudicating at last instance committed a manifest error in the exercise of those activities of interpretation or assessment.

With regard to the limitation of State liability solely to cases of intentional fault and serious misconduct on the part of the court, the Court points out that State liability for damage caused to individuals by reason of an infringement of Community law attributable to a national court adjudicating at last instance may be incurred in the exceptional case where that court has manifestly infringed the applicable law.

¹ Case C-224/01 *Köbler* [2003] ECR I-10239.

² Law No 117 of 13 April 1988 on compensation for damage caused in the exercise of judicial functions and the civil liability of judges (Legge No 117 [sul] risarcimento dei danni cagionati nell'esercizio delle funzioni giudiziarie e responsabilità civile dei magistrati (GURI No 88 of 15 April 1988, p. 3)).

Such manifest infringement is to be assessed, inter alia, in the light of a number of criteria, such as the degree of clarity and precision of the rule infringed, whether the error of law was excusable or inexcusable and the non-compliance by the court in question with its obligation to make a reference for a preliminary ruling. It is in any event presumed, where the decision involved is taken in manifest disregard of the case-law of the Court of Justice on the subject.

Accordingly, **although it remains possible for national law to define the criteria** relating to the nature or degree of the infringement **which must be met before State liability can be incurred for an infringement of Community law** attributable to a national court adjudicating at last instance, **under no circumstances may such criteria impose requirements stricter than that of a manifest infringement of the applicable law.**

Consequently, **limitation of State liability solely to cases of intentional fault and serious misconduct on the part of the court is contrary to Community law if such a limitation were to lead to exclusion of liability of the Member State concerned in other cases where a manifest infringement of the applicable law was committed.**

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Languages available: CS DE EL EN ES FR HU IT NL PL SK SL

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

<http://curia.eu.int/jurisp/cgi-bin/form.pl?lang=EN&Submit=rechercher&numaff=C-173/03>

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

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