

TRIBUNAL DE JUSTICIA DE LAS COMUNIDADES EUROPEAS
SOUDNÍ DVŮR EVROPSKÝCH SPOLEČENSTVÍ
DE EUROPÆISKE FÆLLESSKABERS DOMSTOL
GERICHTSHOF DER EUROPÄISCHEN GEMEINSCHAFTEN
EUROOPA ÜHENDUSTE KOHUS
ΔΙΚΑΣΤΗΡΙΟ ΤΩΝ ΕΥΡΩΠΑΪΚΩΝ ΚΟΙΝΟΤΗΤΩΝ
COURT OF JUSTICE OF THE EUROPEAN COMMUNITIES
COUR DE JUSTICE DES COMMUNAUTÉS EUROPÉENNES
CÚIRT BHREITHIÚNAIS NA gCÓMHPHOBAL EORPACH
CORTE DI GIUSTIZIA DELLE COMUNITÀ EUROPEE
EIROPAS KOPIENU TIESA



EUROPOS BENDRIJŲ TEISINGUMO TEISMAS
EURÓPAI KÖZÖSSÉGEK BÍRÓSÁGA
IL-QORTI TAL-ĠUSTIZZJA TAL-KOMUNITAJIET EWROPEJ
HOF VAN JUSTITIE VAN DE EUROPESE GEMEENSCHAPPEN
TRYBUNAŁ SPRAWIEDLIWOŚCI WSPÓLNOT EUROPEJSKICH
TRIBUNAL DE JUSTIÇA DAS COMUNIDADES EUROPEIAS
SÚDNY DVOR EURÓPSKÝCH SPOLOČENSTEV
SODIŠČE EVROPSKIH SKUPNOSTI
EUROOPAN YHTEISÖJEN TUOMIOISTUIN
EUROPEISKA GEMENSKAPERNAS DOMSTOL

Press and Information

PRESS RELEASE No 68/05

12 July 2005

Judgment of the Court of Justice in Case C-304/02

Commission of the European Communities v French Republic

**FOR THE FIRST TIME THE COURT ORDERS A MEMBER STATE TO PAY BOTH
A PERIODIC PENALTY PAYMENT AND A LUMP SUM FINE FOR A SERIOUS
AND PERSISTENT FAILURE TO COMPLY WITH COMMUNITY LAW**

France is ordered to pay a lump sum fine of EUR 20 000 000 for having failed to fulfil its Community fishery obligations and a penalty payment of EUR 57 761 250 for each additional period of six months at the end of which it has not complied with those obligations

In 1991 the Court of Justice of the European Communities held, on an application by the Commission, that between 1984 and 1987 France had infringed Community law by not carrying out controls ensuring compliance with Community measures for fishery conservation.¹ Following inspections at certain French ports in the course of the subsequent 11 years, the Commission took the view that France was still not complying fully with its obligations by letting undersized fish be offered for sale and maintaining a lax attitude as regards taking action in respect of infringements. That is why it asked the Court of Justice for a declaration that France had failed to fulfil its obligation to comply with the 1991 judgment and for an order imposing on it a penalty payment of EUR 316 500 for each day of delay in implementing that judgment.

Persistence of France's breach of obligations

According to the Court, the reference date for assessing the breach of obligations is in August 2000, when the period laid down in the Commission's supplementary reasoned opinion expired and, in order to consider the Commission's request for a penalty payment, it should also be ascertained whether the breach of obligations has continued up to the Court's examination of the facts.

The persistence, on expiry of the period laid down in the supplementary reasoned opinion, of a practice of **offering undersized fish for sale** and the **absence of effective action** by the national authorities are such as to prejudice seriously the Community objectives of conserving

¹ Judgment of 11 June 1991 in Case C-64/88 *Commission v France* [1991] ECR I-2727.

and managing fishery resources. The similarity and recurrence of the situations recorded are the result of **structural inadequacy** of the measures implemented by the French authorities who neglected **to carry out controls which were effective, proportionate and dissuasive, as required by the Community rules**. In August 2000 France therefore had not taken all the necessary measures to comply with the 1991 judgment. Furthermore, on the date of examination of the facts by the Court, the information available shows that significant deficiencies persisted.

The obligation to make sure that penalties which are effective, proportionate and dissuasive are imposed for infringements of Community rules is of fundamental importance in the field of fisheries. However, on expiry of the period laid down, the national authorities were continuing not to record infringements which they should have found to exist and not to draw up reports in respect of offenders. They therefore failed to fulfil the obligation to take action in respect of infringements, which the Community rules impose on them. Likewise, as at the date of examination of the facts by the Court, proceedings were not being brought in respect of all the infringements that were recorded and deterrent penalties were not being imposed in respect of all the infringements in respect of which proceedings were brought.

The imposition of both financial penalties

Both a periodic penalty payment and a lump sum, as provided for by the Treaty, have the objective of inducing a defaulting Member State to comply with a judgment establishing a breach of obligations and of ensuring that Community law is effectively applied. The imposition of a penalty payment serves to induce a Member State to put an end as soon as possible to a breach of obligations which would tend to persist; the imposition of a lump sum is based more on assessment of the effects on public and private interests of the Member State's failure to comply with its obligations, in particular where the breach has persisted for a long period since the judgment which initially established it. The Court held that **it is therefore possible to impose both types of penalty at the same time, in particular where the breach of obligations has both continued for a long period and is inclined to persist**.

The conjunction 'or' used in the Treaty² to link the two types of financial penalty provided for must, given the context in which it is used and the objective pursued by the Treaty, be understood in a cumulative sense. The fact that both measures were not imposed in previous cases does not constitute an obstacle to the imposition of both subsequently if, having regard to the nature, seriousness and persistence of the breach of obligations established, that appears appropriate.

The lump sum not suggested by the Commission

With regard to the argument derived from the fact that the Commission did not suggest that a lump sum be imposed, the Court stated that it is for the Court, in performance of its judicial function, to assess the extent to which the situation prevailing in the Member State complies with the first judgment, the question whether a serious breach of obligations persists, **the appropriateness of imposing a financial penalty and the choice of the penalty most suited to the circumstances**. That assessment falls outside the political sphere.

² Article 228(2) EC.

The financial penalties appropriate in this case

In light of the duration and seriousness of the infringement and France's ability to pay, the Court ordered France to pay **a penalty payment of EUR 57 761 250** for each period of six months, from today, at the end of which the 1991 judgment has still not been fully implemented. This amount corresponds to the amount of the penalty payment suggested by the Commission, but calculated on a half-yearly basis.

In addition, in light of the persistence of the breach of obligations since the judgment which initially established it and of the public and private interests at issue, the Court held that it is essential to order payment of **a lump sum of EUR 20 000 000**.

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

Languages available: all

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>

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

For further information, please contact Christopher Fretwell

Tel: (00352) 4303 3355 Fax: (00352) 4303 2731

*Pictures of the delivery of the Judgment are available on EbS "Europe by Satellite",
a service provided by the European Commission, Directorate-General Press and
Communications,*

L-2920 Luxembourg, Tel: (00352) 4301 35177 Fax: (00352) 4301 35249

ou B-1049 Brussels, Tel: (0032) 2 2964106 Fax: (0032) 2 2965956