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Judgment of the Court of Justice in Case C-440/05

Commission of the European Communities v Council of the European Union

THE EUROPEAN COMMUNITY IS COMPETENT TO OBLIGE THE MEMBER STATES TO PROVIDE FOR COMMON CRIMINAL PENALTIES IN ORDER TO COMBAT SHIP-SOURCE POLLUTION

The Court of Justice annuls the Council Framework Decision to strengthen the criminal-law framework for the enforcement of the law against ship-source pollution due to its adoption outside the Community legislative framework

The Council Framework Decision to strengthen the criminal-law framework for the enforcement of the law against ship-source pollution¹ introduces the obligation for Member States to provide for effective, dissuasive and proportionate criminal penalties for persons, natural or legal, who have committed, aided, abetted or incited one of the offences referred to in the Community directive². It also lays down the type and level of criminal penalty to be applied according to the damage caused by the offences to water quality, to animal or vegetable species or to persons.

With that framework decision, the Council intended to supplement the directive, with a view to reinforcing maritime safety. That decision was adopted by the Council of the European Union, made up of the representatives of the governments of the Member States, within the framework of inter-governmental police and judicial cooperation in criminal matters, which was institutionalised by the Treaty on European Union.

Considering that the framework decision had not been adopted on the correct legal basis, the Commission³ brought an action before the Court of Justice of the European Communities. It argued that the aim and content of the framework decision come within the European Community's sphere of competence as provided for by the EC Treaty as part of the common transport policy; consequently, the contested measure could have been adopted on the basis of the EC Treaty.

Since the EU Treaty provides that, in the event of competing spheres of competence between the EC Treaty and the EU Treaty, the former is to take precedence, the contested measure should

¹ Council Framework Decision 2005/667/JHA of 12 July 2005 to strengthen the criminal-law framework for the enforcement of the law against ship-source pollution (OJ 2005 L 255, p. 164).

² Directive 2005/35/EC of the European Parliament and of the Council of 7 September 2005 on ship-source pollution and on the introduction of penalties for infringements (OJ 2005 L 255, p. 11).

³ Supported in this case by the European Parliament.

actually have been adopted on the basis of the EC Treaty. Following that reasoning, the Commission may take the initiative in the legislative procedure and the European Parliament may take part in the adoption of the measure in question.

The Council⁴ considers that, through the adoption of the directive, the Community legislature demarcated the limits of its own power to take action in matters involving maritime transport policy. Consequently, the Community is not competent, at the present time, to lay down binding rules on the type and level of criminal penalty which the Member States must provide for in their national law.

The Court of Justice notes that the common transport policy is one of the foundations of the Community and that, within the scope of the competence conferred on it by the EC Treaty, the Community legislature may adopt measures aimed at improving maritime transport safety.

In the light of both its aim and content, the framework decision has as its primary objective the improvement of maritime safety and the protection of the environment. The provisions of that decision, which impose on Member States an obligation to provide for criminal penalties for certain conduct, could have been validly adopted on the basis of the EC Treaty. The Court finds, as it did previously in Case C-176/03 *Commission v Council*⁵, that although it is true that, as a general rule, neither criminal law nor the rules of criminal procedure fall within the Community's competence, the fact remains that when the application of effective, proportionate and dissuasive criminal penalties by the competent national authorities is an essential measure for combating serious environmental offences, the Community legislature may require the Member States to introduce such penalties in order to ensure that the rules which it lays down in the field of environmental protection are fully effective.

By contrast, the Court finds that the determination of the type and level of the criminal penalties to be applied does not fall within the Community's sphere of competence.

Since the framework decision encroaches on the competence which the EC Treaty attributes to the Community and thus infringes the Treaty on European Union, which gives priority to such competence, the Court annuls the framework decision, which is indivisible, in its entirety.

⁴ Supported in this case by 19 Member States: Belgium, the Czech Republic, Denmark, Estonia, Greece, France, Ireland, Latvia, Lithuania, Hungary, Malta, the Netherlands, Austria, Poland, Portugal, Slovakia, Finland, Sweden and the United Kingdom.

⁵ Judgment in Case C-176/03 *Commission v Council* [2005] ECR I-7879; see Press Release No 75/05.

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

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

*The full text of the judgment may be found on the Court's internet site
<http://curia.europa.eu/jurisp/cgi-bin/form.pl?lang=EN&Submit=rechercher&numaff=C-440/05>*

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