



Press and Information

Court of Justice of the European Union  
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Judgment in Case C-752/18  
Deutsche Umwelthilfe v Freistaat Bayern

**The coercive detention of persons at the head of the Land of Bavaria for the purpose of enjoining them to adopt measures to improve ambient air quality in Munich (such as a traffic ban in respect of certain diesel vehicles) can be ordered only if a national legal basis which is sufficiently accessible, precise and foreseeable in its application exists to that end and if the detention is proportionate**

*The Higher Administrative Court of Bavaria has the task of ascertaining whether those conditions are met*

By its judgment delivered today, the Court of Justice ruled for the first time on whether the national courts are empowered, or even obliged, to order the coercive detention of persons in charge of national authorities that persistently refuse to comply with a judicial decision enjoining them to perform their obligations under EU law.

The reference was made to the Court in a dispute between Deutsche Umwelthilfe, which is a German environmental protection organisation, and the Land of Bavaria (Germany) concerning the latter's persistent refusal to adopt, in implementation of Directive 2008/50 on ambient air quality,<sup>1</sup> the measures necessary in order for the limit value set for nitrogen dioxide to be complied with in the city of Munich (Germany). Following a first order in 2012 requiring it to amend its air quality action plan applicable in that city, then a second order in 2016 requiring it, on pain of a financial penalty, to comply with its obligations, including by imposing traffic bans in respect of certain diesel vehicles in various urban zones, the *Land* of Bavaria nevertheless refused to observe those injunctions and, consequently, was required by a third order in 2017 to pay a financial penalty of €4 000, which it did. As the *Land* of Bavaria continued to refuse to comply with those injunctions and publicly stated that it would not comply with its obligations, Deutsche Umwelthilfe brought a new action seeking, first, payment of a fresh financial penalty of €4 000, a claim which was upheld by order of 28 January 2018, and second, the coercive detention of the persons at the head of the *Land* of Bavaria (namely of the Minister for the Environment and Consumer Protection or, failing that, of the Minister-President), a claim which was dismissed by order of the same day. In proceedings brought by the Land of Bavaria, the referring court, the Bayerischer Verwaltungsgerichtshof (Higher Administrative Court of Bavaria), first, upheld payment of the financial penalty and, second, decided to request a preliminary ruling from the Court of Justice regarding whether coercive detention might be ordered. Since the referring court found that ordering the payment of financial penalties was not liable to result in an alteration of the *Land* of Bavaria's conduct, as such penalties are credited as income of the *Land* and therefore do not result in any economic loss, and that the application of a measure of coercive detention was precluded for national constitutional reasons, it referred to the Court of Justice for preliminary ruling a question intended to determine, in essence, whether EU law, in particular the right to an effective remedy guaranteed in Article 47 of the Charter of Fundamental Rights of the European Union ('the Charter'), had to be interpreted as empowering, or even obliging, the national courts to adopt such a measure.

**The Court held that**, in circumstances in which a national authority persistently refused to comply with a judicial decision enjoining it to perform a clear, precise and unconditional obligation flowing

<sup>1</sup> Directive 2008/50/EC of the European Parliament and of the Council of 21 May 2008 on ambient air quality and cleaner air for Europe (OJ 2008 L 152, p. 1).

from EU law, in particular from Directive 2008/50, **it was incumbent upon the national court having jurisdiction to order the coercive detention of persons at the head of the Land of Bavaria provided that two conditions were met. First, domestic law must contain a legal basis for adopting such a measure which is sufficiently accessible, precise and foreseeable in its application. Second, the principle of proportionality must be observed.**

In that regard, the Court first of all recalled that, when the Member States implement EU law, it is incumbent upon them to ensure that the right to **effective judicial protection** is observed, a right which is guaranteed both by Article 47 of the Charter and, in the environmental field, by Article 9(4) of the Aarhus Convention.<sup>2</sup> That right is all the more important because failure to adopt the measures required by Directive 2008/50 would **endanger human health**. National legislation which results in a situation where the judgment of a court remains ineffective fails to comply with the essential content of that right and deprives it of all useful effect. The Court recalled that, in such a situation, it is for the national court to interpret its national law in a way which, to the fullest extent possible, is consistent with the objectives pursued by those provisions or, failing this, to disapply any provision of national law which is contrary to EU law with direct effect.

However, the Court also explained that compliance with the latter obligation cannot result in the infringement of another fundamental right, the **right to liberty** which is guaranteed by Article 6 of the Charter and which coercive detention limits. As the right to effective judicial protection is not absolute and may be restricted, in accordance with Article 52(1) of the Charter, **the fundamental rights at issue must be weighed against one another**. In order to meet the requirements of Article 52(1) of the Charter, **a law empowering a court to deprive a person of his or her liberty must first of all be sufficiently accessible, precise and foreseeable in its application in order to avoid all risk of arbitrariness, a matter which is for the referring court to determine**. Furthermore, **since the ordering of coercive detention entails a deprivation of liberty, in observance of the requirements stemming from the principle of proportionality recourse may be had to such an order only where there are no less restrictive measures** (such as, in particular, high financial penalties that are repeated after a short time and the payment of which does not ultimately benefit the budget from which they are funded), **a matter which is also for the referring court to examine. It is only if it were concluded that the limitation on the right to liberty which would result from coercive detention being ordered complies with those conditions that EU law would not only authorise, but require, recourse to such a measure**. The Court added, however, that an infringement of Directive 2008/50 may be found by the Court in an action for failure to fulfil obligations under EU law or give rise to the incurrence of State liability for the resulting loss or damage.

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**NOTE:** A reference for a preliminary ruling allows the courts and tribunals of the Member States, in disputes which have been brought before them, to refer questions to the Court of Justice about the interpretation of European Union law or the validity of a European Union act. The Court of Justice does not decide the dispute itself. It is for the national court or tribunal to dispose of the case in accordance with the Court's decision, which is similarly binding on other national courts or tribunals before which a similar issue is raised.

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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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<sup>2</sup> Convention on access to information, public participation in decision-making and access to justice in environmental matters signed in Aarhus on 25 June 1998 and approved on behalf of the European Community by Council Decision 2005/370/EC of 17 February 2005 (OJ 2005 L 124, p. 1).