



Press and Information

Court of Justice of the European Union

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Judgment in Case C-457/18  
Slovenia v Croatia

**The Court of Justice of the European Union lacks jurisdiction to rule on a border dispute between Slovenia and Croatia, but those two Member States are required, under Article 4(3) TEU, to strive sincerely to bring about a definitive legal solution to the dispute consistent with international law**

In the judgment in *Slovenia v Croatia* (C-457/18), delivered on 31 January 2020, the Grand Chamber of the Court has declared that it lacks jurisdiction to rule on the action brought by Slovenia, on the basis of Article 259 TFEU, for a declaration that Croatia has failed to fulfil its obligations under EU law, by not having complied with obligations stemming from the latter Member State from an arbitration agreement concluded with Slovenia that was intended to resolve the border dispute between those two States and from an arbitration award defining the sea and land borders between the two States. However, the Court stated that its lack of jurisdiction is without prejudice to any obligation arising — for each of those two Member States, both in their reciprocal relations and vis-à-vis the European Union and the other Member States — from Article 4(3) TEU to strive sincerely to bring about a definitive legal solution consistent with international law, in order to ensure the effective and unhindered application of EU law in the areas concerned. In order to achieve this, they may use one or other means of settling their dispute, including, as the case may be, its submission to the Court under a special agreement pursuant to Article 273 TFEU.

In order to resolve the issue of establishment of their common borders following the proclamation of their respective independence vis-à-vis the Socialist Federal Republic of Yugoslavia, Croatia and Slovenia concluded an arbitration agreement in November 2009. Under that agreement, which entered into force a year later, the two States undertook to submit this dispute to the arbitral tribunal established by the agreement, whose award would be binding on them. Following a procedural issue that arose before the arbitral tribunal, on account of unofficial communications in the course of the arbitral tribunal's deliberations between the arbitrator appointed by Slovenia and that State's Agent before the arbitral tribunal, Croatia took the view that the tribunal's ability to make an award independently and impartially was compromised. It thus informed Slovenia, in July 2015, that it considered that Slovenia had been guilty of material breaches of the arbitration agreement. Consequently, relying upon the Vienna Convention on the Law of Treaties,<sup>1</sup> it decided to terminate the arbitration agreement immediately. The arbitral tribunal nevertheless decided that the arbitration proceedings should continue and made an arbitration award in June 2017, by which it defined the sea and land borders between the two States concerned. Croatia did not execute that arbitration award. In July 2018 Slovenia brought an action for failure to fulfil obligations before the Court of Justice. It contended, first of all, that Croatia had infringed a number of obligations owed by it under primary law<sup>2</sup> by failing to comply with its obligations stemming from the arbitration agreement and the arbitration award, in particular by not observing the border set by the award. Furthermore, it asserted that Croatia had thereby also infringed a number of provisions of secondary law.<sup>3</sup>

<sup>1</sup> Vienna Convention on the Law of Treaties of 23 May 1969, *United Nations Treaty Series*, vol. 1155, p. 331.

<sup>2</sup> The provisions in question are Article 2 TEU and Article 4(3) TEU.

<sup>3</sup> It thus pleaded Article 5(2) of Regulation (EU) No 1380/2013 of the European Parliament and of the Council of 11 December 2013 on the Common Fisheries Policy, amending Council Regulations (EC) No 1954/2003 and (EC) No

Ruling on the plea of inadmissibility raised by Croatia, the Court pointed out that it lacks jurisdiction to give a ruling on the interpretation of an international agreement concluded by Member States whose subject matter falls outside the areas of EU competence and on the obligations arising under it for them. The Court then inferred therefrom that it lacks jurisdiction to rule on an action for failure to fulfil obligations, whether it is brought under Article 258 TFEU or under Article 259 TFEU, where the infringement of the provisions of EU law that is pleaded in support of the action is ancillary to the alleged failure to comply with obligations resulting from such an agreement.

The Court found that the infringements of EU law pleaded by Slovenia either resulted from the alleged failure by Croatia to comply with the obligations stemming from the arbitration agreement and from the arbitration award made on the basis of that agreement or were founded on the premiss that the land and sea border between those two Member States was determined by that award.

Noting that, in the case in point, the arbitration award had been made by an international tribunal set up under a bilateral arbitration agreement governed by international law, the subject matter of which did not fall within the areas of EU competence and to which the European Union was not a party, the Court observed that neither the arbitration agreement nor the arbitration award formed an integral part of EU law. It stated in this context that the reference, made in neutral terms by a provision of the Act of Accession of Croatia to the European Union, to that arbitration award could not be interpreted as incorporating into EU law the international commitments made by both Member States within the framework of the arbitration agreement.

Accordingly, the Court held that the infringements of EU law pleaded were, in the case in point, ancillary to the alleged failure by Croatia to comply with the obligations arising from the bilateral agreement at issue. Stating that an action under Article 259 TFEU for failure to fulfil obligations can only relate to a failure to comply with obligations stemming from EU law, the Court held that it therefore lacked jurisdiction to rule, in the present action, on an alleged failure to comply with the obligations arising from the arbitration agreement and the arbitration award, which are the source of Slovenia's complaints regarding alleged infringements of EU law.

Finally, noting the competence reserved to the Member States, in accordance with international law, in respect of the geographical demarcation of their borders and the fact that, under the arbitration agreement, it is for the parties to that agreement to take the steps necessary to implement the arbitration award, the Court held that it was not for it to examine, in the present action, the question of the extent and limits of the respective territories of Croatia and Slovenia, applying directly the border determined by the arbitration award in order to verify the truth of the infringements of EU law at issue.

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**NOTE:** An action for failure to fulfil obligations directed against a Member State which has failed to comply with its obligations under European Union law may be brought by the Commission or by another Member State. If the Court of Justice finds that there has been a failure to fulfil obligations, the Member State concerned must comply with the Court's judgment without delay.

Where the Commission considers that the Member State has not complied with the judgment, it may bring a further action seeking financial penalties. However, if measures transposing a directive have not been notified to the Commission, the Court of Justice can, on a proposal from the Commission, impose penalties at the stage of the initial judgment.

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1224/2009 and repealing Council Regulations (EC) No 2371/2002 and (EC) No 639/2004 and Council Decision 2004/585/EC (OJ 2013 L 354, p. 22); the system of control, inspection and implementation in respect of the rules laid down by Council Regulation (EC) No 1224/2009 of 20 November 2009 establishing a Community control system for ensuring compliance with the rules of the common fisheries policy (OJ 2009 L 343, p. 1) and by Commission Implementing Regulation (EU) No 404/2011 of 8 April 2011 laying down detailed rules for the implementation of Council Regulation (EC) No 1224/2009 establishing a Community control system for ensuring compliance with the rules of the Common Fisheries Policy (OJ 2011 L 112, p. 1); Articles 4 and 17, read in conjunction with Article 13, of Regulation (EU) 2016/399 of the European Parliament and of the Council of 9 March 2016 on a Union Code on the rules governing the movement of persons across borders (Schengen Borders Code) (OJ 2016 L 77, p. 1); and Article 2(4) and Article 11(1) of Directive 2014/89/EU of the European Parliament and of the Council of 23 July 2014 establishing a framework for maritime spatial planning (OJ 2014 L 257, p. 135).

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

The [full text](#) of the judgment is published on the CURIA website on the day of delivery.

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