



Judgments of the Court

in Cases C-163/24 | Statul Român – Ministerul Finanțelor Publice and Curtea de Apel București and C-293/24 | Ferreira da Silva e Brito and Others

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Liability for infringement of EU law: the Court specifies the conditions under which an individual may obtain redress following a decision of a court or tribunal that is contrary to EU law

It confirms, inter alia, that the rule breached must confer rights on individuals and that the wrongful failure by the national court or tribunal to question the Court of Justice as to the interpretation of that rule may help to establish liability

In two judgments, delivered today, the Court of Justice develops its case-law concerning the liability of Member States for infringements of EU law by a national court of last instance by specifying the role of a failure to fulfil the obligation to make a reference for a preliminary ruling. Thus, in a Romanian case, the Court indicates that such liability cannot be triggered unless the obligation to refer is accompanied by breach of another rule of EU law intended to confer rights on individuals. This was not, however, the situation in the case at hand, as the rules at issue relating to the precise identification of agricultural areas pursue a general objective of public interest, namely protecting the financial interests of the Union. In a Portuguese case, the rules at issue, incorrectly applied in a decision of a supreme court dating from 2009, did have such an objective, given that they protect workers in the event of transfers of undertakings. The Court of Justice indicates that it is for the referring court to verify whether that decision constitutes a sufficiently serious breach of EU law, which is one of the conditions for the triggering of the liability of a Member State for infringement of that law by one of its courts ruling at last instance. However, the Court highlights certain factors which it classifies as decisive for the purposes of that examination, suggesting that that condition is indeed met in the case in the main proceedings.

In Case C-163/24, a Romanian farmer applied, in 2007, for agricultural aid in respect of an area of 264.71 ha. Following a check, the competent Romanian authority considered that the area actually eligible was only 180.62 ha and rejected his application. The action and appeal brought against that decision were dismissed, with the Court of Appeal, Bucharest, refusing, in 2012, to make a reference to the Court of Justice in order to obtain an interpretation of the regulation concerning the integrated administration and control system for agricultural aid. ¹ The farmer then brought an action for liability against the Romanian State for infringement of EU law. Hearing the appeal, the Court of Appeal, Bucharest, finally questioned the Court of Justice, inter alia as to whether the initial refusal to make a reference for a preliminary ruling was such as to trigger the liability of the Romanian State.

In Case C-293/24, employees of the Portuguese airline Air Atlantis, dismissed upon the dissolution of that airline in 1993, argued that, in connection with a 'transfer of a business' within the meaning of the Directive on the Transfer of Undertakings, ² Transportes Aéreos Portugueses had taken on a part of Air Atlantis' activities. They therefore asked to be reinstated within Transportes Aéreos Portugueses. In 2009, the Portuguese Supreme Court refused to refer a question to the Court of Justice concerning the concept of 'transfer of a business' before confirming the dismissal, by the lower Portuguese courts, of the action brought by the employees concerned. Those employees then brought an action for liability before the Court of First Instance, Lisbon, against the Portuguese State for infringement of EU law attributable to the Supreme Court. That court of first instance having made a reference to the Court of Justice for a preliminary ruling, the latter ruled, in 2015, first, that there had indeed been a transfer of an undertaking in the case at hand and, second, that the

Supreme Court should have made a reference for a preliminary ruling.³ Despite that ruling, the Portuguese courts adjudicating on the substance dismissed the workers' action on the ground, *inter alia*, that, in its judgment, the Court of Justice had relied on case-law relating to the concept of 'transfer of a business' which postdated the Supreme Court's decision of 2009. Hearing an extraordinary appeal on a point of law, the Supreme Court also finally made a reference to the Court of Justice in order to determine whether the position which it had adopted in 2009 constituted a sufficiently serious breach of EU law capable of triggering the liability of the Portuguese State.

Regarding the conditions for triggering the liability of a Member State for infringement of EU law, the Court recalls that the individuals who claim to have been harmed have a right to redress where three cumulative conditions are met: the rule of EU law breached must be intended to confer rights on them, the breach of that rule must be sufficiently serious, and there must be a direct causal link between that breach and the loss or damage sustained. That principle also applies where the breach stems from a decision handed down by a court against whose decisions there is no judicial remedy under national law.

In Case C-163/24, the Court therefore holds that, in a situation where a failure to fulfil the obligation to make a reference for a preliminary ruling is in issue, the liability of a Member State cannot be triggered **unless that failure is also accompanied by breach of another rule of EU law intended to confer rights on individuals. The failure to fulfil that obligation to refer cannot, in itself, be sufficient to trigger the liability of a Member State.** In the case at hand, first, the provision of the regulation concerning the integrated administration and control system for agricultural aid at issue does not confer any rights on a farmer applying for agricultural aid, as the sole objective of that provision is to protect the financial interests of the Union. Second, the conditions under which the Romanian farmer concerned had acted did not permit him to rely on a provision of EU law contained in another regulation covering a situation involving an excusable error.

In Case C-293/24, the Court finds that the provisions of the Directive on the Transfer of Undertakings at issue are indeed intended to confer rights on individuals, so that the first condition for the triggering of the liability of the Portuguese State as a result of the Supreme Court's decision of 2009 is indeed met. As regards the second condition, concerning the existence of a sufficiently serious breach of EU law by the court in question, the Court of Justice notes three factors which it classifies as decisive. Thus, first, it finds that the solution adopted in its judgment of 2015 was already apparent from the case-law prior to the decision of the Portuguese Supreme Court of 2009 refusing to make a reference, that decision being vitiated by a combination of errors of interpretation of EU law. Second, the fact that the Portuguese Supreme Court had departed from the guidance derived from the case-law prior to that decision of 2009 without submitting a request to the Court of Justice for a preliminary ruling, in spite of its obligation to do so, is also an indication of a sufficiently serious breach of EU law in the case at hand. Third, that Supreme Court could not have been unaware of the fact that the issue of the conformity with EU law of the methodological approach adopted by it in that decision was specifically at the heart of a request for a preliminary ruling pending before the Court of Justice at that time, which is such as to establish the inexcusable nature of the breach of EU law by that national court. In view of those various factors, **the decision of 2009 thus appears to be vitiated by a sufficiently serious breach of EU law, which, however, it is for the referring court to verify**, as well as the **causal link between that breach and the loss or damage in respect of which compensation is sought by the former employees of Air Atlantis in the case in the main proceedings.**

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 of the European Union about the interpretation of EU law or the validity of an EU act.

The General Court has jurisdiction to deal with requests for a preliminary ruling coming exclusively within the following areas (1) the common system of value added tax (VAT), (2) excise duties, (3) the Customs Code, (4) the tariff classification of goods under the Combined Nomenclature, (5) compensation and assistance to passengers in the event of denied boarding or delay or cancellation of transport services, or (6) the system for greenhouse gas emission allowance trading. The Court of Justice has jurisdiction to deal with all other requests for a preliminary ruling.

Neither the Court of Justice nor the General Court decides the national dispute itself. It is for the national court or tribunal to resolve the case in accordance with the ruling by the Court of Justice or by the General Court, which is similarly binding on other national courts or tribunals before which a similar issue is raised.

Unofficial document for media use, not binding on the Court of Justice. The presentation of the facts and the legal context refers to the relevant period and is based on the case files.

The full text and, as the case may be, the abstract of the judgments ([C-163/24](#) and [C-293/24](#)) is published on the CURIA website on the day of delivery.

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¹ [Commission Regulation \(EC\) No 796/2004](#) of 21 April 2004 laying down detailed rules for the implementation of cross-compliance, modulation and the integrated administration and control system provided for in Council Regulation (EC) No 1782/2003 of 29 September 2003 establishing common rules for direct support schemes under the common agricultural policy and establishing certain support schemes for farmers.

² [Council Directive 77/187/EEC](#) of 14 February 1977 on the approximation of the laws of the Member States relating to the safeguarding of employees' rights in the event of transfers of undertakings, businesses or parts of businesses.

³ Judgment of the Court of 9 September 2015 in *Ferreira da Silva e Brito and Others*, [C-160/14](#) (see also Press Release No [96/15](#)).