

Form of order sought

The Commission claims that the Court should:

- (i) set aside the judgment under appeal in so far as the General Court reduced the basic amount of the fine imposed on SLM, on the grounds that the General Court, in the contested decision, failed to take account of the fact that, for part of the infringement, SLM had not participated in the external aspect of Club Italia;
- (ii) set aside the judgment under in so far as the General Court reduced the basic amount of the fine imposed on SLM to EUR 1,956 million and annulled the fine imposed on SLM jointly and severally with Ori Martin;
- (iii) exercising its own unlimited jurisdiction, recalculate the amount of the fine to be imposed, in accordance with that requested by the Commission;
- (iv) order the applicants at first instance to pay the costs of the proceedings.

Grounds of appeal and main arguments

- (i) The General Court fundamentally misread the facts by erroneously considering that the basic amount of the fine imposed by the contested decision against SLM was EUR 19,8 million, instead of EUR 15,965 million as determined by the second corrective decision, EUR 14 million of which was imposed jointly and severally with Ori Martin.
- (ii) The General Court erred in law in its application of the rules on joint and several liability for fines and in the calculation of the 10 % ceiling, in so far as it fixed the final amount of the fine for which SLM is liable at EUR 1,956 million by applying the legal limit of 10 % of SLM's worldwide turnover in the reference year mentioned in Article 23(2) of Regulation (EC) No 1/2003. ⁽¹⁾ In the present case, the General Court ought to have found, in the judgment, that SLM was liable, not only individually for the payment of EUR 1,956 million, but for an additional sum of EUR 13,3 million too, jointly and severally with Ori Martin. The ceilings ought to have been calculated separately for SLM, individually, for the period when it participated in the infringement during which it was not controlled by Ori Martin (the ceiling relating to the SLM's worldwide turnover), and for SLM jointly and severally with Ori Martin, for the period in which that subsidiary was controlled by its parent (the ceiling relating to Ori Martin's worldwide turnover, which in the present case was not reached).

⁽¹⁾ Council Regulation (EC) No 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles 81 and 82 (OJ 2003 L 1, p. 1)

Request for a preliminary ruling from the Verwaltungsgerichtshof (Austria) lodged on 7 October 2015 — Gert Folk

(Case C-529/15)

(2015/C 406/27)

Language of the case: German

Referring court

Verwaltungsgerichtshof

Parties to the main proceedings

Applicant: Gert Folk

Defendant: Unabhängiger Verwaltungssenat für die Steiermark

Questions referred

1. Does Directive 2004/35/EC ⁽¹⁾ of the European Parliament and of the Council of 21 April 2004 on environmental liability with regard to the prevention and remedying of environmental damage, as amended by Directive 2006/21/EC of the European Parliament and of the Council of 15 March 2006 and by Directive 2009/31/EC of the European Parliament and of the Council of 23 April 2009 (OJ 2009 L 140, p. 114), ('the Environmental Liability Directive') apply also to damage which, although it arises after the date specified in Article 19(1) of the Environmental Liability Directive, none the less results from the operation of a facility (a hydroelectric power station) authorised and brought into operation prior to that date and is covered by an authorisation granted under the law governing matters relating to water?
2. Does the Environmental Liability Directive, in particular Articles 12 and 13 thereof, stand in the way of a national provision which precludes persons holding fishing rights from initiating a review procedure within the meaning of Article 13 of the Environmental Liability Directive in relation to environmental damage as defined in Article 2(1)(b) of the Directive?
3. Does the Environmental Liability Directive, in particular Article 2(1)(b) thereof, preclude a national provision which excludes damage that has a significant adverse effect on the ecological, chemical or quantitative status or ecological potential of the water in question from the notion of 'environmental damage', in the case where that damage is covered by an authorisation granted under a national legislative provision?
4. If Question 3 is answered in the affirmative:

In cases where, in the granting of an authorisation under provisions of national law, no assessment has been made of the criteria laid down by Article 4(7) of Directive 2000/60/EC (or of the national measures implementing it), is, for the purpose of determining whether environmental damage within the meaning of Article 2(1)(b) of the Environmental Liability Directive has arisen, Article 4(7) of Directive 2000/60/EC to be applied directly, and is it necessary to determine whether the criteria laid down by that provision are satisfied?

⁽¹⁾ OJ 2004 L 143, p. 56, in the version amended by Directive 2006/21/EC of the European Parliament and of the Council of 15 March 2006 on the management of waste from extractive industries and amending Directive 2004/35/EC — Statement by the European Parliament, the Council and the Commission (OJ 2006 L 102, p. 15) and by Directive 2009/31/EC of the European Parliament and of the Council of 23 April 2009 on the geological storage of carbon dioxide and amending Council Directive 85/337/EEC, European Parliament and Council Directives 2000/60/EC, 2001/80/EC, 2004/35/EC, 2006/12/EC, 2008/1/EC and Regulation (EC) No 1013/2006 (OJ 2009 L 140, p. 114).