

Case C-121/07

Commission of the European Communities

v

French Republic

(Failure of a Member State to fulfil obligations — Directive 2001/18/EC — Deliberate release into the environment and placing on the market of GMOs — Judgment of the Court establishing the failure of a Member State to fulfil its obligations — Non-compliance — Article 228 EC — Judgment complied with during the proceedings — Pecuniary penalties)

Opinion of Advocate General Mazák delivered on 5 June 2008 I - 9163
Judgment of the Court (Grand Chamber), 9 December 2008 I - 9192

Summary of the Judgment

- 1. Actions for failure to fulfil obligations — Judgment of the Court establishing such failure — Period for implementation*
(Art. 228 EC)
- 2. Actions for failure to fulfil obligations — Judgment of the Court establishing such failure — Breach of the obligation to comply with the judgment — Pecuniary penalties — Purpose*
(Art. 228(2) EC)

3. *Actions for failure to fulfil obligations — Judgment of the Court establishing such failure — Breach of the obligation to comply with the judgment — Pecuniary penalties — Imposition of a lump sum payment*
(Art. 228(2) EC)

1. Although Article 228 EC does not specify the period within which a judgment establishing the failure of a Member State to comply with its obligations must be implemented, the importance of immediate and uniform application of Community law means that the process of implementation must be initiated at once and completed as soon as possible.

(see para. 21)

2. The procedure laid down in Article 228(2) EC is aimed at inducing a defaulting Member State to comply with a judgment establishing a failure to fulfil obligations, thereby ensuring that Community law is in fact applied. The measures provided for by that provision, namely a lump sum and a penalty payment, are both intended to achieve this objective.

It is for the Court, in each case, in the light of the circumstances of the case before it and the degree of persuasion and deterrence which appears to it to be required, to determine the financial penalties appropriate for making sure that the judgment which previously established the breach is complied with as swiftly as possible and

preventing similar infringements of Community law from recurring.

Whereas the imposition of a penalty payment seems particularly suitable for the purpose of inducing a Member State to put an end as soon as possible to a breach of obligations which, in the absence of such a measure, would tend to persist, the imposition of a lump sum is based more on the assessment of the effects on public and private interests of the failure of the Member State concerned to comply with its obligations, in particular where the breach has persisted for a long period since the judgment initially establishing it was delivered.

While an order for a penalty payment, which is essentially intended to be coercive as regards an ongoing breach, is therefore made, as a rule, only in so far as the failure to comply with the judgment which originally established that failure continues, that does not apply with regard to the imposition of a lump sum payment.

(see paras 27, 56-59)

3. The decision whether to impose a lump sum payment is not automatic but must, in each individual case, depend on all the relevant factors pertaining to both the particular nature of the infringement established and the individual conduct of the Member State involved in the procedure instigated pursuant to Article 228 EC.

and the degree of persuasion and deterrence required.

If the Court decides to impose a lump sum payment, it must do so, in exercising its discretion, in a manner that is appropriate to the circumstances and proportionate both to the breach that has been established and the ability to pay of the Member State concerned.

While guidelines such as those in the Commission's communication on the imposition of lump sum payments may indeed help to ensure that the Commission acts in a manner that is transparent, foreseeable and consistent with legal certainty, the fact nevertheless remains that such rules cannot bind the Court in the exercise of the power conferred on it by Article 228(2) EC.

The relevant factors to be taken into account in making such a decision include, in particular, factors such as how long the breach of obligations has persisted since the judgment which initially established it was delivered and the public and private interests involved.

Moreover, the fact that, until now, the payment of a lump sum has not been imposed by the Court in situations in which the original judgment was fully complied with before the procedure laid down in Article 228 EC was concluded cannot prevent such an order being made in another case, should that be necessary in the light of the details of the individual case

Where failure to comply with a judgment of the Court is likely to harm the environment and endanger human health, the protection of which is, indeed, one of the Community's environmental policy objectives, as is apparent from Article 174 EC, such a breach is of a particularly serious nature. The same applies, in principle,

where the free movement of goods continues to be hindered, in breach of Community law, notwithstanding the existence of a judgment of the Court establishing an infringement in that respect.

governed by Community rules, this may be an indication that effective prevention of future repetition of similar infringements of Community law may require the adoption of a dissuasive measure, such as a lump sum payment.

Where a Member State repeatedly engages in unlawful conduct in a specific sector

(see paras 60-64, 69, 77, 78, 80)