

# Case C-416/07

## Commission of the European Communities

v

## Hellenic Republic

(Failure of a Member State to fulfil obligations — Directives 91/628/EEC and 93/119/EC — Regulation (EC) No 1/2005 — Protection of animals during transport and at the time of slaughter or killing — Structural and general infringement of Community rules)

Opinion of Advocate General Trstenjak delivered on 2 April 2009 . . . . . I - 7887  
Judgment of the Court (Third Chamber), 10 September 2009 . . . . . I - 7951

### Summary of the Judgment

- 1. Actions for failure to fulfil obligations — Subject-matter of the dispute — Determination during the pre-litigation procedure*  
(Art. 226 EC)
- 2. Actions for failure to fulfil obligations — Proof of failure — Burden of proof on the Commission*  
(Art. 226 EC)
- 3. Agriculture — Approximation of laws — Protection of animals during transport — Directive 91/628*  
(Council Directive 91/628, as amended by Regulation No 806/2003, Art. 5(A)(1)(a))

4. *Agriculture — Approximation of laws — Protection of animals during transport — Directive 91/628*

(Council Directive 91/628, as amended by Regulation No 806/2003, Art. 5(A)(2)(d)(i), first indent, and 8, first para., (b) and (d))

5. *Agriculture — Approximation of laws — Protection of animals during transport — Directive 91/628*

(Council Directive 91/628, as amended by Regulation No 806/2003, Annex, Chapter VII, point 48.7(b))

1. In an action for failure to fulfil obligations, although the claims as stated in the application cannot as a rule be extended beyond the infringements alleged in the operative part of the reasoned opinion and in the letter of formal notice, the fact nevertheless remains that the Commission has standing to seek a declaration that a Member State has failed to fulfil obligations which were created in the original version of a Community measure, subsequently amended or repealed, and which were maintained in force under the provisions of a new Community measure. Conversely, the subject-matter of the dispute cannot be extended to obligations arising under new provisions which do not correspond to those arising under the original version of the measure concerned, for otherwise it would constitute a breach of the essential procedural requirements of infringement proceedings.

(see para. 28)

2. In proceedings under Article 226 EC for failure to fulfil obligations it is incumbent

upon the Commission to prove the alleged failure. It is the Commission's responsibility to place before the Court the information needed to enable the Court to establish that the obligation has not been fulfilled, and in so doing the Commission may not rely on any presumption. Where the Commission has adduced sufficient evidence of certain matters in the territory of the defendant Member State, it is incumbent on the latter to challenge in substance and in detail the information produced and the consequences flowing therefrom.

(see paras 32, 33)

3. The Commission's argument that certain transporters do not have an authorisation or that the authorisation which has been issued to them is no longer valid is not such as to show the existence of an administrative practice which is, to some degree, of a consistent and general nature and is contrary to the obligations incumbent upon a Member State under Article 5(A)(1)(a) of Directive 91/628 on the

protection of animals during transport and amending Directives 90/425 and 91/496, as amended by Regulation No 806/2003, since the Commission does not give any information in particular as regards the number of transporters who did not have an authorisation or whose authorisation had expired or as regards the number of transporters who were subject to checks.

first indent of Article 5(A)(2)(d)(i) and points (b) and (d) of the first paragraph of Article 8 of Directive 91/628 on the protection of animals during transport and amending Directives 90/425 and 91/496, as amended by Regulation No 806/2003, if the competent authorities of other Member States have drawn up those plans.

As regards the argument that the lists of transporters are not always updated it is incumbent upon the Commission to prove the alleged failure and to place before the Court the information needed to enable the Court to establish that the obligation has not been fulfilled. In the absence of information, in particular on the number of lists concerned or on the total number of lists checked, the mere fact that certain lists of transporters are not updated is not sufficient to show that a Member State has failed to fulfil its obligations under Article 5(A)(1)(a) of Directive 91/628.

The checks of the route plans are intended to ensure that the requirements laid down by Directive 91/628 are complied with. Therefore, the check cannot be restricted to checking that a route plan exists or checking the information in that plan, but must also include an examination of whether the animal transport complies with Community legislation on the protection of animals during transport. In those circumstances, a mere check of the data in the route plans is not sufficient to satisfy the obligations laid down by that directive.

(see paras 44, 45, 47-49)

(see paras 65-68)

4. A Member State whose competent authorities can monitor only the implementation of route plans and not the information in them fails to fulfil its obligations under the
5. A Member State which fails to take all the appropriate measures to provide, in ferry ports or in their immediate vicinity, for installations to enable animals to be rested after unloading fails to fulfil its obligations

under point 48.7(b) of Chapter VII of the Annex to Directive 91/628 on the protection of animals during transport and amending Directives 90/425 and 91/496, as amended by Regulation No 806/2003.

Under that provision, in the case of transport by sea on a regular and direct link between two geographical points of the Community by means of vehicles loaded on to vessels without unloading of the animals, the latter must, as a rule, be rested for 12 hours after unloading at the port of destination or in its immediate

vicinity. Although that provision does not expressly provide that Member States are obliged to ensure that there are rest facilities for animals in ports, such an obligation forms an integral part of the requirement that animals must be rested for 12 hours after unloading at the port of destination or in its immediate vicinity. Transporters would be unable to comply with a rest period of 12 hours if Member States did not ensure that facilities were available for that purpose.

(see paras 75, 76, 79)