

In these judgments the Court of Justice noted that the principle that Member States are obliged to make good loss or damage caused to individuals by breaches of Community law for which they can be held responsible is applicable where the national legislature was responsible for the breaches.

In the case of a Member State which fails to fulfil its obligation under the third paragraph of Article 249 of the EC Treaty to take all the measures necessary to achieve the result prescribed by a directive, the full effectiveness of that rule of Community law requires that there should be a right to reparation where three conditions are met, that is to say, first, that the result prescribed by the directive should entail the granting of rights to individuals; secondly, that it should be possible to identify the content of those rights on the basis of the provisions of the directive; and thirdly, that there should be a causal link between the breach of the State's obligation and the loss and damage suffered by the injured parties.

Subject to that reservation, it is in accordance with the rules of national law on liability that the Member State must make reparation for the consequences of the loss and damage caused by a breach of Community law for which it can be held responsible, given that the conditions laid down by the applicable national legislation must not be less favourable than those relating to similar domestic claims and must not be so framed as to make it virtually impossible or excessively difficult to obtain reparation.

(¹) Council Directive 89/391/EEC of 12 June 1989 on the introduction of measures to encourage improvements in the safety and health of workers at work, OJ L 183, 29.6.1989.

(2004/C 84 E/0926)

WRITTEN QUESTION P-0654/04

by Reinhold Messner (Verts/ALE) to the Commission

(2 March 2004)

Subject: Brenner axis

Is the Commission aware that the situation along the Brenner axis between Kufstein and Verona (air and noise pollution and fine dust particles) has become intolerable for the residents of the narrow Alpine valleys? Pollution levels frequently rise far above the permitted limit, resulting in damage to the health of those affected. With the referendum decision in Switzerland not to build a second tube for the Gotthard tunnel and EU enlargement, heavy goods transit traffic will increase even more spectacularly.

In view of these facts, are counter-measures not urgently required?

The real costs provide a key to the short-term solution. To cut down on the volume of empty vehicles and waste transporters, the tolls for all HGVs could be raised in this sensitive area. It is a choice between protecting the health of people living along this stretch of road or unchecked goods traffic.

In the long term, this unjustifiable situation must be rectified using a concept adapted to the future (base tunnel and modern logistics), and an EU ban on transit, to force all heavy goods transit traffic off the Brenner motorway and under the mountain or onto the railway tracks. In this regard, I refer once again to the ATT3 project and ask why the Commission does not immediately announce an exemption for this sensitive area with regard to the toll fee between Kufstein and Verona. Why have some of the profits made north and south of the Brenner Pass not been invested in the planned base tunnel included in the TEN guidelines adopted in 1996, and why is this 21st-century project relying on 19th-century logistics?

Answer given by Mrs de Palacio on behalf of the Commission

(6 April 2004)

The Commission is aware of the problems on the Brenner axis to which the Honourable Member refers. It takes a coordinated approach to the problem of land transport in sensitive areas. This consists of various

measures, in particular the introduction of a new charging scheme for road haulage, liberalisation of the rail sector and opening it up to competition, the promotion of intermodal transport (the Marco Polo programme), and the development of railway infrastructure. With regard to the latter, it should be noted that, since the mid-1990s, the Commission has insisted that the Brenner base tunnel be considered a priority infrastructure project of European interest and that the Member States concerned should implement this project as soon as possible.

On road charging, it should be noted that Directive 1999/62/CE⁽¹⁾ does not allow the Commission to adopt derogatory measures as regards the toll between Kufstein and Verona, since the toll charge must correspond to the costs of constructing, operating and developing the infrastructure network concerned. However, the Directive does allow the Member States concerned, Italy and Austria, to allocate a percentage of the amount of the tolls to the funding of other transport infrastructure, for example the Brenner base tunnel.

The Commission proposal⁽²⁾ to amend the Eurovignette Directive provides for specific measures in particularly sensitive areas. In order to cover the cross-financing of the investment costs of other transport infrastructure of high European interest in the same corridor (for example, the Brenner base tunnel), Member States may increase tolls by up to 25 % in these areas. Mountainous areas, which include the Alps, are specifically referred to. It should also be noted that the proposal for a Directive provides that the rates at which tolls are charged should vary according to several criteria, which more especially will enable the Member States to reflect their concerns about congestion and the environment when implementing road charges. The Member States will therefore be able to vary the charges according to the particular route of the road network, the environmental sensitivity of the area or the risk of accidents. All of these measures should enable Austria to introduce a system of tolls which reflects the costs engendered by infrastructure use and contributes to an efficient and sustainable transport policy, in particular in the Tyrol.

Whatever decisions are taken on the modal transfer from road to rail, they must take account of the obligations arising from the free movement of goods and the freedom to provide services as well as the railway capacity made available by operators.

⁽¹⁾ Directive 1999/62/EC of the European Parliament and of the Council of 17 June 1999 on the charging of heavy goods vehicles for the use of certain infrastructures, OJ L 187, 20.7.1999.

⁽²⁾ COM(2003) 448 final.

(2004/C 84 E/0927)

WRITTEN QUESTION E-0655/04

by Robert Evans (PSE) to the Commission

(9 March 2004)

Subject: Human rights in Algeria

In light of the Association Agreement between the European Union and Algeria and in particular Article 2, can the Commission inform me what continuing action it is taking and will take in relation to human rights in Algeria?

1. What is the Commission doing to ensure that the Algerian authorities have at their disposal relevant expertise and equipment in dealing with the crimes against humanity committed throughout the last decade and that they respect recommended procedures in exhuming mortal remains from mass graves?
2. What is the Commission doing to ensure that families of the 'disappeared' in Algeria are able to carry out their campaigning work as legally registered organisations?
3. Has the Commission asked the Algerian authorities to extend an invitation to the UN Special Rapporteur on Torture (who has asked to gain entry to Algeria since 1997)?
4. Will the Commission press the Algerian authorities for concrete information on the alleged trials of some 20 security officers following the killing of dozens of unarmed protesters in Kabylia and to make public the information on these and similar trials?