

JUDGMENT OF THE COURT (First Chamber)

8 July 1999 *

In Case C-186/98,

REFERENCE to the Court under Article 177 of the EC Treaty (now Article 234 EC) by the Tribunal de Círculo do Porto, Portugal, for a preliminary ruling in the criminal proceedings pending before that court against

Maria Amélia Nunes

Evangelina de Matos

on the interpretation of the provisions of Community law governing the improper use of financial assistance granted from the European Social Fund,

THE COURT (First Chamber),

composed of: P. Jann (Rapporteur), President of the Chamber, D.A.O. Edward and L. Sevón, Judges,

Advocate General: F.G. Jacobs,

* Language of the case: Portuguese.

Registrar: R. Grass,

after considering the written observations submitted on behalf of:

- Maria Amélia Nunes, by J. Lourenço Pinto, Advogado, Lisbon,

- the Portuguese Government, by Luís Fernandes, Director of the Legal Service of the Directorate-General for the European Communities of the Ministry of Foreign Affairs, and Ângelo Seiça Neves, of the same Service, acting as Agents,

- the Finnish Government, by Holger Rotkirch, Ambassador, Head of Legal Affairs in the Ministry of Foreign Affairs, and Tuula Pynnä, Legal Adviser in the same Ministry, acting as Agents,

- the Commission of the European Communities, by Maria Teresa Figueira and Knut Simonsson, of its Legal Service, acting as Agents,

having regard to the report of the Judge-Rapporteur,

after hearing the Opinion of the Advocate General at the sitting on 20 May 1999,

gives the following

Judgment

- 1 By order of 21 April 1998, received at the Court on 18 May 1998, the Tribunal de Círculo (District Court), Oporto, referred to the Court for a preliminary ruling under Article 177 of the EC Treaty (now Article 234 EC) two questions on the interpretation of the provisions of Community law governing the improper use of financial assistance granted from the European Social Fund (hereinafter 'the ESF').
- 2 The questions were raised in the course of criminal proceedings brought against Ms Nunes and Ms de Matos for forgery, as defined in and sanctioned under Article 228(1) and (3) of the Portuguese Penal Code, committed in connection with a vocational training initiative carried out in 1986 and a course given in 1987. Ms Nunes is also charged with corruption, as defined in and sanctioned under Article 424 of the Portuguese Penal Code. The various training initiatives received financial assistance from the ESF.
- 3 At the time of the events at issue in the main action, Article 6(1) of Council Regulation (EEC) No 2950/83 of 17 October 1983 on the implementation of Decision 83/516/EEC on the tasks of the European Social Fund (OJ 1983 L 289, p. 1) provided:

'When Fund assistance is not used in conformity with the conditions set out in the decision of approval, the Commission may suspend, reduce or withdraw the aid after having given the relevant Member State an opportunity to comment.'

The first question

- 7 It is clear from Article 6 of Regulation No 2950/83 that the consequences of using ESF assistance in breach of the conditions set out in the decision of approval are not in the nature of criminal sanctions.
- 8 Consequently the answer to the first question must be that Community legislation does not classify the improper use of ESF assistance as a criminal offence.

The second question

- 9 Where a Community regulation does not specifically provide any penalty for an infringement or refers for that purpose to national laws, regulations and administrative provisions, Article 5 of the EC Treaty (now Article 10 EC) requires the Member States to take all measures necessary to guarantee the application and effectiveness of Community law (see, in particular, Case 68/88 *Commission v Greece* [1989] ECR 2965, paragraph 23).
- 10 For that purpose, while the choice of penalties remains within their discretion, the Member States must ensure in particular that infringements of Community law are penalised under conditions, both procedural and substantive, which are analogous to those applicable to infringements of national law of a similar nature and importance and which, in any event, make the penalty effective, proportionate and dissuasive (*Commission v Greece*, paragraph 24).
- 11 Moreover, the national authorities must proceed, with respect to infringements of Community law, with the same diligence as that which they bring to bear in

implementing corresponding national laws (*Commission v Greece*, paragraph 25).

- 12 The same reasoning applies where a Community regulation lays down particular penalties for infringement, but does not exhaustively list the penalties that the Member States may impose, as is the case with the regulation on the ESF.

- 13 The nature of the obligation imposed by Article 5 of the EC Treaty is underlined, as Advocate General Jacobs observed in point 9 of his Opinion, by the first paragraph of Article 209a of the EC Treaty (now, after amendment, Article 280(2) EC), which expressly requires Member States to take the same measures to counter fraud affecting the financial interests of the Community as they take to counter fraud affecting their own financial interests.

- 14 Consequently the answer to the second question must be that Article 5 of the Treaty requires the Member States to take all effective measures to penalise conduct harmful to the financial interests of the Community. Such measures may include criminal penalties even where the Community legislation only provides for civil ones. The penalty provided for must be analogous to those applicable to infringements of national law of similar nature and importance, and must be effective, proportionate and dissuasive.

Costs

- 15 The costs incurred by the Portuguese and Finnish Governments and by the Commission, which have submitted observations to the Court, are not recoverable. Since these proceedings are, for the parties to the main proceedings,

a step in the action pending before the national court, the decision on costs is a matter for that court.

On those grounds,

THE COURT (First Chamber),

in answer to the questions referred to it by the Tribunal de Círculo do Porto by order of 21 April 1998, hereby rules:

- 1. Community legislation does not classify the improper use of European Social Fund assistance as a criminal offence.**
- 2. Article 5 of the EC Treaty (now Article 10 EC) requires the Member States to take all effective measures to penalise conduct harmful to the financial interests of the Community. Such measures may include criminal penalties**

even where the Community legislation only provides for civil ones. The penalty provided for must be analogous to those applicable to infringements of national law of similar nature and importance, and must be effective, proportionate and dissuasive.

Jann

Edward

Sevón

Delivered in open court in Luxembourg on 8 July 1999.

R. Grass

P. Jann

Registrar

President of the First Chamber