

Pleas in law and main arguments

The Appellants submit that the contested judgment should be set aside on the following grounds:

As regards the infringement in Germany, the General Court erred in law in finding that the Commission did not manifestly exceed its margin of appreciation in assessing Kone's contribution to the opening of the investigation and the finding of the infringement in the Decision. The General Court's error of law meant that Kone was wrongly disqualified from immunity under the 2002 Notice on immunity from fines and reduction of fines in cartel cases (the '2002 Notice').

The General Court also erred in law in holding that the Commission's breach of the 2002 Notice did not violate the principle of legitimate expectations.

As regards the infringement in the Netherlands, the General Court erred in law in upholding the Commission's refusal to grant Kone any reduction in the fine under the 2002 Notice, because of Kone's characterisation of the information it provided in its leniency application. As a result, the GC upheld the Commission's decision insofar as it refused to grant Kone any reduction in the fine for the Netherlands cartel.

The General Court also erred in law in holding that the Commission did not breach the principle of equal treatment in concluding that Kone's submissions in respect of the Dutch cartel were not comparable to ThyssenKrupp's submissions in respect of the cartel in Belgium.

Action brought on 7 October 2011 — European Commission v Hellenic Republic

(Case C-517/11)

(2011/C 362/21)

Language of the case: Greek

Parties

Applicant: European Commission (represented by: M. Patakia, I. Chatzigiannis and S. Petrova, acting as Agents)

Defendant: Hellenic Republic

Form of order sought

Declare that the Hellenic Republic:

— by not having taken all the required steps to avoid the deterioration of the natural habitats and the habitats of

species for which the special area of conservation (SAC) 1220009 was designated, and more particularly, by not taking all the steps required to carry out the measures related to the cessation of illegal drilling, irrigation, the disposal of industrial waste and the plan for management and integrated monitoring programme relating to the National Park of Koronia-Volvi and Macedonika Tempa Lakes, failed to fulfil its obligations under Article 6(2) of Directive 92/43/EEC on the conservation of natural habitats and of wild fauna and flora, in conjunction with Article 7 of that directive;

— by not having completed the system for the collection and treatment of urban waste water for the agglomeration of Langada, failed to fulfil its obligations under Articles 3 and 4(1) and (3) of Council Directive 91/271/EEC of 21 May 1991 concerning urban waste water treatment.

— order the Hellenic Republic to pay the costs.

Pleas in law and main arguments

1. The infringement at issue concerns the deterioration and contamination of Lake Koronia (Prefecture of Thessalonika), as a result of a series of environmentally harmful actions, and the failure to comply with the regulatory framework established by the Hellenic Republic for the protection of that lake.
2. In order to comply with the Community legislation on the environment, the Greek authorities established a regime for the protection of the area (Ministerial Decision 6919/2004), a specific programme for the reduction of water pollution in the lake (Ministerial Decision 35308/1838/2005) and an action plan in relation to pollution caused by nitrates (Ministerial Decision 16175/824/2006) and approved 21 measures which were required for the restoration of the lake, within the framework of a master plan developed by the Prefecture ('the Master Plan'). At the same time, the Greek authorities ensured the funding of those measures from Community resources (see in particular Decision of the Cohesion Fund C(2005) 5779/19.12.2005 which funds infrastructure works) but also from national resources.
3. However, the Commission considers that the Greek authorities continue to fail to bring into force, to any substantial degree, the legal framework concerned. The problem of the deterioration of the lake fully remains and the implementation of certain of the 21 measures (an indispensable precondition for access to European Union funding) has therefore been delayed. In view of the lack of progress in connection with the implementation of the planned measures, the Commission decided to bring an action before the Court of Justice.

4. Specifically, the Commission considers that there is an infringement of Article 6(2), in conjunction with Article 7, of Directive 92/43/EEC, which provides that, in special areas of conservation, [Member States should prevent] the deterioration of natural habitats and the habitats of species as well as disturbances which affect the species for which the areas have been designated and the conservation of wild birds.
5. As assessed by the Commission, the Hellenic Republic has not taken all the steps necessary in order to implement all the measures which it itself designed and which were considered essential for the achievement of the objectives of the above provisions.
6. In particular:
- The final cessation of illegal drilling, which the Greek authorities themselves considered essential for the restoration of the lake, has not been achieved.
 - The restriction of irrigation to a satisfactory level has not yet been carried out, as is shown by the fact that the Greek authorities have not provided information to demonstrate that the intended measures have been taken.
 - The study for the work of construction of common irrigation systems and enrichment of the Lake Koronia water table, has not yet been prepared, while the disposal of industrial waste has not been implemented, since the relevant contract for work of construction of fermentation basins in the lake has apparently not yet been entered into. Four polluting industries also continue to operate illegally.
 - The plan for the management and completion of the programmed monitoring of the National Park of Koroni-Volvi Lakes and Macedonika Tempa has not yet been adopted.
7. Further, the Commission considers that there is an infringement of Articles 3 and 4 of Directive 91/271/EEC in connection with the discharge of and collecting systems for urban waste water. In fact, in relation to the construction of the Langada collecting system and units for the reception of urban and industrial waste water, and the operation of biological treatment, the Commission has not been informed by the Greek authorities whether the intended first phase of the work has been completed, at the end of which 50 % of the population of the city of Langada will be served. In any event, the second phase of the Langada collecting system, at the end of which 100 % of the population will be covered, is still at the stage of preliminary study.
8. Finally, as regards the secondary treatment of urban waste water, the contract in question had not yet been entered into on the date when the Greek authorities replied to the reasoned opinion.

Action brought on 11 October 2011 — European Commission v French Republic

(Case C-520/11)

(2011/C 362/22)

Language of the case: French

Parties

Applicant: European Commission (represented by: F. Jimeno Fernández and D. Bianchi, Agents)

Defendant: French Republic

Form of order sought

The European Commission claims that the Court should:

- Declare that, by failing to comply with Commission Decision 2009/726/EC ordering France to suspend the application of certain interim protection measures prohibiting the introduction onto its territory, for the purpose of human consumption, of milk and milk products coming from a holding where a classical scrapie case is confirmed, the French Republic has failed to fulfil its obligations under Articles 4(3) TEU and 288 TFEU;
- order French Republic to pay the costs.

Pleas in law and main arguments

On 25 February 2009, France adopted a measure relating to the prohibition of import of milk and milk products for human consumption from ovine and caprine origin onto the French territory, in the light of transmissible spongiform encephalopathies intended for human consumption.

The Commission put the matter before the Standing Committee on the Food Chain and Animal Health (SCoFAH) with a view to the extension, amendment or abrogation of the abovementioned national interim protective measures.

On the basis of the scientific opinions available and the consultations with the SCoFAH, on 24 September 2009 the Commission considered that the interim protective measures adopted by France went beyond what was necessary to avoid a serious risk to human health, even taking into account the precautionary principle, and adopted, on the basis of Article 54(2) of Regulation No 178/2002, ⁽¹⁾ Decision 2009/726/EC ⁽²⁾ ordering France to suspend the application of those measures.

The French Republic lodged an action for annulment of that decision. It did not, however, request suspension of operation of that decision.