

NATIONAL AFFAIRS

Greece

Waste Fine Appealed

In 1992, Greece was found guilty by the European Court of Justice (case C-45/91) for not fulfilling a number of obligations under two Community Directives on waste, specifically toxic and dangerous waste disposal. Subsequently, following protracted correspondence between Brussels and Athens in which the Commission sought to establish the extent to which the Greek authorities had complied with the 1992 judgment, the Commission started new legal proceedings against Greece under

Article 171 of the EC Treaty in April 1997 (C-387/97), requesting the Court to impose a fine on the Greek Government of ECU 24,600 per day for failing to respect the earlier ruling.

The Commission, in consideration of the seriousness of the infringement, the length of the period of non-compliance and the “ability-to-pay” factor, proposed to sanction the four infringements as a whole, but Greece asked for them to be considered separately.

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In reply to a request from the Court of Justice to consider the possibility of treating separately each of the infringements, the Commission proposed a set of penalties in respect of the separate provisions which had been infringed, amounting to a total of EURO 32,800 per day.

The Court's Advocate-General felt that the Commission's proposal of a fine of EURO 24,600 was appropriate to the extent that it had made no manifest error of assessment or failure to observe the principles of proportionality and equal treatment.

Having considered the infringements individually and the relative importance of each one, the Advocate-General said that, since failure to fulfil two of the obligations in question resulted in a failure to fulfil the other two, the fine should be reduced to EURO 15,375 per day.

Although the EU judges will take this Opinion into account when making their final ruling in the coming weeks, they are not obliged to follow it.

It is interesting to note that this will be the first case in which the Court of Justice is to apply new provisions, introduced by the Treaty of Maastricht. These enable it to

impose fines on a Member State which has failed to take the necessary measures to comply with a Judgment of the European Court, declaring that a Member State has failed to fulfil its obligations under Community law.

Many legal problems will be raised by the application of the new Maastricht provisions. In view of this, the Advocate-General has set out in his Opinion a detailed analysis of the principles involved, such as whether the penalties are criminal or administrative in nature and whether, where there are various discrete infringements, they should be separately assessed rather than assessed as a whole – thus allowing compliance to be partial or gradual and the penalty to be reduced accordingly.

In his analysis, the Advocate-General also outlines the limits of the discretion of the Court of Justice regarding the penalties proposed by the Commission. It is his opinion that judicial review must be restricted to verifying the facts, ascertaining whether a manifest error of assessment has been committed, and whether the principles of proportionality and equal treatment have been observed. □