Implications of Case C-176/03

European Parliament resolution on the consequences of the judgment of the Court of 13 September 2005 (C-176/03 Commission v Council) (2006/2007(INI))

The European Parliament,

– having regard to Article 10 of the EC Treaty and Article 47 of the EU Treaty,
– having regard to Article 5 of the EC Treaty,
– having regard to its resolution of 3 September 2003 on legal bases and compliance with Community law¹,
– having regard to the judgment of the Court of Justice of the European Communities of 13 September 2005 in Case C-176/03²,
– having regard to Rule 45 of its Rules of Procedure,
– having regard to the report of the Committee on Legal Affairs and the opinion of the Committee on Civil Liberties, Justice and Home Affairs (A6-0172/2006),

A. whereas the effective implementation of Community law is one of the main concerns of the Community institutions and a fundamental obligation of the Member States, as laid down in Article 10 of the EC Treaty,

B. whereas over the decades the construction of Europe has brought with it the establishment of a common judicial area, within which the national and European legal systems have gradually become intertwined, forming an independent structure based not only on shared values, but also on the principles of the primacy of Community law and cooperation in good faith between the Member States and the Community institutions (Article 10 of the EC Treaty),

C. whereas any action taken by the Community must accord with the subsidiarity principle laid down in Article 5 of the EC Treaty,

D. whereas the case-law of the Court of Justice has repeatedly established that the measures required to ensure the effective implementation of Community law may involve criminal penalties,

E. whereas the principles of the primacy of Community law and sincere cooperation can affect the national criminal legislation of the Member States in so far as the latter are

¹ OJ C 76 E, 25.3.2004, p. 224.
² Commission v Council, not yet published in the European Court Reports.
obliged, in accordance with the case-law of the Court of Justice:

– to rescind any provision of criminal law that is incompatible with Community law (judgment of 19 January 1999 in Case C-348/96 Donatella Calfa\(^3\), paragraph 17: ‘Although in principle criminal legislation is a matter for which the Member States are responsible, the Court has consistently held that Community law sets certain limits to their power, and such legislation may not restrict the fundamental freedoms guaranteed by Community law’),

– to provide for ‘effective, proportionate and dissuasive’ penalties, including criminal ones where necessary, to enforce Community law (judgment of 21 September 1989 in Case 68/88 Commission v Greece\(^4\); judgment of 12 September 1996 in Case C-58/95 Gallotti\(^5\); judgment of 21 September 1999 in Case C-378/97 Wijsenbeek\(^6\); judgment of 28 January 1999 in Case C-77/97 Unilever\(^7\), paragraph 36: ‘the measures which the Member States are required to take […] in order to prevent […] must provide that such advertisements constitute a breach of the law and, in particular, a criminal offence punishable by penalties having a deterrent effect’),

F. whereas the case-law of the Court of Justice has primarily served to clarify which legal bases applied under the first and the third pillar while establishing that, in fact, the European legislature had no competence in relation to criminal matters or criminal procedural law,

G. whereas, in particular, in Case C-176/03, the Court of Justice, while finding that, as a general rule, criminal matters did not fall within the Community's competence, stated that that did not prevent the Community legislature, when the application of effective, proportionate and dissuasive criminal penalties by the competent national authorities was an essential measure for combating serious environmental offences, from taking measures which related to the criminal law of the Member States which it considered necessary in order to ensure that the rules which it laid down on environmental protection were fully effective,

H. whereas, in accordance with settled case-law, in order to ensure that a Community act is adopted on the correct legal basis, the aim and content of the act itself must be taken into account and consequently, pursuant to Articles 29 et seq. of the EU Treaty, acts adopted under Title VI of the EU Treaty are unlawful if, by virtue of their aim and content, they could instead have been based on the EC Treaty,

I. whereas the subject of the judgment in Case C-176/03 is limited to criminal matters relating to protection of the environment, which is one of the main tasks of the Community, as specified in Articles 2 and 3 of the EC Treaty,

J. whereas the judgement in Case C-176/03 should therefore be considered with caution and applied on a case-by-case basis to those fields that are among the main principles, objectives and competences of the Community,

\(^3\) [1999] ECR I-11.
\(^4\) [1989] ECR 2965.
\(^7\) [1999] ECR I-431.
K. whereas, in the abovementioned communication, the Commission sought to extend the conclusions of the Court of Justice, also regarding as unlawful criminal provisions adopted under Title VI of the EU Treaty relating to other areas of Community competence, and not just those relating to environmental policy,

L. whereas there appear to be no grounds for an automatic presumption in favour of a broad interpretation of the judgment,

M. whereas furthermore, according to the Commission, current legislation may include acts based on Title VI of the EU Treaty whose legal basis should be regarded as incorrect in the light of the judgment in Case C-176/03, according to the broad interpretation of that judgment adopted by the Commission,

N. whereas, in order to avert the need to annul the legislation in question and in order to ensure legal certainty, the Commission proposes to take various measures in relation to existing legislation and pending proposals,

O. having regard to the importance of the question of the legitimacy of including criminal provisions in legislation adopted under the first pillar of the EU, as a further stage in the development of Community law,

P. having regard to Parliament's role as the driving force behind the development of Community law, one it carries out, together with the other European institutions, as the legislative body invested with democratic authority as the representative of the peoples of Europe, in particular when laws which could affect citizens' fundamental freedoms are to be adopted,

Q. whereas, in the context of the European Union's legal system also, the principle of the supremacy of the rule of law in criminal matters is an irremovable safeguard designed to protect individual liberty and make any exercise of power subject to the law, for example when determining which actions are punishable and what penalties should be imposed,

1. Welcomes the judgment in Case C-176/03, which made it clear that the legal basis on which acts are adopted must be selected by reference to the aim and content of the act itself, and consequently annulled a framework decision on environmental protection which had been mistakenly adopted under the third, rather than the first, pillar;

2. Is pleased that the Court of Justice, on the basis of that finding, confirms that the European legislature may adopt, under the first pillar, any criminal provisions necessary to ensure that the rules laid down under that pillar - in this instance, on environmental protection - are fully effective;

3. Urges the Commission not to automatically extend the conclusions of the Court of Justice to every other field falling within the scope of the first pillar;

4. Reiterates, yet again, the urgent need to start the procedure, using Article 42 of the Treaty on European Union, for inclusion of judicial and police cooperation on criminal matters in the Community pillar, which alone provides the conditions for adopting European provisions in full compliance with the principles of democracy and efficient decision-making and under appropriate judicial control;
5. Takes the view that, pending this measure, there is an urgent need to define a coherent political strategy with regard to the application of criminal sanctions in European law; recalls that the criminal-law provisions adopted must also be internally coherent, whatever the legal basis or ‘pillar’ on which they are based; considers it regrettable, moreover, that European citizens are, in the final analysis, the victims of the prevailing dichotomy between the Community and the Union in this sphere;

6. Takes the view that an inter-pillar strategy in this area calls for:

- very close cooperation between the Union’s institutions and between the latter and the Member States,
- a certain flexibility in the definition of the nature and scope of the sanctions, in order to avoid penal ‘dumping’ and to foster cooperation between the judicial authorities,
- the introduction of structured forms of cooperation between judicial authorities, of mutual evaluation and of the collection of reliable, comparable information on the impact of criminal-law provisions based on European laws;

stresses that it is important also to respect the judicial balance achieved at the national level in penal matters; calls for the development of a measured approach to incorporating into Community texts the penal provisions necessary to ensure the effectiveness of Community law, whatever their nature, and calls in this context for closer cooperation with the national parliaments; invites the Commission, in collaboration with Eurojust and the European Judicial Network, to put in place feed-back systems on the application in the Member States of the criminal-law sanctions provided for in European measures; welcomes the initiative taken by the supreme courts of the Member States in meeting online to discuss subjects of common interest linked to the activities of the European Union, including the coexistence of European and national criminal-law provisions;

7. Agrees with the Commission on the need to withdraw or amend pending legislative proposals whose legal basis is to be regarded as incorrect in the light of the Court’s judgment in Case C-176/03;

8. Agrees with the Commission that it is necessary to find a new legal basis in the EC Treaty for pieces of legislation that have already been adopted under the third pillar and that, in the light of the judgment in Case C-176/03, must be regarded as unlawful, and to remedy the situation by reopening the legislative procedure on the new legal basis;

9. Calls on the Commission to review on a case-by-case basis the acts it has identified, instead of adopting an undifferentiated, across-the-board approach, in order to ensure that, after careful consideration, the correct legal basis is chosen in each individual case;

10. Asks the Commission to apply the judgment of the Court of Justice to those fields that are among the main principles, objectives and competences of the Community and to apply it with caution on a case-by-case basis and always in cooperation with the Council and the European Parliament;

11. Reminds the Commission that reviewing the legislation in force, and possibly submitting proposals designed to rectify the legal basis while leaving the substance of the legislation
unchanged, must not involve depriving Parliament of its inalienable role as co-legislator and thus sacrificing the democratic input provided by Parliament, the elected body representing European citizens, in the process of European integration;

12. Opposes any interinstitutional agreement that would oblige Parliament to abdicate the exercise of its rights;

13. Notes, however, that the Court of Justice has ruled that ‘a directive cannot, of itself and independently of a national law adopted by a Member State for its implementation, have the effect of determining or aggravating the liability in criminal law of persons who act in contravention of the provisions of that directive’;

14. Shares the Commission's view that any recourse to measures relating to the criminal law must be motivated by the need to give effect to the Community policy in question and must respect the internal consistency of the criminal law; considers that, as a general principle, it is the Member States which are responsible for the due application of Community law;

15. Asks the Commission to bear in mind that the requisite conditions for including criminal provisions under the first pillar must be clear and determined in advance; that those requisite conditions are fulfilled only where it is not possible to ensure compliance with Community law except by recourse to criminal penalties; in particular, it is necessary to ascertain that there have been frequent and repeated infringements of Community law which it has not proved possible to stop by means of the legislation in force, even by invoking the law of individual Member States;

16. Notes that Community law can only lay down minimum rules, in the form of directives, for criminal penalties to be applied by the Member States; considers, however, that in certain cases it is appropriate to further define the action taken by Member States by expressly specifying (a) the type of conduct that should constitute a criminal offence, and/or (b) the type of penalty that should be applied, and/or (c) other measures relating to criminal law which are applicable in the relevant context;

17. Reminds Member States that, pursuant to Article 10 of the EC Treaty, they are obliged to ensure that Community action is generally effective, and consequently urges them to do their utmost to ensure that the provisions of their respective national criminal law are also designed to comply with that objective;

18. Agrees with the Commission that, in any event, ‘horizontal’ criminal law provisions designed to promote judicial and police cooperation between Member States, and measures to harmonise criminal law in the context of the area of freedom, security and justice, must be based on Title VI of the EU Treaty;

19. Instructs its President to forward this resolution to the Council and the Commission, and to the governments and parliaments of the Member States.

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