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Committee on Civil Liberties, Justice and Home Affairs

2006/2007(INI)

12.04.2006

OPINION

of the Committee on Civil Liberties, Justice and Home Affairs

for the Committee on Legal Affairs

on the implications of the Court's judgment of 13 September 2005
(Case C-176/03 Commission v Council)
(2006/2007(INI))

Draftsman (*) : Jean-Marie Cavada

(*) Enhanced cooperation between committees (Rule 47)

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SUGGESTIONS

The Committee on Civil Liberties, Justice and Home Affairs calls on the Committee on Legal Affairs, as the committee responsible, to incorporate the following suggestions in its motion for a resolution (rule 47 - Enhanced cooperation between committees):

A. mindful of the fact that 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 a new and original 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 European institutions (Article 10 of the EC Treaty),

B. whereas all action taken by the Community is subject to the subsidiarity principle set out under Article 5 of the Treaty,

C. whereas the principles of the primacy of Community law and cooperation in good faith can affect the national criminal legislation of the Member States in so far as the latter are 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, point 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'[1]),

- 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/Greece[2] ; judgment of 12 September 1996 in Case C-58/95, Gallotti[3]; judgment of 21 September 1999 in Case C-378/97, Wijsenbeek[4]; judgment of 28 January 1999 in Case C-77/97, Unilever, point 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'[5]),

D. whereas the Court of Justice has reaffirmed the general rule that criminal matters do not fall within the Community's sphere of competence; whereas, however, when the application of effective, proportionate and dissuasive criminal penalties by the competent national authorities is an essential measure for combating serious environmental offences, that general rule does not prevent the Community from taking measures which

[1] ECR 1999, p. I-11.
[2] ECR 1989, p. 2965.
[3] ECR 1996, p. I-4345.
[4] ECR 1999, p. I-6207.
[5] ECR 1999, p. I-431.

relate to the criminal law of the Member States which it considers necessary in order to ensure that the rules which it lays down on environmental protection are fully effective,

E. whereas the case-law of the Court has essentially clarified the applicable legal bases under the first and third pillars,

F. whereas the interaction between the Community legal system and criminal law in the Member States is already an observable phenomenon on which both doctrine and case-law are based, but whereas in the absence to date of unequivocal provisions in the Treaty the Court of Justice has restricted itself to noting the existence of a Community power to decree administrative penalties, remaining silent on the question of criminal sanctions (judgment of 27 March 1990 in Case C-9/89, Kingdom of Spain/Council[1]),

G. whereas the subject of the judgment of the Court of Justice is limited to criminal matters relating to the protection of environment, which is one of the main tasks of the Community, as specified in Articles 2 and 3 of the EC Treaty,

H. whereas the decision of the Court of Justice 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,

I. whereas the Court has handed down a decision of principle, the scope of which goes beyond environmental policy and extends to cover all the common policies and fundamental freedoms,

J. having regard, in this process, to the role played by Parliament, in its capacity as a legislative body democratically invested with representative power by the peoples of Europe, as a force active alongside the other institutions, particularly when laws which could affect citizens' fundamental freedoms are under discussion,

1. Welcomes the Court's ruling, as it makes clear that in order to determine precisely the legal basis of an act reference should be made to the objective and the content of the act itself and, consequently, a framework decision in the field of environmental protection was annulled that had been wrongly based on the third instead of the first pillar;

2. 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;

3. 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 legal basis or 'pillar' they are based upon; considers it regrettable, moreover, that European citizens are, in the final analysis, the victims of the prevailing dichotomy

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[1] ECR 1990, p. I-1383, point 27.

between the Community and the Union in this sphere;

4. 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 arrived at at the national level in penal matters, and 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 appeal courts of the Member States in meeting on-line to discuss subjects of common interest linked to the activities of the European Union, including the coexistence of European and national criminal-law provisions;

5. Accepts in principle the Commission's proposal to initiate at the earliest opportunity a trilogue between Parliament, the Council and the Commission, but takes the view that this trilogue must define the general frame of reference of the institutions referred to in the previous paragraph, as well as methods for the prior evaluation of legislative impact appropriate to this particular area;

6. Takes the view that the European legislator must restrict the application of criminal sanctions to cases where they are essential and necessary for the protection:

   - of the rights and freedoms of citizens and other persons (for example in the fight against trafficking in human beings and the fight against racist or seriously discriminatory conduct),

   - of the essential interests of the European Union, including its financial interests and the fight against counterfeiting of the euro;

7. 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;

8. Takes the view that it would be desirable, in particular, to verify that frequent violations of Community laws had repeatedly occurred, and that it had been impossible to prevent

them using the legislation in force, even by having recourse to national law;

9. Agrees with the Commission, in the short term, on the need to withdraw or amend pending legislative proposals if they are founded on a legal basis which, in the light of the judgment referred to, must be considered incorrect;

10. Calls on the Commission to bear in mind that the assumptions on the basis of which criminal-law provisions under the first pillar are included must be clear and well-defined from the outset, and that they are valid only in so far as Community law cannot be enforced except by recourse to criminal-law sanctions;

11. Recalls that the Court of Justice took the view that the Community legislator could adopt measures relative to criminal law, whatever their nature, provided that these were necessary to guarantee the efficacy of Community law and that it expressly included in the powers of the Community the possibility of approximating the level of criminal-law sanctions.

PROCEDURE

Title	Implications of the Court's judgment of 13 September 2005 (Case C-176/03 Commission v Council)
Procedure number	2006/2007(INI)
Committee responsible	JURI
Opinion by Date announced in plenary	LIBE 19.1.2006
Enhanced cooperation – date announced in plenary	19.1.2006
Drafts(wo)man Date appointed	Jean-Marie Cavada 23.1.2006
Previous drafts(wo)man	
Discussed in committee	22.2.2006 3.4.2006
Date adopted	3.4.2006
Result of final vote	+: 22 –: 17 0: 1
Members present for the final vote	Alexander Nuno Alvaro, Edit Bauer, Johannes Blokland, Kathalijne Maria Buitenweg, Michael Cashman, Giusto Catania, Jean-Marie Cavada, Carlos Coelho, Fausto Correia, Agustín Díaz de Mera García Consuegra, Kinga Gál, Lilli Gruber, Adeline Hazan, Timothy Kirkhope, Ewa Klamt, Wolfgang Kreissl-Dörfler, Barbara Kudrycka, Stavros Lambrinidis, Henrik Lax, Claude Moraes, Hartmut Nassauer, Martine Roure, Inger Segelström, Ioannis Varvitsiotis, Manfred Weber, Stefano Zappalà, Tatjana Ždanoka
Substitute(s) present for the final vote	Panayiotis Demetriou, Gérard Deprez, Genowefa Grabowska, Ignasi Guardans Cambó, Jeanine Hennis-Plasschaert, Sophia in 't Veld, Bill Newton Dunn, Siiri Oviir, Herbert Reul, Marie-Line Reynaud
Substitute(s) under Rule 178(2) present for the final vote	Simon Busuttil, David Casa, Salvatore Tatarella
Comments (available in one language only)	