

EUROPEAN COURT RULING: COMMENT

By Hugo Brady

According to *The Times* newspaper, on September 13th the European Court of Justice ruled that the EU has the power to jail British citizens. This is patently untrue. The EU is not about to set laws for murder or theft, or arrest citizens and drag them off to cells in Brussels. Nonetheless something important has changed in EU law: the Court ruled that the Commission has the right to ask member-states to enforce some EU laws using criminal as well as civil penalties. The member-states could still object to a Commission proposal to use criminal sanctions if they thought it was excessive. The governments would also have to agree on the exact nature of such penalties. National authorities will continue to police these offences; national judges will continue to decide whether a crime has been committed.

In 2003, EU member-states agreed a framework decision (a law decided by the governments only) on common criminal penalties for breaches of EU environmental rules, for example on pollution. On September 13th, the Court struck this law down because the governments did not involve the European Commission and the European Parliament. According to the EU treaties, the Parliament and the Commission have the power to legislate with the Council (where national ministers meet) on EU environmental rules. In addition, the Commission is responsible for drafting laws on environmental protection. Until the Court's ruling the Commission could not decide that criminal laws were needed to penalise polluters, which restricted the usefulness of its environmental protection legislation.

This case sets an important new precedent because the member-states have always sidelined the Commission from issues involving criminal justice. The Commission has no say over national criminal laws. But the governments are unhappy about the Court's ruling because they think criminal sanctions should be a national matter only. The Court's ruling recognises that a key power for any state is to decide how people should be punished for breaking the law. But the judges decided that this should not mean that the Commission has no involvement in criminal matters. The Court added that the Commission should have this right to ensure that EU laws are effective and respected.

Although this ruling dealt exclusively with environmental law, it is likely the Commission will rely on this precedent to require criminal penalties in other areas governed by EU law. These could include laws on consumer policy, the internal market, data protection, fraud and protecting intellectual property. However, this ruling does not give the Commission the power to arrest or prosecute EU citizens. Only national governments can arrest people and only national magistrates can prosecute.

The Court's ruling is logical from a legal perspective, but may mean that governments are more cautious in future about legislating at EU level on issues that could affect national criminal law.

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