

Towards the EU Police State: EU Criminal Law overrides Member States

By [Global Research](#)

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Global Research Editors Note

This ruling of the EU is far-reaching.

If the EU establishes “anti-terrorist” legislation patterned on the US, this legislation will override the laws of the member states. The development of supranational institutions and supranational powers constitutes a first step towards a Eu police state apparatus, where fundamental rights protected by the laws of the member states are derogated.

The EU has been given the power to compel the national courts of its 25 Member States to fine or imprison people for breaking EU laws, even if a country’s own Government and Parliament are opposed.

An unprecedented ruling yesterday by the EU Court of Justice in Luxembourg gives Brussels the power to introduce harmonised criminal law across the EU, creating for the first time a body of European criminal law that all Member States must adopt.

The judgment by the EU supreme court was opposed by 11 EU Governments – Ireland, Denmark, Finland, Sweden, the Netherlands, Germany, France, the UK, Spain, Portugal and Greece.

In principle the judgement gives the EU the power to impose criminal sanctions for all breaches of EU law. It greatly extends the power of the non-elected Brussels Commission, which would have the exclusive right to propose such criminal sanctions, to be adopted by majority vote of the Council of Ministers.

Traditionally the EU Court of Justice (ECJ) works hand in glove with the Commission, as both are supranational institutions that benefit from increasing supranational powers. In the words of one of its judges, the ECJ is a “court with a mission” – that mission being to extend the supranational powers of the EU and its institutions to the utmost. The Commission’s press release of yesterday welcoming the Court ruling may be read at

<http://www.statewatch.org/news/2005/sep/ecj-environment-dec.pdf>

Yesterday’s ruling was given in a test case about environmental law, an issue which may make it acceptable to some people who fail to appreciate its far-reaching constitutional and political implications. The judgement is a legal landmark that sets an important precedent. It

gives the Commission the right to decide when breaches of EU laws are so serious that they should be treated as criminal.

The EU Council of Ministers and the 11 or the 15 older Member States that lost the court-case were seeking to guard their sovereignty over criminal law. The Commission took them to court after they blocked it from introducing harmonised criminal law for pollution. The Court of Justice ruled in the Commission's favour, concluding: "The European Community has the power to require the member states to lay down criminal penalties for the purposes of protecting the environment."

Yesterday's judgement upheld the EU Commission's challenge to the Council of Ministers' "Framework Decision on the Protection of the Environment through Criminal Law". The Council of Ministers contended in the case that, as EU law currently stands, Member States cannot be forced to impose criminal penalties in respect of conduct covered by the Framework Decision. The 11 Member States that supported the Council of Ministers position contended that not only is there no express conferral of power on the EU to impose criminal sanctions under the European treaties, but, "given the considerable significance of criminal law for the sovereignty of the Member States, there are no grounds for accepting that that power can have been implicitly transferred to the Community at a time when specific substantive powers, such as those pertaining to the environment, were conferred on it."

The Commission disputed this view and yesterday's Court judgement came down decisively on the Commission's side.

The judgement effectively means that when Member States transferred powers to the EU, the Court of Justice has now decided that they implicitly gave the EU power to impose EU criminal sanctions also for breaches of EU law.

EU Member States have always insisted that the power to set criminal law goes to the heart of national sovereignty and must be decided by national Governments and Parliaments. The judgement of the Luxembourg judges means, however, that national governments can no longer exempt EU law from being upheld by criminal sanctions.

When the peoples of the 10 new Accession States agreed in various referendums to transfer powers to Brussels, their national politicians who supported this step never told them that they could be found to be in breach of EU criminal law for disobedience!

The Commission says that it would use its new powers only in extreme circumstances, but its officials are already talking about introducing EU crimes for overfishing, deliberate polluting, money laundering, price fixing and the vast legal territory of the EU internal market.

José Manuel Barroso, the President of the Commission, welcomed yesterday's ruling: "This is a watershed decision. It paves the way for more democratic and more efficient lawmaking at EU level."

In reality it opens the way to criminal laws over a vast policy territory being rewritten at EU level, and a harmonised EU criminal code, which was prefigured in the proposed EU Constitution that was rejected by French and Dutch voters this summer.

The EU Court said that although as a general rule criminal law does not fall within EU

powers, that “does not prevent the Community legislature ... from taking measures that relate to the criminal law of member states which it considers necessary”.

The ruling means that the Commission can propose an EU crime that, if passed by the European Parliament and a qualified majority of Member States, must be adopted by all Member States even though a particular Government and Parliament may be against it. This means that a particular EU Member can be forced to introduce a crime into its law if enough other EU States support it. It also gives the Commission the power to compel members to enforce EU criminal law if governments drag their heels or if their courts refuse to sentence people for breaches of EU laws.

The ruling was welcomed by most members of the European Parliament, who will now have the powers to pass criminal law and not just civil law and who thereby increase their own powers.

In the apt words of today’s London “Times” editorial given below: “Democracy yesterday suffered a grievous defeat in a court whose contempt for sovereignty verges on the criminal.”

Some excerpts from UK press reports on this judgment

Editorial from THE TIMES, London, Wednesday 14 September 2005, page 19

LEGAL TRESPASS: THE EUROPEAN COURT HAS GRAVELY UNDERMINED THE SOVEREIGNTY OF EU STATES

For the first time in its 53-year existence, the European Court of Justice has given the Commission in Brussels the power to impose criminal sanctions. In a landmark ruling that is as ominous as it is deluded, the Luxembourg-based court yesterday overruled the governments of EU member states, removing from them the sole right to impose their own penalties on people or companies breaking the law, and giving the unelected EU Commission an unprecedented role in the administration of criminal justice.

The pretext for this transparent attempt at empire-building beyond the boundaries laid down for Europe’s bureaucrats was the claim by Brussels that it had the right to insert criminal penalties into laws to protect the environment. The Commission said that unless it did so, its attempt to halt cross-border pollution would be ineffective. But in 2001, 11 of the 15 members, including Britain, insisting that only a national government has the right to fine or jail its citizens, vigorously opposed this action. Instead they proposed a “framework decision”, excluding the Commission and including only governments, to deal with transgressors. The Commission called in the lawyers and, extraordinarily, the European Court agreed that it had the right to impose criminal sanctions.

This is a dangerous step in the wrong direction. The Commission, chafing at criticism that it is too powerful and too interfering, has been itching to reassert its authority. It is not a sovereign power but a civil service executive, supposedly appointed to serve EU common interests. In recent years the Commission has worried that its right to initiate legislation, under the Treaty of Rome, was being eroded. EU ministers, when discussing urgent issues such as terrorism, sometimes came up with their own proposals for new laws. But to retaliate by trespassing on the sole right of governments to imprison their citizens is a

serious expansion of and misunderstanding of the Commission's role.

The ruling also reveals the mindset of the court, and confirms the lingering suspicion that, when faced with a choice between subsidiarity or strengthening the EU's federal powers, it will, invariably, choose the latter. The decision highlights the contradiction at the court's very heart – of course a federal court will expand federal powers. It gives substance to all the worries in Britain and those countries that have voted against the EU constitution that any point vague enough to require legal clarification would always prompt a ruling reinforcing the EU's central bureaucracy and federal power. This lamentable judgement strikes at the heart of national sovereignty and Britain's ability to decide the law for itself.

The Commission is entitled to argue that draft laws should be effective. But it is up to elected national governments to define and enforce the law. Already elated Commission officials are proposing similar criminal penalties in other areas. It is not their right. Democracy yesterday suffered a grievous defeat in a court whose contempt for sovereignty verges on the criminal

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THE GUARDIAN, Wednesday 14 September 2005

Brussels wins right to force EU countries to jail polluters

Nicholas Watt, European editor

Brussels was given greater powers over the EU's 25 members yesterday, when the European court of justice declared that the union's rules can be enforced through criminal sanctions . . .

The court delivered its ruling after a disagreement between the commission and the council of ministers over the punishment of polluters. Both sides agreed that polluters should face criminal penalties, but they disagreed on how these should be enforced: European ministers argued that under the "Third Pillar" of the Maastricht treaty, the matter should be left in the hands of governments who would have the power of veto.

The commission argued that it should be enforced through the "First Pillar", also known as the "Community Pillar". This waters down the power of member states by involving all three of the EU centres of power – the commission, the council of ministers, and the European parliament. Countries also lose their national veto. This view was endorsed by the Luxembourg-based court.

The ruling means the commission would have the right to tell EU countries to impose criminal penalties on polluters. This would be carried out in national courts, although the commission would like to extend its powers by recommending the level of punishment.

Michel Petite, head of the European commission's legal service, said: "I suppose that for a directive to be complied with, we might want to say it has to be a criminal penalty, we may want to say it has at least to be at this level. That could be viewed as a necessary condition for the directive to be complied with properly. But that was not contemplated in the ruling."

British government sources indicated that the result of the court's ruling will be deadlock, with no criminal charges being brought against polluters at a European-wide level. EU countries originally voted in favour of the original plan to allow governments to decide the matter by 11 votes out of 15 in 2003.

"There was such a strong vote because of the principle that this should be decided by member states. That point of principle has not changed, so there will be deadlock," one source said.

But pro-Europeans welcomed the European court of justice's ruling. Chris Davies, the Liberal Democrat leader in the European Parliament, said: "Europe needs an umpire to ensure fair play between member states and to dismiss the cheats. The commission is the only body that comes close to fitting that role and this court ruling gives it more teeth with which to bite."

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THE INDEPENDENT, London, Wednesday 14 September 2005

Europe may impose criminal penalties for breaching EU law

By Stephen Castle in Brussels

. . . the head of the Commission's legal service, Michel Petite, hinted that in future the Commission might not only push member states to apply criminal sanctions, but also to set the scale of sanctions. The Commission said the ruling applied to areas where it enjoys competence, including internal market measures, environmental protection, data protection, defence of intellectual property and monetary matters. . .

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THE DAILY TELEGRAPH, Wednesday 14 September 2005

Criminal sanctions to enforce EU law

By Andrew Sparrow, Political Correspondent

European commissioners yesterday hailed a landmark legal judgment that could give them the power to use criminal sanctions to enforce EU law.

José Manuel Barroso, the commission president, claimed that the European Court of Justice had made a "watershed decision" that would lead to "more democratic and more efficient lawmaking at EU level".

Eurosceptics said the decision showed that national governments were losing power to determine their own laws. . .

The ECJ decision is hugely sensitive because until now the EU has only been able to use the criminal law to enforce its decisions in certain categories where all member states agree legislation by unanimity. In theory, qualified majority voting - which allows EU law to be made against the wishes of a minority of member states - could now be used to take

decisions that would have to be enforced throughout the EU by criminal sanctions.

The ECJ issued its ruling following a power struggle between the commission, the EU's unelected bureaucracy, and member states.

Two years ago, member states created a new law on environmental pollution, involving minimum EU-wide penalties for serious offenders, using the unanimity decision-making procedures set out in the so-called "third pillar" of the EU's treaty provisions.

But the commission took the member states to court because they believed criminal sanctions should be available to enforce laws.

Yesterday, the commission claimed that the court decision set an "important precedent" because it would allow "the commission to continue to enhance its efforts to ensure compliance with the provisions of European Community law also by means of criminal law".

The internal market, environmental protection, data protection, protection of intellectual property and monetary matters were all named by the commission as areas where EU law could be backed up by criminal sanctions. . .

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