



Complaint by the company Carrefour France about a fine for acts committed by Carrefour hypermarchés France declared inadmissible

In its decision in the case of [Carrefour France v. France](#) (application no. 37858/14) the European Court of Human Rights has unanimously declared the application inadmissible. The decision is final.

The case concerned a judgment against the company Carrefour France finding it liable and ordering it to pay a fine for acts committed by the company Carrefour hypermarchés France in breach of the Commercial Code.

Further to an inspection by the Departmental Directorate for Competition, Consumer Affairs and Fraud Prevention and an application to the Commercial Court, Carrefour hypermarchés France, after its dissolution, was absorbed by Carrefour France, its sole shareholder.

The Court observed that after this merger operation, the company Carrefour hypermarchés France, which had ceased to exist for legal purposes, had nevertheless continued the activities of the enterprise of which it had formed the legal structure, through the intermediary of the applicant company.

The Court considered that in ordering the applicant company Carrefour France to pay the fine prescribed by the Commercial Code for facts attributable to Carrefour hypermarchés France, based on the principle of the enterprise's economic and operational continuity, the domestic courts had not breached the rule that a punishment should be applied to the offender only and not to other persons.

Principal facts

The applicant company, Carrefour France, trades as a simplified limited company (SAS) under French law, with its registered office at Mondeville (France).

Carrefour France was the sole shareholder of Carrefour hypermarchés France, against which proceedings had been brought before the Bourges Commercial Court, in 2006, by the Ministry of Economic Affairs, Finance and Industry, for contravening Article L. 442-6 of the Commercial Code on competition. The company was suspected of obtaining advantages from twenty-two of its suppliers that were manifestly disproportionate in relation to the services rendered.

In 2009, while the proceedings were still pending, the applicant company proceeded with the dissolution without liquidation of Carrefour hypermarchés France. The minutes of the decisions indicated in particular that the dissolution resulted in the transfer of the business of Carrefour hypermarchés France, with all assets and corresponding debts, to the applicant company.

In a judgment of 12 April 2012, the Orléans Court of Appeal ordered Carrefour France to pay a civil-law fine of 60,000 euros. Carrefour France appealed on points of law, arguing that in imposing the sanction of a civil-law fine for acts attributable to Carrefour hypermarchés France, the Court of Appeal had breached the rule that punishment should be applied to the offender only and not to other persons. The Court of Cassation dismissed the appeal.

Complaints, procedure and composition of the Court

The application was lodged with the European Court of Human Rights on 13 May 2014.

Relying on Article 6 § 1 (right to a fair hearing) and Article 6 § 2 (presumption of innocence), the applicant company complained about the civil fine imposed on it for acts attributable to Carrefour hypermarchés France.

The decision was given by a Chamber of seven judges, composed as follows:

Gabriele **Kucsko-Stadlmayer** (Austria), *President*,
Ganna **Yudkivska** (Ukraine),
André **Potocki** (France),
Yonko **Grozev** (Bulgaria),
Síofra **O’Leary** (Ireland),
Lətif **Hüseynov** (Azerbaijan),
Lado **Chanturia** (Georgia),

and also Claudia **Westerdiek**, *Section Registrar*.

Decision of the Court

Article 6

The Court observed that Carrefour France had been found against on the basis of Article L. 442-6 of the Commercial Code and find on account of restrictive practices regarding prices.

On 21 January 2009 Carrefour hypermarchés France, after its dissolution, had been absorbed by Carrefour France, accompanied by the transfer of the business of Carrefour hypermarchés France, with all assets and corresponding debts, to the applicant company. The decision to carry out this merger operation had been taken by the applicant company Carrefour France itself. It had at the time been the sole shareholder of Carrefour hypermarchés France. That decision had been taken just after an inspection carried out by the Departmental Directorate for Competition, Consumer Affairs and Fraud Prevention (DDCCRF) and the application to the court.

The Court observed that following the merger operation, Carrefour hypermarchés France had ceased to exist for legal purposes but the activities of the company of which it had formed the legal structure had nevertheless continued through the intermediary of the applicant company. Carrefour France had been subrogated to all the ongoing contracts of Carrefour hypermarchés France, and had become the employer of the latter’s personnel. It was, precisely, because of restrictive trade practices conducted in the framework of the said activities, which had continued after the merger operation, that proceedings had been taken against Carrefour hypermarchés France in the first place.

The Court held that in ordering the applicant company Carrefour France to pay the fine laid down in the Commercial Code, based on the principle of the enterprise’s economic and operational continuity, the domestic courts had not breached the rule that punishment should be applied to the offender only and not to other persons.

Accordingly, the application had to be rejected as ill-founded.

The decision is available only in French.

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The European Court of Human Rights was set up in Strasbourg by the Council of Europe Member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.