

Case C-470/03

A.G.M.-COS.MET Srl

v

Suomen valtio and Tarmo Lehtinen

(Reference for a preliminary ruling
from the Tampereen käräjäoikeus)

(Directive 98/37/EC — Measures having equivalent effect — Machinery presumed
to comply with Directive 98/37/EC — Criticism expressed
publicly by a State official)

Opinion of Advocate General Kokott delivered on 17 November 2005 . . . I - 2753

Judgment of the Court (Grand Chamber), 17 April 2007 I - 2798

Summary of the Judgment

1. *Approximation of laws — Machinery — Directive 98/37 — Obstacles to the placing on the market of machinery presumed to comply with the directive (European Parliament and Council Directive 98/37, Arts 4(1) and 7(1))*

2. *Approximation of laws — Machinery — Directive 98/37 — Obstacles to the placing on the market of machinery presumed to comply with the directive (European Parliament and Council Directive 98/37, Arts 4(1) and 7)*
3. *Community law — Rights conferred on individuals — Infringement by a Member State (European Parliament and Council Directive 98/37, Art. 4(1))*
4. *Community law — Rights conferred on individuals — Infringement by a Member State*
5. *Community law — Rights conferred on individuals — Infringement by a Member State*

1. Statements which, by reason of their form and circumstances, give the persons to whom they are addressed the impression that they are official positions taken by the State, not personal opinions of the official, are attributable to the State. The decisive factor for the statements of an official to be attributed to the State is whether the persons to whom those statements are addressed can reasonably suppose, in the given context, that they are positions taken by the official with the authority of his office.

that directive. Such statements are capable of hindering, at least indirectly and potentially, the placing on the market of such machinery.

To the extent that they are attributable to the State, statements by an official describing machinery certified as conforming to Directive 98/37 relating to machinery as contrary to the relevant harmonised standard and dangerous constitute a breach of Article 4(1) of

The prohibition in Article 4(1) of the Directive applies only if the machinery in question complies with the provisions of the Directive. In that regard, the presumption of conformity, in accordance with Article 5(1) of the Directive with regard to machinery certified as compliant and bearing the CE marking of conformity provided for in Article 10 of the Directive, does not mean that the Member States cannot act if risks appear. On the contrary, under the first subparagraph of Article 7(1) of the Directive, a Member State is required to take all appropriate measures to withdraw machinery from the market if it ascertains that the machinery, used in accordance with its intended purpose, is

liable to endanger the safety of persons or property. In such an event, in accordance with the second subparagraph of Article 7(1), the Member State must inform the Commission immediately of any such measure and indicate the reasons for its decision.

Since the competent authorities of the Member State in question neither ascertained that there was a risk, nor took measures to withdraw the machinery at issue from the market, nor a fortiori did they inform the Commission of any such measures, the State must, however, observe the prohibition of restrictions on their free movement laid down in Article 4(1) of the Directive.

(see paras 61-66, operative part 1)

State, cannot be justified either on the basis of the objective of protection of health or on the basis of the freedom of expression of officials.

First, in view of the fact that the safety rules for the placing of machinery on the market which affect the free movement of goods have been harmonised exhaustively, a Member State cannot rely on a justification on the ground of the protection of health outside the framework created by Article 7 of the Directive.

Secondly, although everyone within the jurisdiction of the Member States is guaranteed the right to freedom of expression and that freedom is an essential foundation of any democratic society, Member States, however, cannot rely on their officials' freedom of expression to justify an obstacle and thereby evade their own liability under Community law.

(see paras 70, 72, 73, operative part 2)

2. A breach of Article 4(1) of Directive 98/37 relating to machinery occasioned by the conduct of an official, in so far as it is attributable to the official's Member
3. Article 4(1) of Directive 98/37 relating to machinery must be interpreted as mean-

ing that, first, it confers rights on individuals and, second, it leaves the Member States no discretion as regards machinery that complies with the directive or is presumed to do so. A failure to comply with that provision as a result of statements made by an official, assuming that they are attributable to the Member State, constitutes a sufficiently serious breach of Community law for the Member State to incur liability.

cult in practice to obtain compensation for loss or damage resulting from a breach of Community law. Thus, especially in the context of economic or commercial litigation, total exclusion of loss of profit suffered by individuals as a head of damage for which compensation may be awarded in the case of a breach of Community law cannot be accepted.

(see paras 95, 96, operative part 4)

(see para. 86, operative part 3)

4. Community law does not preclude specific conditions from being laid down by the domestic law of a Member State with reference to compensation for damage other than damage to persons or property, provided that those conditions are not framed in such a way as to make it impossible or excessively diffi-

5. In the event of a breach of Community law, Community law does not preclude an official from being held liable in addition to the Member State, but does not require this.

(see para. 99, operative part 5)