

In the Commission's opinion, the justifications relied on by the Spanish and Catalan authorities — protection of consumers (protection of small businesses in order to guarantee competitive supply in each market, protection of the environment and urban areas) cannot be accepted for the following reasons:

1. The criteria laid down by the legislation at issue is not in fact intended to protect consumers as the national authorities state, but to favour the small business sector to the detriment of the big names of commercial distribution. Therefore, the measures are an inappropriate means of attaining the alleged objective as in reality they have an economic purpose.
2. The measures at issue go beyond what is necessary to attain the objectives pursued. In any event, it is for the national authorities to prove that the objectives relied on could not have been achieved by less restrictive measures.

Action brought on 18 September 2008 — Commission of the European Communities v Republic of Slovenia

(Case C-402/08)

(2008/C 285/49)

Language of the case: Slovene

Parties

Applicant: Commission of the European Communities (represented by U. Wölker and V. Kovačič, acting as Agents)

Defendant: Republic of Slovenia

Form of order sought

- A declaration that the Republic of Slovenia, by failing to adopt the laws, regulations and administrative provisions necessary to comply with Directive 2004/35/EC⁽¹⁾ of the European Parliament and of the Council of 21 April 2004 on environmental liability with regard to the prevention and remedying of environmental damage, has failed to fulfil its obligations under that directive;
- an order that the Republic of Slovenia should pay the costs.

Pleas in law and main arguments

The period prescribed for implementation of Directive 2004/35/CE expired on 30 April 2007.

⁽¹⁾ OJ 2004 L 143, p. 56.

Appeal brought on 23 September 2008 by Trubowest Handel GmbH, Viktor Makarov against the judgment of the Court of First Instance (Third Chamber) delivered on 9 July 2008 in Case T-429/04 Trubowest Handel GmbH, Viktor Makarov v Council, Commission

(Case C-419/08 P)

(2008/C 285/50)

Language of the case: English

Parties

Appellants: Trubowest Handel GmbH, Viktor Makarov (represented by: K. Adamantopoulos, E. Petritsi, dikigoroi)

Other parties to the proceedings: Council of the European Union, Commission of the European Communities

Form of order sought

The appellants claim that the Court should:

- Set aside in its entirety the Judgment of the Court of First Instance
- Accept, by giving a final judgment itself, the application for compensation under Article 288 EC lodged before the Court of First Instance (CFI), or in the alternative refer the case back to the CFI
- Order the Council and the Commission, in addition to paying their own costs, to pay all the costs occasioned by the appellants, in the course of the present proceedings and the proceedings before the CFI

Pleas in law and main arguments

The appellants submit that the contested judgment should be set aside for the following reasons:

- 1) The CFI erred in law in interpreting and applying Community law with regard to the conditions under which the Community may incur non-contractual liability pursuant to Article 288(2) EC. First it is submitted that the contested judgement is vitiated by an error of law in so far as the CFI has totally failed to consider the illegal conduct complained of in the context of assessing the causal link and failed to investigate it in its legal context although it ought to have done so in order to determine the Community's legal responsibility. The CFI erred in law by failing to correctly assess, in accordance with Community law, the existence of a direct causal nexus between the conduct of the Community Institutions and the resulting damage suffered by the appellants and in finding that there was no sufficiently direct causal link between the conduct of the Community Institutions and the resulting damage on the grounds that either the appellants failed to demonstrate reasonable diligence and/or that the fault is attributed exclusively to the German Authorities.