

JUDGMENT OF THE COURT

22 January 2002

in Case C-390/99 (Reference for a preliminary ruling from the Tribunal Supremo): Canal Satélite Digital SL and Administración General del Estado, intervener: Distribuidora de Televisión Digital SA (DTS), v Administración General del Estado⁽¹⁾

(Articles 30 and 59 of the EC Treaty (now, after amendment, Articles 28 EC and 49 EC) — Directive 5/47/EC — National legislation requiring operators of conditional-access television services to register in a national register created for that purpose, indicating the characteristics of the technical equipment they use, and subsequently to obtain administrative certification thereof — Directive 83/189/EEC — Meaning of ‘technical regulation’)

(2002/C 84/17)

(Language of the case: Spanish)

(Provisional translation; the definitive translation will be published in the European Court Reports)

In Case C-390/99: Reference to the Court under Article 234 of the EC Treaty by the Tribunal Supremo (Spain) for a preliminary ruling in the proceedings pending before that court between Canal Satélite Digital SL and Administración General del Estado, intervener: Distribuidora de Televisión Digital SA (DTS), and on the interpretation of Articles 30 and 59 of the EC Treaty (now, after amendment, Articles 28 EC and 49 EC), read in conjunction with Articles 1 to 5 of Directive 95/47/EC of the European Parliament and of the Council of 24 October 1995 on the use of standards for the transmission of television signals (OJ 1995 L 281, p. 51) and of Article 1, point 9, of Council Directive 83/189/EEC of 28 March 1983 laying down a procedure for the provision of information in the field of technical standards and regulations (OJ 1983 L 109, p. 8), as amended and updated by Directive 94/10/EC of the European Parliament and of the Council of 23 March 1994 (OJ 1994 L 100, p. 30), the Court, composed of: G.C. Rodríguez Iglesias, President, F. Macken, and N. Colneric (Presidents of Chambers), C. Gulmann, D.A.O. Edward (Rapporteur), A. La Pergola, J.-P. Puissochet, R. Schintgen and V. Skouris, Judges, Advocate General: C. Stix-Hackl, Registrar: H. von Holstein, Deputy Registrar, J. Svaningsen, acting as Agents, has given a judgment on 22 January 2002, in which it has ruled:

1. National legislation which makes the marketing of apparatus, equipment, decoders or digital transmission and reception systems for television signals by satellite and the provision of related services by operators of conditional-access services subject to a prior authorisation procedure restricts both the free movement of goods and the freedom to provide services.

Therefore, in order to be justified with regard to those fundamental freedoms, such legislation must pursue a public-interest objective recognised by Community law and comply with the principle of proportionality; that is to say, it must be appropriate to ensure achievement of the aim pursued and not go beyond what is necessary in order to achieve it.

2. In determining whether national legislation such as that at issue in the main proceedings complies with the principle of proportionality, the referring court must take into account the following considerations in particular:

— for a prior administrative authorisation scheme to be justified even though it derogates from those fundamental freedoms, it must, in any event, be based on objective, non-discriminatory criteria which are known in advance, in such a way as to circumscribe the exercise of the national authorities' discretion, so that it is not used arbitrarily;

— a measure introduced by a Member State cannot be regarded as necessary to achieve the aim pursued if it essentially duplicates controls which have already been carried out in the context of other procedures, either in the same State or in another Member State;

— a prior authorisation procedure will be necessary only where subsequent control must be regarded as being too late to be genuinely effective and to enable it to achieve the aim pursued;

— a prior authorisation procedure does not comply with the fundamental principles of the free movement of goods and the freedom to provide services if, on account of its duration and the disproportionate costs to which it gives rise, it is such as to deter the operators concerned from pursuing their business plan.

3. National legislation which requires operators of conditional-access services to enter the equipment, decoders or systems for the digital transmission and reception of television signals by satellite which they propose to market in a register and to obtain prior certification for those products before being able to market them constitutes a ‘technical regulation’ within the meaning of Article 1, point 9, of Council Directive 83/189/EEC of 28 March 1983 laying down a procedure for the provision of information in the field of technical standards and regulations, as amended and updated by Directive 94/10/EC of the European Parliament and of the Council of 23 March 1994.

⁽¹⁾ OJ C 6 of 8.1.2000.