

Case law

Case Details

National ID: 98/17/0052

Member State: Austria

Common Name: link

Decision type: Other

Decision date: 21/12/1998

Court: Verwaltungsgerichtshof (Supreme court)

Subject:

Plaintiff:

Defendant:

Keywords:

Directive Articles

Price Indication Directive, [Article 8](#)

Headnote

1. Directive 79/581/EEC (as amended by Directive 88/315/EEC) stipulates that both the retail price and the unit price must be displayed. It cannot be inferred from the regulation stipulating that the unit price must also be displayed on pre-packed products that only the unit price has to be displayed.
2. The Austrian Price Labelling Act is not in breach of EC law.
3. The place an offence is committed (and jurisdiction applies) is where the arrangements and orders designed to prevent breaches of administrative regulations should have been laid down. In such cases, it is immaterial in terms of establishing where the offence has been committed whether it is a party entitled to represent the company externally, an official agent or a manager registered to trade on the company's behalf who has to answer the charge.

Facts

The appeal applicant was a manager registered to trade on behalf of a public company selling meat products. The company was headquartered in Lower Austria. As a manager registered to trade on behalf of a public company selling meat products, he was found guilty by the Magistrate of Vienna of an offence under § 15 para 1 PrAG relating to a branch in Vienna. He was served with a fine of 2,000 Austrian Schillings, with a two-day custodial sentence for non-payment. The defendant lodged an appeal with the Independent Court of Administration (UVS) in Vienna, which essentially upheld the verdict of the first court. The defendant was accused of failing to provide the retail price of a product since he had only labelled the pre-packed goods with their weight and unit price on the shelves.

In his appeal to the Austrian Court of Administration (VwGH), the defendant argued firstly that the PrAG contradicted EC law, since it could be inferred from Directive 79/581/EEC (as amended by Directive 88/315/EEC) that labelling the unit price was sufficient. Secondly, he raised an objection over jurisdiction. In the case of an offence committed by a party entitled to represent the company externally, the offence is not to be regarded as having been committed in the place where the impact is felt (the individual branch), but rather where the decision was taken or the necessary steps were not taken.

Legal issue

The VwGH rejected the argument that the PrAG was in breach of EC law. The appeal applicant was guilty of misunderstanding the law when he argued in his appeal submission that the price labelling practices adopted by the public company selling meat products were in line with the EC Directive and that the requirement under the PrAG to display the retail price for pre-packed products contradicted the Directive. The provisions in the Directive made it clear that both the retail price and the unit price must be displayed. It could not be inferred from the regulation stipulating that the unit price must also be displayed on pre-packed products that only the unit price had to be displayed.

However, the VwGH did uphold the objection over jurisdiction. Under the Administrative Penalties Act (Verwaltungsstrafgesetz), in assessing matters relating to the running of a company (even companies subdivided into branches), jurisdiction for the relevant authorities is not determined by the place from which the company is run (nor from which the branch is run). Rather, in accordance with legal precedents in the VwGH, in cases of employee protection, the employment of foreign persons, working hours legislation and food labelling regulations, as well as for the Opening Hours Act, the place where the offence has been committed is the head office of the company for which the party entitled to represent that company (or an official agent) is acting. In this particular case, there was no argument against applying the principles developed for the food labelling regulations or the Opening Hours Act to offences under the PrAG. The UVS had indicated that in assessing whether the offence had been committed, the deciding factor was whether there was a possibility of allocating prices on the relevant shelves and thus whether the defendant adhered to the provisions under the PrAG was critically dependent on the local circumstances. However, the VwGH ruled that the local circumstances could not be regarded as predominating if, as in the case in question, no specific instruction for individual branches was necessary or indeed given, but rather a general directive had come from head office relating in general terms to price labelling procedures. The manager had labelled the pre-packed products and delivered them to the branches in a manner in keeping with this directive. The branches then simply had to price the products according to weight. In the case in question, any specific issues surrounding the allocation of retail prices for a particular product on the shelf were immaterial. The VwGH concluded that the offence had been committed where the company was headquartered, hence in Lower Austria. As such, the second court should have overturned the guilty verdict reached by the Magistrate of Vienna on the grounds that it had no jurisdiction in the case.

Decision

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