



Administrative liability if European rules are infringed

The judgment of the National High Court of 6 March 2013 limits the right to claim liabilities to those who invoked European rules

Background

Some years ago, in Spain it was almost impossible to market food supplements and similar plant based products unless they were included in the Annex of the Order of 3 October 1973. The administrative practice consisted of systematically withdrawing these products from the market, without considering if the products were legally marketed in other European countries and without analyzing whether their sales in Spain could cause any problem for public health or not.

In March 2009, the Court of Justice in Luxembourg issued a judgment declaring that Spain infringed the European Union law by doing so.

Conditions to claim liability

In this judgment, the National High Court revises the doctrine regarding the patrimonial liability of the State for infringement of European Union law.

In the case that a State infringes the provisions of a European Directive, those affected by the infringement may claim liabilities if three requirements are met: the result mandated by the Directive must imply the conferring of rights in favour of individuals, the infringement of the European rule must be sufficiently serious, and there must be a relation of causality between the infringement of the obligation that is incumbent upon the State and the damage suffered.

The second requirement, the infringement sufficiently serious infringement of the European rule, is normally the most complex one. In order for it to be met, it is required that the State has manifestly and seriously infringed the limits imposed by European law unless the European regulation permits the State a very reduced or null margin of discretion, in which case the mere infringement would be sufficient to meet this requirement. Obviously, in order to value these matters the judges must analyze the specific case at issue and take into account a number of elements, among which the clarity of the infringed rule and the intentional or involuntary nature of the infringement.

In this case, the High Court rejects the appeal. It is interesting to highlight that the Court takes into consideration that in the proceedings in Luxembourg, in which it was found that Spain had infringed the European rules, some manufacturers had been identified who had proven that their products were being legally marketed in another Member State. However, in such proceedings the European Commission has been silent as regards the products of the company that had now filed the claim.

The conclusion that can be reached is clear: it may be a condition sine qua non to warn a state about the reasons for which it is in breach of European law in a specific and individual case in order to be able to claim responsibilities later. On the contrary, a party who wishes to claim liabilities on the basis of judgments that are issued in other cases may have more problems to succeed.