

Litigation - Cyprus

Supreme Court declares law on sales incompatible with European legislation

Contributed by **Andreas Neocleous & Co LLC**

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In a unanimous decision, the Criminal Appeal Division of the Supreme Court of Cyprus recently ruled that certain provisions of the Law Regarding the Sale of Goods at Discounted Prices (34/1990) that regulate clearance sales by retailers are incompatible with EU Directive 2005/29/EC concerning unfair business-to-consumer commercial practices in the internal market.

In most prosecutions brought under the law in recent years, the retailer has been acquitted. However, in one isolated district court case, large retailer Ermes Department Store Plc and certain of its employees were found guilty of breaking this law. The appellants appealed to the Supreme Court, which overturned the district court ruling.

The Supreme Court accepted the appellants' arguments that the proper objective of a law regulating sales is to protect consumers, rather than to protect business enterprises. The sale of goods at reduced prices is not forbidden by the directive. Furthermore, the directive prohibits member states from introducing or maintaining more restrictive legislative measures than those that it provides for. Article 3 of the law prohibits any enterprise from selling goods at reduced prices, except during prescribed periods of up to four weeks in February and August.

The Supreme Court noted the European Court of Justice ruling in the joined cases of *VTB-VAB NV v Total Belgium NV* and *Galatea BVBA v Samona Magazines Belgium NV*⁽¹⁾ and stated that:

"Article 4 of the Directive states that Member States shall neither restrict the freedom to provide services, nor restrict the free movement of goods for reasons falling within the field approximated by this Directive."

The court further stated that since the provisions of the law on which the charge was based are incompatible with the directive, there was no need to consider whether they were compatible with Articles 26 and 28 of the Constitution, since the Fifth Amendment of the Constitution (effected by Law 127(I)/2006) provides that no domestic law may contradict or oppose EU directives.

The appeals were allowed and the appellants were acquitted.

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Endnotes

⁽¹⁾ C-261/07 and C-299/07.

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