TRIBUNAL CALIFICADOR
PRUEBAS PARA EL INGRESO EN EL CUERPO DE TRADUCTORES E INTÉRPRETES
Orden AEC/1486/2016 de 12 de septiembre
(B.O.E del 19 de septiembre)

Texto Jurídico

SUPREME COURT OF THE UNITED KINGDOM

JUDGMENT

The United States of America (Appellant) *v* Nolan (Respondent)

Judgment given on

21 October 2015

Heard on 15 and 16 July 2015

(…)

It is a cardinal principle of European and domestic law that domestic courts should construe domestic legislation intended to give effect to a European Directive so far as possible (or so far as they can do so without going against the "grain" of the domestic legislation) consistently with that Directive. But that means avoiding so far as possible a construction which would have the effect that domestic implementing legislation did not fully satisfy the United Kingdom's European obligations. Where a Directive offers a member state a choice, there can be no imperative to construe domestic legislation as having any particular effect, so long as it lies within the scope of the permitted. Where a Directive allows a member state to go further than the Directive requires, there is again no imperative to achieve a "conforming" interpretation. It may in a particular case be possible to infer that the domestic legislature did not, by a domestic formulation or reformulation, intend to go further in substance than the European requirement or minimum. *Risk Management Partners* is a case where the Supreme Court implied into apparently unqualified wording of domestic Regulations a limitation paralleling in scope that which had been implied by the Court of Justice into general wording of the Directive to which the Regulations were giving effect: see *Teckal Srl v Comune di Viano.*

There was nothing in the Regulations in issue in *Risk Management* positively to have prevented the legislator going further than European law required.

Nonetheless, the Supreme Court read the wording as qualified so as to have a like scope to that which the Court of Justice had given the Directive in issue in *Teckal.* The Supreme Court's reasoning is however important. In this leading judgment, the Court noted that the *Teckal* exemption was "not referred to anywhere in the Directive. It is a judicial gloss on its language" and went on to say that "the basis for implying the *Teckal* exemption into the 2006 Regulations is to be found in their underlying purpose, which was to give effect to the Directive. The absence of any reference to the exemption in the Regulations is of no more significance than the absence of any reference to it in the Directive that was being transposed. The exemption in favour of contracts which satisfy its conditions was read into the Directive by the Court of Justice in *Teckal* because it was thought to be undesirable for contracts of that kind to be opened up for public procurement. This was not just a technicality. It was a considered policy of EU law.