

European Court of Justice – Case Law

Marc Michel Josemans v Burgemeester van Maastricht (December 2010)

Facts: Local authorities in the Netherlands may authorise ‘coffee shops’ to sell cannabis, alongside food and non-alcoholic drinks. In an effort to reduce drug tourism and related public nuisance, Maastricht Council imposed a residence criterion, prohibiting coffee shop owners from admitting tourists onto their premises.

Mr Joseman, owner of the ‘Easy Going’ coffee shop in Maastricht, argued that the residence requirement constituted unjustified unequal treatment of EU citizens and, since non-residents could not buy food or drink from the coffee shops, the rule breached EU law.

Question of law: Does the residence requirement restrict an EU freedom, and if so is that restriction justified?

Decision: Even though narcotic drugs are restricted throughout the EU, freedoms of movement still apply. The sale of food and drink in coffee shops, even if this is only their secondary purpose, constitutes a catering activity. Thus, the freedom to provide services applies.

However, although the residence requirement did restrict the exercise of that freedom, the restriction was justified by the objective of combating drug tourism and the accompanying public nuisance. The restriction served the maintenance of public order and the protection of the health of citizens, at both member state and EU level.

Those objectives constitute a legitimate interest which justifies a restriction of Community law obligations.

Association belge des Consommateurs Test-Achats ABSL and Others v Conseil des ministres (March 2011)

Facts: The case involves a Council Directive which seeks to implement “the principle of equal treatment between men and women in the access to and supply of goods and services”. When the Directive came into force in 2004, member states could opt-out of the prohibition on discrimination with regards to insurance, provided that the situation was reviewed by 21 December 2012.

A Belgian consumer association challenged the legality of this opt-out.

Question of law: In light of fundamental principles, in particular the principle of equality for men and women enshrined in EU law, is the derogation legally valid?

Decision: As actuarial factors related to sex were commonly used in the provision of insurance services at the time the Directive was adopted, the legislature could implement unisex premiums and benefits gradually.

The Directive states that any derogation must be reviewed, however it is silent as to the length of time during which those differences may continue to be applied. Thus, there was a risk that EU law may permit the derogation to persist indefinitely. The derogation therefore worked “against the achievement of

the [Directive’s] objective” of equal treatment. Consequently, the derogation is invalid from 21 December 2012.

FIFA and UEFA v Commission (February 2011)

Facts: The sale of the television broadcasting rights for the World Cup and European Championship is a major source of income for FIFA and UEFA respectively.

Under a television broadcasting directive, member states can prohibit the exclusive broadcasting of events of major importance to society, where this would prevent a substantial proportion of the public from viewing those events on free television.

Belgium and the UK each drew up a list of events of major importance; Belgium’s list included the World Cup games, and the UK included both the World Cup and European Championships. Both lists were verified as compatible with EU law by the European Commission.

Question of law: Can limitations justified by overriding reasons of public interest be placed on the television broadcasting rights of FIFA and UEFA?

Decision: The Court rejected FIFA and UEFA’s argument that the World Cup or European Championships should be viewed as a series of matches rather than a single event, so that ‘non-prime’ matches could not lawfully be included on a list of events of national importance.

The Court noted that the national team’s participation in ‘prime’ matches could depend on the results of ‘non-prime’ matches. Thus, there may still be particular public interest in ‘non-prime’ matches. Consequently, member states are justified in their decision that all matches of a competition are of major importance for society.

The restriction on the freedom to provide services and freedom of establishment is justified, as it seeks to protect the right to information and to ensure wide public access to television broadcasts of events of major importance.

Quotes

‘The Court of Justice has contributed significantly to the Community legal system. Its creative case-law has remedied any shortcomings in the basic Treaties’. Josse Mertens de Wilmars, ECJ President, 1980-1984

‘Judicial decision-making in Europe is in deep trouble. The reason is to be found in the European Court of Justice.’ Roman Herzog, German President, 1994-1999

Links

- http://europa.eu/about-eu/institutions-bodies/court-justice/index_en.htm
- http://curia.europa.eu/jcms/jcms/Jo2_6999/