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Press and Information

PRESS RELEASE No 38/07

5 June 2007

Judgment of the Court of Justice in Case C-170/04

Klas Rosengren and Others v. Riksåklagaren

THE PROHIBITION OF THE IMPORTATION INTO SWEDEN OF ALCOHOLIC BEVERAGES BY PRIVATE INDIVIDUALS AMOUNTS TO AN UNJUSTIFIED QUANTITATIVE RESTRICTION ON THE FREE MOVEMENT OF GOODS

That measure is inappropriate for attaining the objective of limiting alcohol consumption generally and is not proportionate for attaining the objective of protecting young persons from the harmful effects of alcohol

Under the Swedish Law on alcohol, retail sales of alcoholic beverages in Sweden are carried out under a monopoly held by Systembolaget. Only Systembolaget and wholesalers authorised by the State may import alcoholic beverages. Private individuals are prohibited from importing alcoholic beverages. That prohibition means that a person wishing to import alcohol from other Member States must do so exclusively through Systembolaget. Systembolaget is required to obtain any alcoholic beverage on request at the consumer's expense, provided that it sees no objection to doing so.

Klas Rosengren and several other Swedish nationals ordered, by correspondence, cases of bottles of Spanish wine. The wine was imported into Sweden, without being declared to customs, by a private transporter. The wine was then confiscated by the customs authorities at Göteborg. Criminal proceedings were brought against Mr Rosengren and other individuals for unlawful importation of alcoholic beverages.

The Högsta domstolen (Swedish Supreme Court), dealing with the case at final instance, asked the Court of Justice of the European Communities whether the provisions of the Swedish legislation are compatible with Community law, in particular with the principle of free movement of goods guaranteed by the Treaty.

As a preliminary point, the Court finds that the rules at issue must be assessed in the light of the Community provisions relating to free movement of goods and not in the light of the specific provisions relating to State monopolies, since the latter apply only to rules relating to the existence or operation of monopolies. The importation of alcoholic beverages is not the specific function assigned to the monopoly by the Law on alcohol, which rather confers on the monopoly the exclusive right to retail sales of alcoholic beverages in Sweden.

Does the Swedish legislation amount to a restriction on the free movement of goods?

First of all, the Court takes the view that the fact that Systembolaget may refuse an order from a consumer to import alcoholic beverages amounts to a quantitative restriction on imports.

Furthermore, the Court notes that consumers, when making use of the services of Systembolaget to secure the importation of alcoholic beverages, find that they face a variety of inconveniences with which they would not be faced if they imported the beverages themselves. Above all, independently of administrative or logistical questions, it appears that for all importations, the price demanded of the purchaser includes, in addition to the cost of the beverages invoiced by the supplier, the reimbursement of administrative and transport costs paid by Systembolaget and a margin of 17% which, in principle, the purchaser would not have to pay if he directly imported those goods himself.

Consequently, **the fact that private individuals are prohibited from importing alcoholic beverages amounts to a quantitative restriction on the free movement of goods.**

Can that restriction be justified?

The Court recognises that measures which amount to quantitative restrictions on imports can be justified on grounds of protection of the health and life of humans. Rules which seek to prevent the harmful effects of alcohol and to combat alcohol abuse may therefore be justified in that regard. Nevertheless, a restriction can be justified only to the extent that it is necessary and proportionate for the effective protection of the health and life of humans.

Even though it is indeed possible for Systembolaget to refuse an order, the grounds on which such a refusal may be based are not stated. It is not apparent from the information available to the Court that Systembolaget has, in practice, refused an order by reference to maximum quantities of alcohol. In those circumstances, the prohibition of importation is less a method of limiting alcohol consumption generally than a means of favouring Systembolaget as a channel for the distribution of alcoholic beverages. Thus, **the prohibition of importation must be considered unsuitable for attaining the objective of protecting the health and life of persons.**

With regard to the claim that the prohibition is justified on the ground that it achieves the objective of protecting young persons from the harmful effects of alcohol, the Court notes that the prohibition applies to all persons, irrespective of age. **Accordingly, it manifestly goes beyond what is necessary with regard to the objective pursued of protecting young persons from the harmful effects of alcohol.**

Finally, taking into account the methods of distribution of the goods and the checks on the age of purchasers, the Court takes the view that, in all the circumstances, an effective check on the age of persons to whom alcoholic beverages are supplied is not fully guaranteed. Furthermore, it is not established that age checks could not be carried out using methods which are at least equally effective and less restrictive. For example, the Commission submitted, without being contradicted, that a declaration system by which the recipient certifies, on a form accompanying the goods, that he is over 20 years of age would achieve the same objective. Thus, **the prohibition is not proportionate for achieving the objective of protecting young persons against the harmful effects of alcohol.**

In those circumstances, the Court rules **that the prohibition of importation of alcoholic beverages cannot be justified on grounds of protection of the life and health of humans.**

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Languages available: BG ES CS DA DE EN EL FI FR HU IT NL PL PT RO SK SL SV

The full text of the judgment may be found on the Court's internet site

<http://curia.europa.eu/jurisp/cgi-bin/form.pl?lang=EN&Submit=rechercher&numaff=C-170/04>

It can usually be consulted after midday (CET) on the day judgment is delivered.

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*Pictures of the delivery of the judgment are available on EbS "Europe by Satellite",
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