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Press and Information

PRESS RELEASE No 44/09

19 May 2009

Judgments of the Court of Justice in Case C-531/06 and in Joined Cases C-171/07 and C-172/07

Commission v Italy
Apothekerkammer des Saarlandes and Others

OWNERSHIP AND OPERATION OF PHARMACIES CAN BE RESTRICTED TO PHARMACISTS ALONE

*Italian and German legislation laying down such a rule is justified by the objective of ensuring
that the provision of medicinal products to the public is reliable and of good quality*

Today, the Court of Justice has brought to a close two sets of proceedings relating to the system of pharmacy ownership.

The cases relate, principally, to the issue whether Community law precludes provisions contained in Italian and German legislation which provide that only pharmacists may own and operate a pharmacy.

Joined Cases C-171/07 and C-172/07 (*Apothekerkammer des Saarlandes and Others*) arose from the authorisation granted by the competent ministry in Saarland to DocMorris, a Netherlands public limited company, entitling it to operate a branch pharmacy in Saarbrücken from 1 July 2006. The ministry's decision was challenged before the Administrative Court, Saarland, by several pharmacists and their professional associations, on the ground that it was not consistent with German legislation which restricts the right to own and operate a pharmacy exclusively to pharmacists.

The Administrative Court referred questions to the Court of Justice in order to ascertain whether the Treaty provisions on freedom of establishment must be interpreted as precluding such legislation.

In addition, in Case C-531/06 (*Commission v Italy*) the Commission applied to the Court for, amongst others, a declaration that, by allowing only pharmacists to own and operate private pharmacies, the Italian Republic has failed to fulfil its obligations under Community law.

In its judgments delivered today, the Court states that excluding the possibility for non-pharmacists to operate pharmacies or to acquire stakes in companies or firms operating pharmacies constitutes a restriction on the freedom of establishment and the free movement of capital.

That restriction can nevertheless be justified by the objective of ensuring that the provision of medicinal products to the public is reliable and of good quality.

Where there is uncertainty as to the existence or extent of risks to human health, it is important that a Member State should be able to take protective measures without having to wait until the reality of those risks becomes fully apparent. Furthermore, a Member State may take the measures that reduce, as far as possible, a public-health risk, including, more specifically, a risk to the reliability and quality of the provision of medicinal products to the public.

In this context, the Court draws attention to the very particular nature of medicinal products, whose therapeutic effects distinguish them substantially from other goods.

Those therapeutic effects have the consequence that, if medicinal products are consumed unnecessarily or incorrectly, they may cause serious harm to health, without the patient being in a position to realise that when they are administered.

Overconsumption or incorrect use of medicinal products leads, moreover, to a waste of financial resources which is all the more damaging because the pharmaceutical sector generates considerable costs and must satisfy increasing needs, while the financial resources which may be made available for healthcare are not unlimited, whatever the mode of funding applied.

Given the power accorded to the Member States to determine the level of protection of public health, Member States may require that medicinal products be supplied by pharmacists enjoying genuine professional independence.

It is undeniable that a pharmacist, like other persons, pursues the objective of making a profit. However, as a pharmacist by profession, he is presumed to operate the pharmacy not with a purely economic objective, but also from a professional viewpoint. His private interest connected with the making of a profit is thus tempered by his training, by his professional experience and by the responsibility which he owes, given that any breach of the rules of law or professional conduct undermines not only the value of his investment but also his own professional existence.

Unlike pharmacists, non-pharmacists by definition lack training, experience and responsibility equivalent to those of pharmacists. Accordingly, they do not provide the same safeguards as pharmacists.

A Member State may therefore take the view, in the exercise of its discretion, that the operation of a pharmacy by a non-pharmacist may represent a risk to public health, in particular to the reliability and quality of the supply of medicinal products at retail level.

The Court also finds that it has not been established before it that a measure less restrictive than the exclusion of non-pharmacists would make it possible to ensure just as effectively the level of reliability and quality in the provision of medicinal products to the public that results from the application of that exclusion.

Having regard to the discretion which it is allowed, a Member State may take the view that there is a risk that less restrictive rules designed to ensure the professional independence of pharmacists, such as a system of controls and penalties, would not be observed in practice, given that the interest of a non-pharmacist in making a profit would not be tempered in a manner equivalent to that of self-employed pharmacists and that the fact that pharmacists, when employees, work under an operator could make it difficult for them to oppose instructions given by him.

The Court concludes that **the freedom of establishment and the free movement of capital do not preclude national legislation which prevents persons not having the status of pharmacist from owning and operating pharmacies.**

Since the Court finds that not only the exclusion of non-pharmacists from operation of a pharmacy can be justified, but also the prohibition preventing undertakings engaged in the distribution of pharmaceutical products from taking stakes in municipal pharmacies, it dismisses the action for failure to fulfil obligations brought by the Commission against Italy.

Unofficial document for media use, not binding on the Court of Justice.

Languages available: BG ES CS DE EN EL FR HU IT NL PL PT SK

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

<http://curia.europa.eu/jurisp/cgi-bin/form.pl?lang=EN&Submit=rechercher&numaff=C-531/06>

<http://curia.europa.eu/jurisp/cgi-bin/form.pl?lang=EN&Submit=rechercher&numaff=C-171/07>

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

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