

Case C-275/92

Her Majesty's Customs and Excise
v
Gerhart Schindler and Jörg Schindler

(Reference for a preliminary ruling from the High Court
of Justice of England and Wales, Queen's Bench Division)

(Lotteries)

Opinion of Mr Advocate General Gulmann delivered on 16 December 1993 I - 1042
Judgment of the Court, 24 March 1994 I - 1078

Summary of the Judgment

1. *Freedom to provide services — Treaty provisions — Scope — Importation of lottery advertisements and tickets in order to enable residents of one Member State to participate in a lottery operated in another Member State — Inclusion*
(EEC Treaty, Arts 59 and 60)
2. *Freedom to provide services — Restrictions — National legislation prohibiting lotteries — Justification — Protection of consumers and maintenance of order in society*
(EEC Treaty, Art. 59)

1. The importation of lottery advertisements and tickets into a Member State with a view to the participation by residents of that State in a lottery conducted in another Member State relates to a 'service' within the meaning of Article 60 of the Treaty and accordingly falls within the scope of Article 59 of the Treaty.

Community law may be likened to that of activities involving illegal products.

Finally, neither the chance character of the winnings, as consideration for the payment received by the operator, nor the fact that, although lotteries are operated with a view to profit, participation in them may be recreational, nor even the fact that profits arising from a lottery may generally only be allocated in the public interest, prevents lottery activities from having an economic nature.

Lottery activities, as services normally provided for remuneration constituted by the price of the ticket, do not, even as regards the cross-border sending and distribution of material objects necessary for their organization or operation, fall within the scope of the rules on the free movement of goods. Nor do they fall within the scope of the rules on the free movement of persons, or of those on free movement of capital, which concern capital movements as such and not all monetary transfers necessary to economic activities.

2. National legislation which prohibits, subject to specified exceptions, the holding of lotteries in a Member State and which thus wholly precludes lottery operators from other Member States from promoting their lotteries and selling their tickets, whether directly or through independent agents, in the Member State which enacted that legislation, restricts, even though it is applicable without distinction, the freedom to provide services.

Moreover, their classification as services is not affected by the fact that they are subject to particularly strict regulation and close control by the public authorities in the various Member States of the Community, since they cannot be regarded as activities whose harmful nature causes them to be prohibited in all the Member States and whose position under

However, since the legislation in question involves no discrimination on grounds of nationality, that restriction may be

justified if it is for the protection of consumers and the maintenance of order in society.

The particular features of lotteries justify national authorities having a sufficient degree of latitude to determine what is

required to protect the players and, more generally, in the light of the specific social and cultural features of each Member State, to maintain order in society, as regards the manner in which lotteries are operated, the size of the stakes, and the allocation of the profits they yield, and to decide either to restrict or to prohibit them.