

TRIBUNAL DE JUSTICIA DE LAS COMUNIDADES EUROPEAS  
SOUDNÍ DVŮR EVROPSKÝCH SPOLEČENSTVÍ  
DE EUROPÆISKE FÆLLESSKABERS DOMSTOL  
GERICHTSHOF DER EUROPÄISCHEN GEMEINSCHAFTEN  
EUROOPA ÜHENDUSTE KOHUS  
ΔΙΚΑΣΤΗΡΙΟ ΤΩΝ ΕΥΡΩΠΑΪΚΩΝ ΚΟΙΝΟΤΗΤΩΝ  
COURT OF JUSTICE OF THE EUROPEAN COMMUNITIES  
COUR DE JUSTICE DES COMMUNAUTÉS EUROPÉENNES  
CÚIRT BHREITHIÚNAIS NA gCÓMHPHOBAL EORPACH  
CORTE DI GIUSTIZIA DELLE COMUNITÀ EUROPEE  
EIROPAS KOPIENU TIESA



ÞOS BENDRIJŪ TEISINGUMO TEISMAS  
İRÓPAI KÖZÖSSÉGEK BÍRÓSÁGA  
IL-QORTI TAL-ĠUSTIZZJA TAL-KOMUNITAJIET EWROPEJ  
HOF VAN JUSTITIE VAN DE EUROPESE GEMEENSCHAPPEN  
TRYBUNAŁ SPRAWIEDLIWOŚCI WSPÓLNOT EUROPEJSKICH  
TRIBUNAL DE JUSTIÇA DAS COMUNIDADES EUROPEIAS  
SÚDNY DVOR EURÓPSKYCH SPOLOČENSTEV  
SODIŠČE EVROPSKIH SKUPNOSTI  
EUROOPAN YHTEISÖJEN TUOMIOISTUIN  
EUROPEISKA GEMENSKAPERNAS DOMSTOL

Press and Information

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Judgment of the Court of Justice in Joined Cases C-94/04 and 202/04

*Federico Cipolla v Rosaria Portelese, and Stefano Macrino, Claudia Capodarte v Roberto Meloni*

**ABSOLUTE PROHIBITION ON DEROGATION FROM THE SCALE OF  
LAWYERS' MINIMUM FEES IN ITALY CONSTITUTES A RESTRICTION ON  
THE FREEDOM TO PROVIDE SERVICES**

*It may be justified if it meets overriding requirements relating to the public interest such as the objectives of protection of consumers and the proper administration of justice and if the restrictions are not disproportionate in relation to those objectives*

In the first case, Mr Cipolla, the lawyer of, among others, Ms Portolese, drew up three summonses for his clients. The dispute was finally resolved by means of a settlement without Mr Cipolla's involvement. Having already made an advance payment of LIT 1 850 000, the client refused to pay the sum of LIT 4 125 000 demanded by her lawyer. Since the Tribunale di Torino rejected Mr Cipolla's action for the payment of that sum, he brought the matter before the Corte d'Appello di Torino seeking application of the scale of fees.

In the second case, Mr Macrino and Ms Capodarte contested the order obtained against them by Mr Meloni concerning the fees which the latter had demanded from them for an out-of-court consultation in the field of copyright, on the basis that they were disproportionate having regard to the importance of the case dealt with and the services performed. The Tribunale di Roma asks whether the scale, in so far as it is applicable and is binding for lawyers in out-of-court matters, is compatible with the EC Treaty.

In Italy, the scale of lawyers' fees is – under a 1933 provision – set on the basis of criteria laid down by decision of the National Lawyers' Council (Consiglio Nazionale Forense) and approved by the Minister of Justice after he has obtained the opinion of the Interministerial Committee on Prices (Comitato Interministeriale dei Prezzi) and the Council of State (Consiglio di Stato). Those criteria are to be determined on the basis of the monetary value of disputes, the level of the court seised and the duration of the proceedings. For each procedural step, or series of steps, the scale sets maximum and minimum fees. Any agreement derogating from the minimum fees set by the scale for lawyers' services is void.

It is only at the time of settlement of the fees that the court may, by reasoned decision, exceed the maximum limit (in cases of exceptional importance) or fix fees below the minimum limit (where the case proves easy to deal with).

### *Rules on free competition*

On the basis of a detailed examination of the procedure which leads to the adoption of the scale, the Court concludes that **it is the Italian State (and not the professional body) which exercises the power to take decisions on lawyers' minimum fees**. Consequently, the Italian State cannot be criticised for requiring or encouraging the adoption of agreements, decisions or concerted practices contrary to the rules of free competition or of reinforcing their effects, or requiring or encouraging abuses of a dominant position or reinforcing the effects of such abuses.

### *Rules on freedom to provide services*

According to the Court, the prohibition of derogation, by agreement, from the minimum fees **renders access to the Italian legal services market more difficult for lawyers established outside Italy**, depriving them of the possibility, by requesting fees lower than those set by the scale, of competing more effectively with lawyers established on a stable basis in Italy and restricting the choice of recipients of such services.

The Court notes, however, that the **objectives of protection of consumers (recipients of legal services) and the proper administration of justice** may be regarded as overriding requirements relating to the public interest **capable of justifying a restriction on freedom to provide services**: this is subject to the twofold condition that the national measure is suitable for securing the attainment of the objective pursued and that it does not go beyond what is necessary in order to attain that objective.

The Court entrusts that assessment to the national court which, for that purpose, must take account of certain factors:

- whether there is a **correlation between the level of fees and the quality of the services** provided by lawyers and whether, inter alia, the setting of such minimum fees constitutes an appropriate measure for attaining the objectives pursued, namely the protection of consumers and the proper administration of justice. So far as concerns the Italian market, which is characterised by an extremely large number of lawyers, the scale might serve to prevent competition taking the form of services being offered at a discount, with the risk of deterioration in their quality.
- **asymmetry of information between 'client-consumers' and lawyers**. Lawyers have a high level of technical knowledge which consumers may not have and they therefore find it difficult to judge the quality of the services provided to them.
- whether those objectives may be attained by other means, including through **professional rules in respect of lawyers (relating to organisation, qualifications, professional ethics, supervision and liability)**.

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*Languages available: ES CS DE EL EN FR IT HU PL SK SL*

*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-94/04>

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

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