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EUROPEISKA GEMENSKAPERNAS DOMSTOL

Press and Information

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Judgment of the Court of Justice in Case C-36/02

*Omega Spielhallen- und Automatenaufstellungs-GmbH v Oberbürgermeisterin der  
Bundesstadt Bonn*

**COMMUNITY LAW DOES NOT PRECLUDE THE PROHIBITION IMPOSED IN  
GERMANY ON THE COMMERCIAL EXPLOITATION OF GAMES SIMULATING  
HOMICIDAL ACTS**

*The protection of public policy following the affront to human dignity posed by that activity  
justifies a restriction on the freedom to provide services*

Omega is a German company which operated an installation known as a “laserdrome” in Bonn. The games organised there consisted of firing with sub-machine-gun-type laser targeting devices at sensory tags installed either in corridors where the firing took place or on jackets worn by other players. In its laserdrome, Omega used a form of the game developed and marketed by a company established in the United Kingdom and concluded a franchising agreement with that company.

In 1994, the Bonn police authority prohibited Omega from allowing or tolerating in its laserdrome games which involved firing on human targets, or in other words “playing at killing” people. That prohibition was based in particular on the existence of a danger to public policy, the acts of simulated homicide and ensuing trivialisation of violence being contrary to fundamental values prevalent in public opinion.

The Bundesverwaltungsgericht (Federal Administrative Court), hearing an action by Omega against that prohibition at final instance, stayed the proceedings and referred a question to the Court of Justice as to whether it was compatible with fundamental freedoms guaranteed by the EC Treaty, such as the freedom to provide services and the free movement of goods, for national law to ban the use of a laserdrome where acts of homicide were simulated on the ground that it was contrary to certain values (notably human dignity) enshrined in the German constitution. The essential question was whether the restriction of fundamental freedoms in question had to be based on a conception of law common to all the Member States.

The Court first held that the prohibition in question affected the freedom to provide services which the EC Treaty guarantees both to the providers of those services and their recipients established in another Member State.

The Court then held that the scope of the concept of public policy, which is amongst the reasons capable of justifying a derogation from that fundamental freedom, cannot be determined unilaterally by each of the Member States. Public policy may be invoked only if there is a genuine and sufficiently serious threat to a fundamental interest of society. However, Member States have a discretion as to the specific circumstances in which recourse to the concept of public policy is admissible.

In that context, the Court went on to state that the Community legal order undeniably seeks to ensure respect for human dignity as a general principle of law and that protection of such a fundamental right constitutes a legitimate interest which is in principle capable of justifying a restriction on the freedom to provide services.

Concerning the need for, and the proportionality of, the prohibition, the Court held that it is not indispensable for that national measure to correspond to a conception shared by all Member States as regards the methods of protecting the fundamental right or legitimate interest in question. It recalled that, in accordance with its case-law, need for, and the proportionality of, such a measure are not excluded simply because one Member State has chosen a system of protection different from that adopted by another State.

Finally, having regard to the fact that, according to the Bundesverwaltungsgericht, the prohibition in question corresponds to the level of protection of human dignity which the national constitution seeks to ensure in Germany, and given that the prohibition concerns only the variant of the laser game the object of which is to fire on human targets, the Court concludes that that prohibition has not gone beyond what is necessary to attain the objective pursued by the competent national authorities and that, therefore, it cannot be regarded as a measure that unjustifiably undermines the freedom to provide services.

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

*Languages available: English, French, German*

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

*<http://curia.eu.int/jurisp/cgi-bin/form.pl?lang=en>*

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

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