



The prohibition on the admission of non-residents to Netherlands 'coffee-shops' complies with European Union law

That restriction is justified by the objective of combating drug tourism and the accompanying public nuisance, an objective which concerns both the maintenance of public order and the protection of the health of citizens at the level of the Member States and at European Union level

Under the 1976 Law on opium (Opiumwet 1976), the possession, dealing, cultivation, transportation, production, import and export of narcotic drugs, including cannabis and its derivatives, are prohibited in the Netherlands. That Member State applies a policy of tolerance with regard to cannabis. That policy is reflected inter alia in the establishment of coffee-shops, the main activities of which are the sale and consumption of that 'soft' drug. The local authorities may authorise such establishments in compliance with certain criteria. In a number of coffee-shops, non-alcoholic beverages and food are also sold.

In an effort to reduce drug tourism, and even to prevent it, the Municipal Council of Maastricht, by decision of 20 December 2005, inserted a residence criterion in the General Maastricht Municipal Regulation and thus prohibited any coffee-shop owner from admitting to his establishment persons who do not have their actual place of residence in the Netherlands.

Mr Josemans runs the 'Easy Going' coffee-shop in Maastricht. Following two reports attesting that persons who are not resident in the Netherlands had been admitted to it, the Burgemeester van Maastricht (Mayor of Maastricht), by decision of 7 September 2006, temporarily closed that establishment.

Mr Josemans lodged an objection against that decision. He submits that the legislation at issue in the main proceedings constitutes unjustified unequal treatment of citizens of the European Union and that, more specifically, people who are not resident in the Netherlands are denied the possibility of buying non-alcoholic beverages and food in coffee-shops, which is contrary to European Union law. It is against that background that the Raad van State (Council of State), before which the dispute was brought, has made a reference for a preliminary ruling to the Court of Justice.

First of all, the Court states that the harmfulness of narcotic drugs, including those derived from hemp, such as cannabis, is generally recognised and that there is a prohibition in all the Member States on marketing them, with the exception of strictly controlled trade for use for medical and scientific purposes. That legal position complies with various international instruments, in particular with a number of United Nations Conventions, which the Member States have cooperated on or acceded to, and with EU law.

As the release of narcotic drugs into the economic and commercial channels of the European Union is prohibited, a coffee-shop proprietor cannot rely on the freedoms of movement or the principle of non-discrimination in so far as concerns the marketing of cannabis.

As regards the activity of marketing non-alcoholic beverages and food in such establishments, the Mayor of Maastricht and the Netherlands, Belgian and French Governments submit that that

activity is altogether secondary to the sale of cannabis and cannot have any bearing on the outcome of the main proceedings.

The Court does not accept that argument and holds that the freedoms of movement may validly be relied on by such a proprietor in those circumstances.

According to the Court, the marketing of non-alcoholic beverages and food in coffee-shops constitutes a catering activity. Consequently, the rules at issue must be examined in the light of the freedom to provide services.

The Court states that there is a restriction on the exercise of that freedom in so far as the proprietors of coffee-shops are not entitled to market lawful goods to persons residing in other Member States and those persons are precluded from enjoying such services.

That restriction is however justified by the objective of combating drug tourism and the accompanying public nuisance.

The rules are intended to put an end to the public nuisance caused by the large number of tourists wanting to purchase or consume cannabis in the coffee-shops in the municipality of Maastricht. According to the information provided by the Mayor of Maastricht, the 14 coffee-shops in the municipality attract around 10 000 visitors per day, that is to say a little more than 3.9 million visitors per year. Of those visitors, 70% are not resident in the Netherlands.

The Mayor of Maastricht and the Netherlands Government state that the problems associated with the sale of 'soft' drugs which arise in that commune – the various forms of public nuisance and crime, the increasing number of illegal premises selling drugs, including 'hard' drugs – have been exacerbated by drug tourism. The Belgian, German and French Governments refer to the public order problems which that phenomenon, including the illegal export of cannabis, gives rise to in Member States other than the Kingdom of the Netherlands, in particular in neighbouring States.

In that regard the Court points out that combating drug tourism and the accompanying public nuisance is part of combating drugs. It concerns both the maintenance of public order and the protection of the health of citizens, at Member State level and at EU level.

Those objectives constitute a legitimate interest which, in principle, justifies a restriction of the obligations imposed by Community law, even under a fundamental freedom such as the freedom to provide services.

The Court states that a prohibition on admitting non-residents to coffee-shops constitutes a measure capable of substantially limiting drug tourism and, consequently, of reducing the problems it causes.

As regards the possibility of adopting measures which are less restrictive of the freedom to provide services, the Court states that, according to the information provided by the Mayor of Maastricht and the Netherlands Government, other measures implemented to combat drug tourism and the accompanying public nuisance have proved to be insufficient and ineffective in the light of the objective pursued.

As for the possibility of granting non-residents access to coffee-shops whilst refusing to sell cannabis to them, the Court points out that it is not easy to control and monitor with accuracy that that product is not served to or consumed by non-residents. Furthermore, there is a danger that such an approach would encourage the illegal trade in or the resale of cannabis by residents to non-residents inside coffee-shops.

Furthermore, the Court observes that the rules in question do not preclude a person who is not resident in the Netherlands from going, in the municipality of Maastricht, into other catering establishments in order to consume non-alcoholic beverages and food. According to the Netherlands Government, there are more than 500 such establishments.

NOTE: A reference for a preliminary ruling allows the courts and tribunals of the Member States, in disputes which have been brought before them, to refer questions to the Court of Justice about the interpretation of European Union law or the validity of a European Union act. The Court of Justice does not decide the dispute itself. It is for the national court or tribunal to dispose of the case in accordance with the Court's decision, which is similarly binding on other national courts or tribunals before which a similar issue is raised.

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The [full text](#) of the judgment is published on the CURIA website on the day of delivery.

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