

Press and Information Division

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Opinion of Advocate General Stix-Hackl in Case C-36/02

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

**THE ADVOCATE GENERAL TAKES THE VIEW THAT A GERMAN BAN
ON THE OPERATION OF A LASERDROME IN WHICH KILLING IS
SIMULATED DOES NOT INFRINGE COMMUNITY LAW**

*She emphasises that a serious danger to human dignity, which must be protected
under Community law too, may justify an interference with the freedom to provide
services*

OMEGA Spielhallen- und Automatenaufstellungs-GmbH is a limited company incorporated under German law which operated premises in Bonn under the name 'Laserdrome'.

The premises were in the form of a large maze, constructed using partitions, in which players shot at sensors installed in the hall but also at other players, or rather at their jackets to which sensors were attached.

OMEGA used equipment supplied from Great Britain by a company incorporated under English law.

In September 1994 the public authority issued an order prohibiting OMEGA from allowing games which involved the deliberate shooting at people using infra-red or laser beams, in other words, 'playing at killing' people. The reason given for the order was inter alia that public order was endangered because the simulated killing and the consequent trivialisation of violence were contrary to common fundamental values.

The Bundesverwaltungsgericht (Federal Administrative Court), hearing the dispute as the court of last instance, stayed the proceedings and referred to the Court of Justice the question whether it is compatible with Community law for the operation of a

laserdrome with simulated killing to be prohibited under national law because it is contrary to values enshrined in the German constitution (in particular that of human dignity). In essence, the question is whether the restriction placed on the activity must reflect an interpretation of the law that is common to all Member States.

The Advocate General first points out that the order banning a variant of the game which constitutes a material part of the contractual agreements between OMEGA and the British supplier represents an infringement of the freedom to provide services.

She then considers the significance which must be attached under Community law to values set out in a national constitution. She emphasises that objections to the application of Community law that are based on the Member States' constitutions are as a rule insufficient, because otherwise the uniform application of Community law would be impaired.

In consequence, a restriction of the freedom to provide services cannot automatically be justified on grounds of protection of specific fundamental rights guaranteed in the constitution of a Member State. Instead it is necessary to examine the extent to which such a restriction based on national law may be justified on grounds recognised under Community law, such as, in particular, the protection of public order. When so doing, the Community concept of public policy must be interpreted in the light of the requirement under Community law that human dignity be protected.

When considering this issue, the competent national authority enjoys a discretion, although not every infringement of national rules can be classified as an infringement of public policy that is recognised by Community law.

Instead it is necessary for there to be an actual and sufficiently serious danger which affects a fundamental interest of society. For there to be a finding that a fundamental interest, in this case human dignity, has been affected, it is not necessary that the Member States share a common view of the matter.

The Advocate General emphasises the fundamental importance of human dignity also in Community law. She infers from this that in the present case it is possible to find the existence of a serious danger to a fundamental interest of society. Finally, she points out that it is probably not possible to impose a less severe means of protection, because the order merely bans one variant of the game.

"Reminder: The opinion of the Advocate General does not bind the Court of Justice. The task of the Advocate General is to propose to the Court, in complete independence, a legal solution to the case in question. The Court will now begin its deliberations in this case and the judgment will be delivered at a later date.

III.

Unofficial document, for media use only, which does not bind the Court of Justice.

Available languages: EN, FR, DE

The full text of the opinion can be found on the internet (www.curia.eu.int).

In principle it will be available from midday CET on the day of delivery.

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