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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  
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HOF VAN JUSTITIE VAN DE EUROPESE GEMEENSCHAPPEN  
TRYBUNAŁ SPRAWIEDLIWOŚCI WSPÓLNOT EUROPEJSKICH  
TRIBUNAL DE JUSTIÇA DAS COMUNIDADES EUROPEIAS  
CURTEA DE JUSTIȚIE A COMUNITĂȚILOR EUROPENE  
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EUROOPAN YHTEISÖJEN TUOMIOISTUIN  
EUROPEISKA GEMENSKAPERNAS DOMSTOL

Press and Information

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Judgment of the Court of Justice in Case C-210/06

*Cartesio Oktató és Szolgáltató bt.*

**THE MEMBER STATE OF INCORPORATION CAN PREVENT A COMPANY FROM TRANSFERRING ITS SEAT TO ANOTHER MEMBER STATE OF THE UNION**

*On the other hand, the freedom of establishment enables a company to move to another Member State by converting itself into a form of company governed by the law of that State, without having to be wound up or enter into liquidation during its conversion, if the law of the host Member State so permits*

Cartesio is a company governed by Hungarian law, whose company seat is in Baja (Hungary). It is active, inter alia, in the field of human resources, secretarial activities, translation, teaching and training.

On 11 November 2005, Cartesio filed an application with the Bács-Kiskun Megyei Bíróság (Regional Court of Bács-Kiskun), sitting as a Cégbíróság (commercial court), for registration of the transfer of its seat to Gallarate (Italy) and, in consequence, for amendment of the reference to its company seat in the commercial register.

That application was rejected on the ground that the Hungarian law in force did not allow a company incorporated in Hungary to transfer its seat abroad while continuing to be subject to Hungarian law as its personal law. According to the Cégbíróság, such a transfer would require, first, that the company cease to exist and, then, that the company re-incorporate itself in compliance with the law of the country where it wishes to establish its new seat.

Cartesio lodged an appeal against that decision with the Szegedi Ítéltábla (Regional Court of Appeal of Szeged), which asks the Court of Justice whether the provision of Hungarian law preventing a Hungarian company from transferring its seat to another Member State, while retaining its status as a company governed by Hungarian law, is compatible with Community law.

The Court points out that, in the absence of uniform Community legislation, a Member State has the power to define both **the connecting factor** required of a company if it is to be regarded as incorporated under the law of that Member State and, as such, capable of enjoying the right of establishment, and that required if the company is to be able subsequently to maintain that status.

That power includes the possibility for that Member State not to permit a company governed by its law to retain that status if the company intends to reorganise itself in another Member State by moving its seat to the territory of the latter, thereby breaking the connecting factor required under the national law of the Member State of incorporation.

The Court therefore holds that, as Community law currently stands, **the freedom of establishment does not preclude a Member State from preventing a company incorporated under its national law from transferring its seat to another Member State whilst retaining its status as a company governed by the law of the Member State of incorporation.**

The situation where the seat of a company is transferred to another Member State falls to be distinguished from the situation where a company governed by the law of one Member State moves to another Member State **with an attendant change as regards the national law applicable**, since that company is converted into a form of company which is governed by the law of the Member State to which it has moved. **The freedom of establishment permits a company to convert itself in that way without having to be wound up or to enter into liquidation in the Member State of incorporation, to the extent that the law of the host Member State permits such a conversion**, unless a restriction of the freedom of establishment serves overriding requirements in the public interest.

Addressing the questions relating to the **preliminary ruling procedure**, the Court points out that the decision of a national court by which questions are referred to the Court for a preliminary ruling may be subject in the Member States to the remedies normally available under national law. In the present case, under the rules of national law which relate to the right of appeal against a decision making a reference for a preliminary ruling, the main proceedings remain pending before the referring court in their entirety, the order for reference alone being the subject of a limited appeal. Where such rules of national law apply, it is **for the referring court to draw the proper inferences** from a judgment delivered on an appeal against its decision to refer.

It follows that, the Court must – also in the interests of clarity and legal certainty – abide by the decision to make a reference for a preliminary ruling, so long as that decision has not been revoked or amended by the referring court, such revocation or amendment being matters on which that court alone is able to take a decision.

In consequence, **the right of any national court to make a reference to the Court for a preliminary ruling cannot be called into question** by the application of rules of national law relating to the right of appeal against a decision making a reference for a preliminary ruling, where they permit the court hearing the appeal **to compel the lower courts to revoke a reference for a preliminary ruling** and to resume the national proceedings which had been stayed.

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

*Languages available: ES CS DE EN FR IT HU NL PL PT RO SK*

*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-210/06>*

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

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*Pictures of the delivery of the judgment are available on EbS "Europe by Satellite",  
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