



Press and Information

Court of Justice of the European Union

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Advocate General's Opinion in Case C-137/09
Marc Michel Josemans v Burgemeester van Maastricht

Advocate General Bot takes the view that the municipality of Maastricht can prohibit the admission to 'coffee shops' of persons not resident in the Netherlands

That measure is necessary to maintain public order in the face of troubles caused by drug tourism and contributes to combating the illicit trade in narcotics in the European Union

In the Netherlands, 'coffee shops' are fast-food establishments, which nevertheless have as their principal activity the sale of 'soft drugs' such as marijuana and hashish, products derived from cannabis. Possession of 'soft drugs' for personal use is decriminalised, and their sale in coffee shops, although prohibited by law, is tolerated by the authorities. However, pursuant to directives issued by the Public Prosecutor's Office, coffee shops cannot sell more than 5g of cannabis per person per day, and their 'stock' must not exceed 500g. In addition, the sale of cannabis must not create nuisances.

In response to troubles caused by the significant and increasing influx of drug tourists, the municipality of Maastricht decided to reserve admission to the coffee shops to residents of the Netherlands only.

Mr Josemans operates a coffee shop in Maastricht, in which 'soft drugs', non-alcoholic beverages and food are sold and consumed. That establishment was the subject of two police controls during which it was found that citizens of the European Union, who were not resident in the Netherlands, had been admitted. The Mayor of Maastricht therefore decided to close the coffee shop temporarily.

Mr Josemans brought a legal challenge against that decision and the Raad van State (Council of State, the Netherlands), before which the case has been brought, has asked the Court of Justice whether European Union law precludes rules which prohibits admission to coffee shops of persons not resident in the Netherlands.

Advocate General Bot recalls that narcotics, including cannabis, are not goods like others and their sale does not benefit from the freedoms of movement guaranteed by European Union law, inasmuch as their sale is unlawful. He observes, in that regard, that only narcotics which have a medical or scientific application come under the internal market rules.

As regards the illegal nature of the sale of 'soft drugs', the Advocate General states that, although that practice is tolerated in coffee shops, it remains an activity prohibited by all Member States. Furthermore, customers of coffee shops are not required to consume cannabis on the premises but may take it to other Member States, thus running the risk of criminal prosecution for the illegal exportation or importation of narcotics.

The Advocate General therefore considers that **the measure adopted by the municipality of Maastricht does not fall within the scope of the freedom to provide services**. That conclusion is not called into question by the fact that coffee shops also sell lawful consumer products, such as food and non-alcoholic beverages, inasmuch as coffee shops are, in practice, dedicated exclusively to the sale and consumption of cannabis.

Then, the Advocate General states that European Union law allows Member States, which retain responsibility for maintaining public order on their territory, to determine the measures necessary for maintaining that public order. As drug tourism represents a genuine and sufficiently serious threat to public order in Maastricht, the exclusion of non-residents from coffee shops thus constitutes a measure necessary to protect the residents of the municipality from trouble caused by that phenomenon.

Moreover, drug tourism, in so far as it conceals, in actual fact, international trade in narcotics and fuels organised criminal activities, threatens even the European Union's internal security. In that context, the Member States have undertaken to combat the illicit trade in narcotics within the framework of the Convention implementing the Schengen Agreement. The Advocate General states that the rules adopted by the municipality of Maastricht forms part of that fight and must therefore be considered to be valid also by reason of their contribution to the maintenance of European public order.

NOTE: The Advocate General's Opinion is not binding on the Court of Justice. It is the role of the Advocates General to propose to the Court, in complete independence, a legal solution to the cases for which they are responsible. The Judges of the Court are now beginning their deliberations in this case. Judgment will be given at a later date.

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 Opinion is published on the CURIA website on the day of delivery.

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