



Press and Information

Court of Justice of the European Union
PRESS RELEASE No 127/16
Luxembourg, 16 November 2016

Judgment in Case C-316/15
Timothy Martin Hemming, trading as 'Simply Pleasure Ltd' and Others v
Westminster City Council

Under the Services Directive, applicants for a licence cannot be required to pay costs relating to the management and enforcement of the licencing regime when submitting their application

The aim of facilitating access to service activities would not be served by such a requirement, even if the payment is refundable if the application is refused

Mr Timothy Martin Hemming and others hold licences authorising them to operate sex shops in Westminster. Within that locality, Westminster City Council is the local authority responsible for issuing licences for such establishments.

National legislation requires an applicant for the grant or renewal of a licence to pay a reasonable fee determined by the local authority.¹ In the present case, the fee in question is made up of two parts, one related to the administration of the application (non-refundable if the application is refused), and the other (considerably larger) for the management of the licensing regime (refundable if the application is refused).

For the year 2011-12, the total fee was £29,102 (approximately €37,700), of which £2,667 (approximately €3,455) was allocated to the administration of the application, while the remaining £26,435 (approximately €34,245)² related to the management of the licensing regime (that amount being refundable if the application was refused).

Mr Hemming submits that Westminster City Council infringed the Services Directive³ by requiring the payment of the second part of the fee. Under that directive, any charges which applicants may incur from their application must be reasonable and proportionate to the costs of the authorisation procedure and not exceed them.

The Supreme Court of the United Kingdom asks whether the second part of the fee constitutes, for a licence applicant, a 'charge' contrary to the Services Directive, in so far as the amount of that fee exceeds any cost of processing the application.

In today's judgment, the Court answers that **EU law precludes the requirement to pay a fee, part of which corresponds to the costs of managing the authorisation scheme**, even if that part is refundable if the application is refused.

First, the Court finds that **the fact that a fee must be paid constitutes a financial obligation, and therefore a 'charge'** within the meaning of the Services Directive, notwithstanding the fact that the amount may subsequently be refunded if that application is refused. It considers that **the amount of such charges may in no case exceed the cost of the authorisation procedure** in question.

The Court has already clarified in relation to a provision of EU law that the costs taken into account may not include the expenditure linked to the authority in question's general supervisory activities.

¹ Local Government (Miscellaneous Provisions) Act 1982.

² In accordance with the exchange rate for the year 2011-2012.

³ Directive 2006/123/EC of the European Parliament and of the Council of 12 December 2006 on services in the internal market (OJ 2006 L 376 p. 36).

That consideration applies *a fortiori* as regards the ‘costs of procedure’ referred to in the Services Directive.

Noting that the **Services Directive pursues the aim of facilitating access to service activities**, the Court concludes that **that aim would not be served by a requirement to prefinance the costs of the management and enforcement of the authorisation scheme concerned**, including, *inter alia*, the costs of detecting and prosecuting unauthorised activities. Consequently, the Court considers that EU law precludes such a requirement.

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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