



Press and Information

Court of Justice of the European Union  
**PRESS RELEASE No 174/18**  
Luxembourg, 14 November 2018

Judgment in Case C-342/17  
Memoria Srl and Antonia Dall'Antonia v Comune di Padova

## **The Italian legislation prohibiting private companies from performing an activity of safekeeping of cinerary urns is contrary to EU law**

*That legislation amounts to an unjustified restriction on the freedom of establishment guaranteed by EU law*

Memoria, a company incorporated under Italian law, offers the families and friends of cremated deceased a service for the safekeeping of cinerary urns allowing them to avoid having to keep those urns at home or place them in a cemetery. The premises used for the storage of the urns offer an aesthetically pleasant, quiet and protected environment suitable for contemplation and prayers in memory of the deceased.

Ms Dall'Antonia plans to have her husband's body cremated and to have the urn containing his ashes stored in one of Memoria's facilities.

By a decision of 2015 the Comune di Padova (municipality of Padua, Italy) amended its regulation on funeral services, which since then expressly prohibits the recipient of a cinerary urn from using the services of a private company, independent of the municipal cemetery service, for the purpose of storing urns outside his home.

Memoria and Ms Dall'Antonia brought proceedings before the Tribunale amministrativo regionale per il Veneto (Regional Administrative Court for the Veneto Region, Italy, 'the TAR') seeking annulment of that decision.

In that context, the TAR asks the Court of Justice whether the principle of freedom of establishment, laid down in Article 49 of the Treaty on the Functioning of the European Union (TFEU),<sup>1</sup> precludes legislation such as that adopted by the Comune di Padova.

In today's judgment the Court answers that question in the affirmative.

The Court notes, first of all, that the reference is admissible, even if the dispute is purely domestic. Even if a dispute is between nationals of a single Member State, it must be considered to have a connecting factor with Article 49 TFEU that makes the interpretation of that provision necessary for it to give judgment in that dispute, where national law requires the referring court to grant the same rights to those nationals as the rights which nationals of other Member States in the same situation would derive from EU law. The Italian legislation which the TAR states it must apply in the present case provides that 'rules of the Italian legal order which have a discriminatory effect with respect to the condition and treatment guaranteed in Italy to citizens of the EU are not to be applied to Italian citizens'.

The Court observes, next, that the rules adopted by the Comune di Padova have the effect of conferring on municipal departments a monopoly of services for the safekeeping of the urns. Since

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<sup>1</sup> The TAR also mentioned the principle of freedom to provide services laid down in Article 56 TFEU: however, the Court considers that the present case must be examined in the light of freedom of establishment, since Memoria wishes to provide a safekeeping service for cinerary urns on the territory of the Comune di Padua by means of permanent facilities and for an indefinite period.

the 'Services Directive'<sup>2</sup> does not apply, given that it does not concern the abolition of monopolies providing services, the issue must be examined solely in the light of the provisions of the Treaty, and more specifically Article 49 TFEU guaranteeing freedom of establishment.

The Court finds that national legislation that prohibits EU nationals from providing a safekeeping service for cinerary urns in a Member State **introduces a restriction on freedom of establishment for the purposes of Article 49 TFEU.**

The Court holds that **that restriction is not justified** by the overriding reasons in the public interest put forward by the Italian Government relating to protection of public health, the need to ensure the respect owed to the memory of the deceased or the protection of the moral and religious values prevailing in Italy, being values which oppose the existence of commercial and worldly activities relating to the safekeeping of the ashes of the deceased and, accordingly, oppose the performance for profit of activities of safekeeping of mortal remains.

As regards protection of public health, the Court notes that funeral ashes, unlike corpses, are biologically inert, since they have been sterilised by heat, so that their safekeeping cannot amount to a constraint imposed by public health considerations.

As regards protection of respect owed to the memory of the deceased, the Court considers that the national legislation at issue goes beyond what is necessary to attain that objective. There are less stringent measures which make it possible to achieve that objective just as effectively, such as, in particular, the obligation to ensure the safekeeping of cinerary urns in similar conditions to those of municipal cemeteries and, in the event of cessation of activities, the obligation to transfer those urns to a public cemetery or to return them to the relatives of the deceased.

As regards the moral and religious values prevailing in Italy (which oppose activities of safekeeping of mortal remains being performed for profit), the Court finds that the activity of the safekeeping of cremated ashes is subject in Italy to pricing fixed by the public authorities and that the opening up to private companies of that kind of activity could be made subject to that pricing structure, which in itself is clearly not considered by Italy to be contrary to its moral and religious values.

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**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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<sup>2</sup> 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).