

JUDGMENT OF THE COURT

21 September 1999 *

In Case C-124/97,

REFERENCE to the Court under Article 177 of the EC Treaty (now Article 234 EC) by the Vaasan Hovioikeus, Finland, for a preliminary ruling in the proceedings pending before that court between

Markku Juhani Läärä,
Cotswold Microsystems Ltd,
Oy Transatlantic Software Ltd,

and

Kihlakunnansyyttäjä (Jyväskylä),
Suomen Valtio (Finnish State),

on the interpretation of the judgment of the Court of Justice of 24 March 1994 in Case C-275/92 *Schindler* [1994] ECR I-1039 and of Articles 30, 36, 56 and 59 of the EC Treaty (now, after amendment, Articles 28 EC, 30 EC, 46 EC and 49 EC) and Article 60 of the EC Treaty (now Article 50 EC),

* Language of the case: Finnish

THE COURT,

composed of: P.J.G. Kapteyn, President of the Fourth and Sixth Chambers, acting for the President, J.-P. Puissechet (Rapporteur) and P. Jann (Presidents of Chambers), C. Gulmann, J.L. Murray, D.A.O. Edward, H. Ragnemalm, L. Sevón and M. Wathelet, Judges,

Advocate General: A. La Pergola,

Registrar: L. Hewlett, Administrator,

after considering the written observations submitted on behalf of:

- Mr Läärä and Oy Transatlantic Software Ltd, by P. Kiviluoto, of the Jyväskylä Bar,
- Cotswold Microsystems Ltd, by H.T. Klami, Professor at the University of Helsinki,
- the Finnish Government, by T. Pynnä, Legal Adviser in the Ministry of Foreign Affairs, acting as Agent,
- the Belgian Government, by J. Devadder, Director of Administration in the Ministry of Foreign Affairs, Foreign Trade and Cooperation with Developing Countries, acting as Agent, assisted by P. Vlaemminck and L. Van Den Hende, of the Ghent Bar,
- the German Government, by E. Röder, Ministerialrat in the Federal Ministry of Economic Affairs, and C.-D. Quassowski, Regierungsdirektor in the same Ministry, acting as Agents,

- the Spanish Government, by L. Pérez de Ayala Becerril, Abogado del Estado, acting as Agent,

- the Netherlands Government, by A. Bos, Legal Adviser in the Ministry of Foreign Affairs, acting as Agent,

- the Austrian Government, by F. Cede, Ambassador in the Ministry of Foreign Affairs, acting as Agent,

- the Portuguese Government, by L. Fernandes, Director of the Legal Service of the Directorate-General for the European Communities in the Ministry of Foreign Affairs, A. Cortesão Seíça Neves, of the same Service, and J. Ramos Alexandre, Inspector-General of Gaming in the Ministry of Economic Affairs, acting as Agents,

- the Swedish Government, by E. Brattgård, Departementsråd in the Department of Foreign Trade of the Ministry of Foreign Affairs, acting as Agent,

- the United Kingdom Government, by J.E. Collins, Assistant Treasury Solicitor, acting as Agent, assisted by M. Brealey, Barrister,

- the Commission of the European Communities, by A. Caeiro, Legal Adviser, and K. Leivo, of its Legal Service, acting as Agents,

having regard to the Report for the Hearing,

after hearing the oral observations of: Mr Läärä and Oy Transatlantic Software Ltd, represented by P. Kiviluoto; Cotswold Microsystems Ltd, represented by H.T. Klami; the Finnish Government, represented by T. Pynnä; the Belgian Government, represented by P. Vlaemminck and L. Van Den Hende; the German Government, represented by E. Röder; the Spanish Government, represented by M. López-Monís Gallego, Abogado del Estado, acting as Agent; the Irish Government, represented by M. Finlay, SC; the Luxembourg Government, represented by K. Manhaeve, of the Luxembourg Bar; the Netherlands Government, represented by M.A. Fierstra, Deputy Legal Adviser in the Ministry of Foreign Affairs, acting as Agent; the Portuguese Government, represented by L. Fernandes and A. Cortesão Seíça Neves; the Swedish Government, represented by L. Nordling, Rättschef in the Legal Secretariat (EU) of the Ministry of Foreign Affairs, acting as Agent; the United Kingdom Government, represented by J.E. Collins, assisted by M. Brealey; and the Commission, represented by A. Caeiro and K. Leivo, at the hearing on 30 June 1998,

after hearing the Opinion of the Advocate General at the sitting on 4 March 1999,

gives the following

Judgment

- 1 By order of 21 March 1997, received at the Court on 25 March 1997, the Vaasan Hovioikeus (Court of Appeal, Vaasa) referred to the Court for a preliminary ruling under Article 177 of the EC Treaty (now Article 234 EC) three questions on the interpretation of the Court's judgment of 24 March 1994 in Case C-275/92 *Schindler* [1994] ECR I-1039 and of Articles 30, 36, 56 and 59 of the EC Treaty (now, after amendment, Articles 28 EC, 30 EC, 46 EC and 49 EC) and Article 60 of the EC Treaty (now Article 50 EC), with a view to determining whether national legislation reserving to a public body the right to run the operation of slot machines on the territory of the Member State concerned is compatible with those provisions.

- 2 Those questions were raised in proceedings between Mr Läärä, Oy Transatlantic Software Ltd, a company incorporated under Finnish law ('TAS'), and Cotswold Microsystems Ltd, a company incorporated under English law ('CMS'), appellants in the main proceedings, and Kihlakunnansyyttäjä (Jyväskylä) (Jyväskylä District Prosecutor) and Suomen Valtio (the Finnish State) concerning the operation of slot machines in Finland.

The national rules

- 3 In Finland, under Article 1(1) of the Arpajaislaki (1.9.1965/491) (Law No 491 of 1 September 1965 on gaming, in the version thereof in force at the material time), games of chance may be organised, with the authorisation of the administrative authorities, only for the purpose of collecting funds for charity or for another non-profit-making purpose provided for by law. According to Article 1(2) of the Arpajaislaki, games of chance, within the meaning of that law, include in particular casino activities, slot machines and other gaming machines or games in which, in exchange for a sum of money, the player may receive a cash prize, goods or other benefits of money's worth, or tokens to be exchanged for money, goods or benefits.
- 4 Article 3 of the Arpajaislaki provides, *inter alia*, for the issue by the administrative authorities to a public-law body of a licence for the operation, in return for remuneration, of slot machines and other gaming machines or for the carrying-on of casino activities, with a view to the collection of funds for various public interest initiatives as listed by that provision. Only one licence, valid for a specified period, may be issued to cover those activities.
- 5 Such a licence was issued to the Raha-automaattiyhdistys (Association for the Management of Slot Machines, hereinafter 'the RAY'), pursuant to Article 1(3) of the Raha-automaattiasetus (29.12.1967/676) (Regulation No 676 of 29 December 1967 on slot machines, in the version thereof in force at the material time).

According to Article 6 of that regulation, the RAY is entitled, with a view to achieving its object of collecting funds to meet the needs referred to in Article 3 of the Arpajaislaki, in return for remuneration, to operate slot machines and to carry on casino activities, and also to manufacture and sell slot machines and amusement machines. Article 29 et seq. of that regulation lays down the conditions under which the net proceeds of the RAY's activities, the amount of which appears in the State budget, are to be paid over to the Ministry of Social Affairs and Health and then distributed amongst the organisations and foundations established to meet the aforesaid needs.

- 6 Under Article 6(1) of the Arpajaislaki, a person who without a licence organises games of chance for which a licence is required is liable to the imposition of a fine or a term of up to six months' imprisonment. In addition, according to Article 16(2) of Part 2 of the Rikoslaki (13.05.1932/143) (Finnish Criminal Law, in the version thereof resulting from Law No 143 of 13 May 1932), any device belonging to an offender or to a person on whose behalf or for whose benefit he has acted and which has been used in the commission of the offence or has been made or obtained solely for that purpose may be confiscated.

The main proceedings

- 7 It is apparent from the order for reference that CMS entrusted TAS, of which Mr Läärä is the chairman, with the running in Finland of slot machines known as 'AWP' machines, of the Golden Shot type, which, in terms of the contract between the two companies, remain the property of CMS. These machines contain rotating rollers bearing symbols which represent fruit. When the rollers stop turning, either by themselves or by the operation of a handle by the player, and the sequence formed by the symbols corresponds to one of the winning combinations, the machine delivers to the player winnings amounting to a maximum of FIM 200 (for a stake of between FIM 1 and FIM 5).
- 8 Criminal proceedings were brought against Mr Läärä, in his capacity as the chief executive of TAS, before the Jyväskylän Käräjäoikeus (Jyväskylä Court of First

Instance) on a charge of having operated these machines in Finland without a licence. Supported by TAS and CMS, who were joined in the proceedings, he denied the offence with which he was charged, on the ground, in particular, that the prospects of winning offered by Golden Shot machines was not based exclusively on chance but also, to a large extent, on the skill of the player, with the result that those machines could not be regarded as gaming machines, and that the Finnish legislation was contrary to the Community rules governing the free movement of goods and services. The Käräjäoikeus, rejecting his arguments, sentenced him to a fine and ordered the confiscation of the machines.

- 9 On appeal against that judgment by the parties concerned to the Vaasan Hovioikeus, that court decided to stay proceedings and to refer the following questions to the Court for a preliminary ruling:

‘(1) Is the judgment of the Court of Justice of 24 March 1994 in Case C-275/92 *Her Majesty’s Customs and Excise v Gerhart Schindler and Jörg Schindler* to be interpreted in such a way that it may be regarded as analogous to the present case (compare the judgment of 6 October 1982 in Case 283/81 *Srl CILFIT and Lanificio di Gavardo SpA v Ministry of Health*), and that the provisions of the EC Treaty should be interpreted in the present case in the same way as in the aforesaid case?

If the answer to the first question is wholly or partly in the negative:

(2) Do the provisions of the EC Treaty on the free movement of goods and services (Articles 30, 59 and 60) also apply to gaming machines of the type in issue here?

(3) If the answer to the second question is in the affirmative:

- (a) do Articles 30, 59 or 60 or any other article of the EC Treaty preclude Finland from restricting the right to manage slot machines to the monopoly operated by the Raha-automaattiyhdistys (Public-Law Association for the Management of Slot Machines), irrespective of whether the restriction applies under that Law to domestic and foreign organisers of gaming alike, and
- (b) can that restriction be justified, having regard to the reasons set out in the Law on games of chance or the measures implementing that Law, or on any other grounds, by the principles contained in Articles 36 or 56 or any other article of the EC Treaty; in addition, is the answer to that question affected by the amount of the winnings which may be obtained from the machines and by the question whether the opportunity of winning is based on chance or on the player's skill?
- 10 By those three questions, which should be examined together, the national court is asking whether, in the light of the judgment in *Schindler*, Articles 30, 59 and 60 of the Treaty are to be interpreted as not precluding national legislation such as that in force in Finland, which grants to a single public body exclusive rights to exploit the operation of slot machines, in view of the public interest grounds relied on in order to justify it.
- 11 Mr Läärä, TAS and CMS maintain that operating the slot machines at issue in the main proceedings is quite different — on account, in particular, of the modest size of the stakes and prizes and their ultimate purpose, namely to provide amusement based on the skill of the player — from the organisation of large-scale lotteries with which the judgment in *Schindler* was concerned. In their view, the exclusive right conferred on the RAY is contrary to the provisions of the Treaty regarding the free movement of goods and services and competition, principally because the public interest objectives relied on to justify it are not pursued in practice and could be attained by less restrictive measures, such as regulations imposing the necessary code of conduct on operators.

- 12 The Finnish, Belgian, German, Spanish, Irish, Luxembourg, Netherlands, Austrian, Portuguese, Swedish and United Kingdom Governments and the Commission consider, by contrast, that the provisions of the Treaty do not preclude legislation such as the Finnish legislation, granting exclusive rights to run the operation of slot machines, since it is justified by considerations analogous to those accepted by the Court in *Schindler*. In the view of all those Governments, the games at issue in the main proceedings, which offer, in return for payment, the opportunity of winning cash prizes, constitute a form of gambling comparable to lotteries, in relation to which the Court has accepted that it is for the Member States, having regard to their specific social and cultural characteristics, to assess whether it is necessary to restrict or even prohibit the activities concerned in order to maintain order in society.
- 13 In paragraph 60 of the *Schindler* judgment, the Court drew attention to the moral, religious and cultural considerations which attach to lotteries, like other forms of gambling, in all the Member States. The general tendency of the national legislation is to restrict, or even prohibit, the practice of gambling and to prevent it from being a source of private profit. The Court also held that lotteries involve a high risk of crime or fraud, given the potentially high stakes and winnings, particularly when they are operated on a large scale. Furthermore, they are an incitement to spend which may have damaging individual and social consequences. A final ground which, according to the Court, is not without relevance, although it cannot in itself be regarded as an objective justification, is that lotteries may make a significant contribution to the financing of benevolent or public interest activities such as social works, charitable works, sport or culture.
- 14 As is apparent from paragraph 61 of the judgment in *Schindler*, the Court held that those particular factors justify national authorities having a sufficient degree of latitude to determine what is required to protect the players and, more generally, in the light of the specific social and cultural features of each Member State, to maintain order in society, as regards the manner in which lotteries are operated, the size of the stakes, and the allocation of the profits they yield. In

those circumstances, it is for them to assess not only whether it is necessary to restrict the activities of lotteries but also whether they should be prohibited, provided that those restrictions are not discriminatory.

- 15 Although the judgment in *Schindler* relates to the organisation of lotteries, those considerations are equally applicable — as is apparent, moreover, from the very wording of paragraph 60 of that judgment — to other comparable forms of gambling.
- 16 It is true that, in its judgment in Case C-368/95 *Familiapress v Bauer Verlag* [1997] ECR I-3689, the Court declined to equate certain games with lotteries of the type considered in *Schindler*. However, that case concerned competitions published in magazines in the form of crosswords or puzzles, giving readers who had sent in the correct solutions the chance of being entered in a draw from which a number of them were selected as prize-winners. As the Court noted, particularly in paragraph 23 of that judgment, such games, organised only on a small scale and for insignificant stakes, do not constitute an economic activity in their own right but are merely one aspect of the editorial content of a magazine.
- 17 In the present case, by contrast, it is apparent from the information supplied by the national court that a game of chance is involved and that the machines at issue in the main proceedings offer, in return for a payment specifically intended to represent consideration for their use, the prospect of winning a sum of money. As has been pointed out by the majority of the governments intervening in the present proceedings, the relatively modest size of the stakes and prizes, on which the appellants in the main proceedings base their case, does not in any way preclude the possibility of earning considerable sums from the operation of such machines, particularly on account of the number of potential players and the tendency amongst most of them, given its short duration and its repetitive nature, to play the game over and over again.
- 18 In those circumstances, games consisting of the use, in return for a money payment, of slot machines such as those at issue in the main proceedings must be regarded as gambling which is comparable to the lotteries forming the subject of the *Schindler* judgment.

19 However, the present case differs from *Schindler* in a number of respects.

20 First of all, the lotteries at issue in *Schindler* are not activities relating to 'goods', falling, as such, under Article 30 of the Treaty; instead, they must be regarded as 'services' within the meaning of the EC Treaty (judgment in *Schindler*, paragraphs 24 and 25). Slot machines, by contrast, constitute goods in themselves which may be covered by Article 30 of the Treaty.

21 Next, whereas the national legislation at issue in *Schindler* prohibits the holding of lotteries on the territory of the Member State concerned, subject to certain exceptions laid down therein, the legislation at issue in the present case does not prohibit the use of slot machines but reserves the running of such machines to a public body holding a licence issued by the administrative authorities ('the licensed public body').

22 Finally, as has been pointed out in certain of the observations submitted to the Court, other provisions of the Treaty, such as those relating to the right of establishment or the competition rules, may be applicable to legislation of the kind at issue in the main proceedings.

23 As regards the latter point, however, since the national court has merely added to the reference to Articles 30, 36, 59 and 60 of the Treaty in its third question the words 'or any other article of the... Treaty', without providing any further details in that regard, either in the reasoning or in the operative part of its order, the Court is unable to rule on the question whether any provisions of the Treaty other than those relating to the free movement of goods and services preclude national legislation of the type at issue in the main proceedings.

- 24 First of all, as stated in paragraph 20 of this judgment, the provisions of the Treaty relating to the free movement of goods may be applicable to slot machines, which constitute goods capable of being imported or exported. It is true that such machines are intended to be made available to the public for use in return for payment. However, as the Advocate General has stated in point 19 of his Opinion, the fact that an imported item is intended for the supply of a service does not in itself mean that it falls outside the rules regarding freedom of movement (see, to that effect, Case C-158/94 *Commission v Italy* [1997] ECR I-5789, paragraphs 15 to 20).
- 25 It should be noted in that regard that national legislation of the kind at issue in the main proceedings may hinder the free movement of goods, inasmuch as the licensed public body is, in law, the only possible operator of slot machines intended to be used in return for payment, and has the right to manufacture such machines itself.
- 26 However, in the absence of adequate detailed information concerning the practical effect which the legislation in issue has on the importation of slot machines, the Court is unable, in the present proceedings, to rule on the question whether Article 30 of the Treaty precludes its application.
- 27 Second, as the Court held in *Schindler* in relation to the organisation of lotteries, the provisions of the Treaty relating to freedom to provide services apply to activities which enable users, in return for payment, to participate in gaming. Consequently, such activities fall within the scope of Article 59 of the Treaty, since at least one of the service providers is established in a Member State other than that in which the service is offered.
- 28 As the referring court points out, national legislation on slot machines such as the Finnish legislation prohibits any person other than the licensed public body from running the operation of the machines in question; it therefore involves no

discrimination on grounds of nationality and applies without distinction to operators who might be interested in that activity, whether they are established in Finland or in another Member State.

29 However, such legislation constitutes an impediment to freedom to provide services in that it directly or indirectly prevents operators in other Member States from themselves making slot machines available to the public with a view to their use in return for payment.

30 It is therefore necessary to examine whether that obstacle to freedom to provide services can be permitted pursuant to the derogations expressly provided for by the Treaty, or whether it may be justified, in accordance with the Court's case-law, by overriding reasons relating to the public interest.

31 In that regard, Articles 55 (now Article 45 EC) and 56 of the EC Treaty, which are applicable pursuant to Article 66 of the EC Treaty (now Article 55 EC), permit restrictions which are justified by virtue of a connection, even on an occasional basis, with the exercise of official authority or on grounds of public policy, public security or public health. Furthermore, it is clear from the Court's case-law (see, to that effect, Case C-288/89 *Collectieve Antennevoorziening Gouda* [1991] ECR I-4007, paragraphs 13 to 15) that obstacles to freedom to provide services arising from national measures which are applicable without distinction are permissible only if those measures are justified by overriding reasons relating to the public interest, are such as to guarantee the achievement of the intended aim and do not go beyond what is necessary in order to achieve it.

32 According to the information contained in the order for reference and in the observations of the Finnish Government, the legislation at issue in the main proceedings responds to the concern to limit exploitation of the human passion for gambling, to avoid the risk of crime and fraud to which the activities concerned give rise and to authorise those activities only with a view to the collection of funds for charity or for other benevolent purposes.

- 33 As the Court acknowledged in paragraph 58 of the *Schindler* judgment, those considerations must be taken together. They concern the protection of the recipients of the service and, more generally, of consumers, as well as the maintenance of order in society. The Court has already held that those objectives are amongst those which may be regarded as overriding reasons relating to the public interest (see Joined Cases 110/78 and 111/78 *Ministère Public v Van Wesemael* [1979] ECR 35, paragraph 28; Case 220/83 *Commission v France* [1986] ECR 3663, paragraph 20; and Case 15/78 *Société Générale Alsacienne de Banque v Koestler* [1978] ECR 1971, paragraph 5). However, it is still necessary, as stated in paragraph 31 of this judgment, that measures based on such grounds guarantee the achievement of the intended aims and do not go beyond that which is necessary in order to achieve them.
- 34 As noted in paragraph 21 of this judgment, the Finnish legislation differs in particular from the legislation at issue in *Schindler* in that it does not prohibit the use of slot machines but reserves the running of them to a licensed public body.
- 35 However, the power to determine the extent of the protection to be afforded by a Member State on its territory with regard to lotteries and other forms of gambling forms part of the national authorities' power of assessment, recognised by the Court in paragraph 61 of the *Schindler* judgment. It is for those authorities to assess whether it is necessary, in the context of the aim pursued, totally or partially to prohibit activities of that kind or merely to restrict them and, to that end, to establish control mechanisms, which may be more or less strict.
- 36 In those circumstances, the mere fact that a Member State has opted for a system of protection which differs from that adopted by another Member State cannot affect the assessment of the need for, and proportionality of, the provisions enacted to that end. Those provisions must be assessed solely by reference to the objectives pursued by the national authorities of the Member State concerned and the level of protection which they are intended to provide.

- 37 Contrary to the arguments advanced by the appellants in the main proceedings, the fact that the games in issue are not totally prohibited is not enough to show that the national legislation is not in reality intended to achieve the public interest objectives at which it is purportedly aimed, which must be considered as a whole. Limited authorisation of such games on an exclusive basis, which has the advantage of confining the desire to gamble and the exploitation of gambling within controlled channels, of preventing the risk of fraud or crime in the context of such exploitation, and of using the resulting profits for public interest purposes, likewise falls within the ambit of those objectives.
- 38 The position is not affected by the fact that the various establishments in which the slot machines are installed receive from the licensed public body a proportion of the takings.
- 39 The question whether, in order to achieve those objectives, it would be preferable, rather than granting an exclusive operating right to the licensed public body, to adopt regulations imposing the necessary code of conduct on the operators concerned is a matter to be assessed by the Member States, subject however to the proviso that the choice made in that regard must not be disproportionate to the aim pursued.
- 40 On that point, it is apparent, particularly from the rules on slot machines, that the RAY, which is the sole body holding a licence to run the operation of those machines, is a public-law association the activities of which are carried on under the control of the State and which is required, as noted in paragraph 5 of this judgment, to pay over to the State the amount of the net distributable proceeds received from the operation of the slot machines.
- 41 It is true that the sums thus received by the State for public interest purposes could equally be obtained by other means, such as taxation of the activities of the various operators authorised to pursue them within the framework of rules of a non-exclusive nature; however, the obligation imposed on the licensed public body, requiring it to pay over the proceeds of its operations, constitutes a measure

which, given the risk of crime and fraud, is certainly more effective in ensuring that strict limits are set to the lucrative nature of such activities.

- 42 In those circumstances, in conferring exclusive rights on a single public body, the provisions of the Finnish legislation on the operation of slot machines do not appear to be disproportionate, in so far as they affect freedom to provide services, to the objectives they pursue.
- 43 Accordingly, the answer to be given to the national court must be that the Treaty provisions relating to freedom to provide services do not preclude national legislation such as the Finnish legislation which grants to a single public body exclusive rights to operate slot machines, in view of the public interest objectives which justify it.

Costs

- 44 The costs incurred by the Finnish, Belgian, German, Spanish, Irish, Luxembourg, Netherlands, Austrian, Portuguese, Swedish and United Kingdom Governments and by the Commission, which have submitted observations to the Court, are not recoverable. Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national court, the decision on costs is a matter for that court.

On those grounds,

THE COURT,

in answer to the questions referred to it by the Vaasan Hovioikeus by order of 21 March 1997, hereby rules:

The Treaty provisions relating to freedom to provide services do not preclude national legislation such as the Finnish legislation which grants to a single public body exclusive rights to operate slot machines, in view of the public interest objectives which justify it.

Kapteyn	Puissochet	Jann
Gulmann	Murray	Edward
Ragnemalm	Sevón	Wathelet

Delivered in open court in Luxembourg on 21 September 1999.

R. Grass

Registrar

G.C. Rodríguez Iglesias

President