

Case C-36/02

Omega Spielhallen- und Automatenaufstellungs-GmbH

v

Oberbürgermeisterin der Bundesstadt Bonn

(Reference for a preliminary ruling
from the Bundesverwaltungsgericht)

(Freedom to provide services — Free movement of goods — Restrictions — Public
policy — Human dignity — Protection of fundamental values laid down by the
national constitution — ‘Playing at killing’)

Opinion of Advocate General Stix-Hackl delivered on 18 March 2004 . . . I - 9611

Judgment of the Court (First Chamber), 14 October 2004 I - 9641

Summary of the Judgment

1. *Freedom to provide services — Restrictions — Justification on grounds of public policy — Need for and proportionality of the measures — Existence of different systems of protection in other Member States — Not relevant*
(Arts 46 EC and 49 EC)

2. *Freedom to provide services — Restrictions — National legislation prohibiting the commercial exploitation of games simulating acts of homicide — Justification — Protection of public policy — Respect for human dignity as a general principle of law*
(Arts 46 EC and 49 EC)

1. Whilst measures which restrict the freedom to provide services may be justified on public policy grounds only if they are necessary for the protection of the interests which they are intended to guarantee and only in so far as those objectives cannot be attained by less restrictive measures, it is not indispensable in that respect for the restrictive measure issued by the authorities of a Member State to correspond to a conception shared by all Member States as regards the precise way in which the fundamental right or legitimate interest in question is to be protected. Thus the need for, and proportionality of, the provisions adopted are not excluded merely because one Member State has chosen a system of protection different from that adopted by another State.

(see paras 36-38)

2. Community law does not preclude an economic activity consisting of the commercial exploitation of games simulating acts of homicide from being made subject to a national prohibition mea-

sure adopted on grounds of protecting public policy by reason of the fact that that activity is an affront to human dignity.

That measure cannot be regarded as one imposing an unjustified restriction on the freedom to provide services. In the first place, the protection of fundamental rights, it being stated that the Community legal order undeniably strives to ensure respect for human dignity as a general principle of law, constitutes a legitimate interest capable in principle of justifying a restriction on the obligations imposed by Community law, even by virtue of a fundamental freedom guaranteed by the Treaty such as the freedom to provide services. Secondly, the measure in question corresponds to the level of protection of human dignity which the national constitution intended to ensure in the territory of the Member State concerned and does not go beyond what is necessary to achieve the objective pursued.

(see paras 34, 35, 39-41, operative part)