

UNIBET

JUDGMENT OF THE COURT (Grand Chamber)

13 March 2007\*

In Case C-432/05,

REFERENCE for a preliminary ruling under Article 234 EC from the Högsta domstolen (Sweden), made by decision of 24 November 2005, received at the Court on 5 December 2005, in the proceedings

**Unibet (London) Ltd,**

**Unibet (International) Ltd**

v

**Justitiekanslern,**

\* Language of the case: Swedish.

THE COURT (Grand Chamber),

composed of V. Skouris, President, C.W.A. Timmermans, A. Rosas, K. Lenaerts (Rapporteur), R. Schintgen, P. Küris and E. Juhász, Presidents of Chambers, J. Makarczyk, G. Arestis, U. Lõhmus, E. Levits, A. Ó Caoimh and L. Bay Larsen, Judges,

Advocate General: E. Sharpston,

Registrar: J. Swedenborg, Administrator,

having regard to the written procedure and further to the hearing on 3 October 2006,

after considering the observations submitted on behalf of:

— Unibet (London) Ltd and Unibet (International) Ltd, by H. Bergman and O. Wiklund, advokater,

— the Swedish Government, by K. Wistrand, acting as Agent,

- the Belgian Government, by A. Hubert, S. Verhulst and P. Vlaemminck, advocaten,
  
- the Czech Government, by T. Boček, acting as Agent,
  
- the German Government, by M. Lumma and A. Dittrich, acting as Agents,
  
- the Greek Government, by A. Samoni-Rantou and K. Boskovits, acting as Agents,
  
- the Italian Government, by I.M. Braguglia, acting as Agent, and F. Sclafani, avvocato dello Stato,
  
- the Netherlands Government, by H.G. Sevenster and C. ten Dam, acting as Agents,
  
- the Austrian Government, by H. Dossi, acting as Agent,

- the Portuguese Government, by L. Fernandes and J. de Oliveira, acting as Agents,
  
- the Finnish Government, by E. Bygglin, acting as Agent,
  
- the United Kingdom Government, by C. White and, subsequently, by Z. Bryanston-Cross, acting as Agents, and T. Ward, Barrister,
  
- the Commission of the European Communities, by E. Traversa and K. Simonsson, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 30 November 2006,

gives the following

### **Judgment**

- 1 The reference for a preliminary ruling concerns the interpretation of the principle of effective judicial protection of an individual's rights under Community law.

- 2 This reference was made in proceedings between Unibet (London) Ltd, Unibet (International) Ltd (taken together, 'Unibet') and the Justitiekanslern (Office of the Chancellor of Justice) concerning the application of the Swedish Law on Lotteries and games of chance (Lotterilagen SFS 1994 No 1000) ('the Law on Lotteries').

## **National legal background**

### *Rules of procedure*

- 3 It is apparent from the order for reference that judicial review of the conformity of national legislative or regulatory provisions with higher-ranking legal rules is governed by Chapter 11, Section 14, of the Swedish Constitution (Regeringsformen). Under that section, where a court considers that a national provision conflicts with a rule of constitutional law or other higher-ranking rule, that provision may not be applied. However, if that provision was adopted by the Swedish Parliament or Government, it is to be disapplied only if the non-conformity is manifest. That condition does not apply, however, where the question of conformity arises in relation to a rule of Community law.
- 4 According to the Högsta domstolen (Supreme Court) (Sweden), Swedish law does not provide for a self-standing application for a declaration that a measure adopted

by the Parliament or the Government conflicts with a higher-ranking legal rule, such a review being possible only by way of a preliminary issue in proceedings brought before the ordinary courts or the administrative courts.

- 5 Under Chapter 13, Section 1, of the Swedish Code of Judicial Procedure (Rättegångsbalken, 'the Code of Judicial Procedure'), which governs proceedings before the ordinary courts, an action may be brought for damages. Such an action may result in an enforceable judgment ordering the defendant to pay damages to the applicant.
  
- 6 Under the first subparagraph of Section 2 of Chapter 13 of the Code of Judicial Procedure, an action may be brought to determine whether a legal relationship exists between the defendant and the applicant where such a relationship exposes the latter to detriment. Under the second subparagraph of that section, the application may be considered if it relates to whether such a relationship exists. The result of such an action can only be a declaratory judgment stating, where appropriate, that there is a legal relationship between the parties, such as an obligation to pay damages to the applicant.
  
- 7 In that situation, the court seised may have cause to determine as a preliminary issue the compatibility of a relevant legislative provision with a higher-ranking rule and, where appropriate, that provision must be disapplied.

- 8 Chapter 15 of the Code of Judicial Procedure governs the grant of interim relief in civil actions. Section 3 of that chapter provides that it is possible to order interim relief in favour of the applicant in order to safeguard that party's rights. Under that provision, if the applicant demonstrates that he has probable cause to believe that he has a claim against another that is or can be made the basis of an action, and that other party may, by performing or failing to perform an action, adversely affect the applicant's rights, the competent court may order measures, such as a prohibition or an order, coupled, where appropriate, with financial penalties, against that other party.
  
- 9 Section 7 of Chapter 15 requires the applicant in favour of whom interim relief has been ordered, inter alia under Section 3 of that chapter, to bring a substantive action before the competent court in the month following the grant of that relief so that, according to the referring court, those measures may provide only interim protection of the rights which the applicant claims by ensuring that those rights are respected pending delivery of the judgment in the substantive action.

### *The Law on Lotteries*

- 10 Under the Law on Lotteries, lotteries for the general public and, more generally, all activities relating to games in which the possibility of gain is based on chance, such as betting, bingo games, slot machines and roulette machines, require an administrative licence issued by the competent authorities at local or national level.
  
- 11 A decision rejecting an application for authorisation to organise such activities may be challenged before the lower administrative courts or, where such a decision is

made by the Government, before the Regeringsrätten (Supreme Administrative Court) (Sweden). In that situation, those courts may have cause to determine as a preliminary issue whether the relevant legislative provision is compatible with Community law, and, where appropriate, that provision must be disapplied.

- 12 Under Section 38 of the Law on Lotteries, it is not permitted, in commercial operations or otherwise for gain, to promote participation in unlawful lotteries organised domestically or in lotteries organised abroad.
- 13 Under Section 52 of that law, that prohibition may be enforced by the issue of an order, the breach of which may be subject to an administrative fine. Administrative measures taken on that basis by the competent authorities may be challenged before the administrative courts, which may order suspension of the operation of those measures and have cause to determine as a preliminary issue whether a relevant legislative provision is compatible with Community law and, where appropriate, that provision must be disapplied.
- 14 An application may be made to the Government or the designated authority for an exception to the prohibition on promotion in Section 38 of the Law on Lotteries. Under the Lagen om rättsprövning av vissa förvaltningsbeslut (Law on judicial review of certain administrative decisions, SFS 1988, No 205), a decision rejecting such an application may be subject to judicial review by the Regeringsrätten, which may have cause to determine, as a preliminary issue, whether a relevant legislative provision is compatible with Community law and, where appropriate, that provision must be disapplied.



- 15 Under Section 54 of the Law on Lotteries, promotion of participation in a lottery organised abroad is liable to the imposition of a fine and six months' imprisonment if the promotion specifically targets those resident in Sweden.
- 16 In criminal proceedings instigated on that basis by the competent authorities, the Tingsrätt (District Court) (Sweden) may have cause, as a preliminary issue, to determine whether a relevant legislative provision is compatible with Community law and, where appropriate, that provision must be disapplied.

**The dispute in the main proceedings and the questions referred for a preliminary ruling**

- 17 According to the documents in the case-file, in November 2003, Unibet purchased advertising space in a number of different Swedish media with a view to promoting its gaming services on the internet. In accordance with the Law on Lotteries, the Swedish State took a number of measures, including obtaining injunctions and commencing criminal proceedings, against those media which had agreed to provide Unibet with advertising space.
- 18 No administrative action or criminal proceedings were brought against Unibet, which, on 1 December 2003, brought an action against the Swedish State in the Tingsrätt seeking, firstly, a declaration that it has the right, pursuant to Article 49

EC, to promote its gaming and betting services in Sweden and is not prevented from doing so by the prohibition under Section 38 of the Law on Lotteries ('the application for a declaration'), secondly, compensation for the damage suffered as a result of that prohibition on promotion ('the claim for damages') and, thirdly, a declaration that the prohibition and the measures and sanctions for breach thereof did not apply to it ('the first application for interim relief').

19 The application for a declaration was dismissed by decision of 2 July 2004 of the Tingsrätt. That court considered that it did not follow from the arguments put forward in support of that application that there was a specific legal relationship between Unibet and the Swedish State and that that application sought an abstract review of a legislative provision, whereas such an action is inadmissible under Swedish law. The Tingsrätt did not give a ruling on the claim for damages or on the first application for interim relief.

20 In response to an appeal lodged by Unibet, the application for a declaration and the first application for interim relief were also dismissed by judgment of the Hovrätt (Court of Appeal) (Sweden) on 8 October 2004. That court considered that the application constituted an action for a declaration, which is inadmissible under Swedish law, and that it does not follow from the case-law of the Court of Justice that the principle of judicial protection requires that an abstract review of a legislative provision should be possible where there is no provision for such an action under national law. That court also considered that the question whether the prohibition on promotion under Section 38 of the Law on Lotteries is consistent with Community law would be determined when the claim for damages was considered by the Tingsrätt.

21 The Hovrätt also considered that if Unibet were to exercise the rights it claims and promote its services in Sweden, the compatibility of that prohibition with

Community law could be examined by the court seised in the context of a direct action against administrative measures or in criminal proceedings.

- 22 The Hovrätt thus found that Unibet's application for a declaration could not be regarded as admissible under Community law and that it was unnecessary to address the first application for interim relief.
- 23 In its first appeal to the Högsta domstolen against the judgment of the Hovrätt of 8 October 2004, Unibet asserted that its application for a declaration and its first application for interim relief were admissible under both Swedish law and Community law.
- 24 Shortly after the judgment delivered by the Hovrätt on 8 October 2004 dismissing its application for a declaration and its first application for interim relief, Unibet made a fresh application for interim relief to the Tingsrätt seeking to be permitted immediately, notwithstanding the prohibition on promotion under Section 38 of the Law on Lotteries, to promote its services pending the outcome of the substantive proceedings concerning its claim for damages and to mitigate the loss arising from that prohibition ('the second application for interim relief'). Unibet stated that that application was directly linked to the infringement of its rights under Community law and to its claim for damages in that it sought to bring to an end the loss arising as a result of that infringement.

- 25 By decision of 12 November 2004, the Tingsrätt dismissed that application, considering that its examination of the case had not demonstrated that Section 38 of the Law on Lotteries conflicts with Community law and that Unibet had also failed to establish that there were serious doubts as to whether the prohibition under that provision is compatible with Community law. The appeal lodged by Unibet against that decision was also dismissed by judgment of the Hovrätt on 26 January 2005.
- 26 In a second appeal to the Högsta domstolen, Unibet sought to have that judgment of the Hovrätt set aside and an order made for interim relief in accordance with its application at first instance.
- 27 With regard to the first appeal, the Högsta domstolen states that, under Swedish law, a self-standing application cannot be brought primarily for a declaration that a national provision conflicts with a higher-ranking legal rule. The Högsta domstolen entertains doubts in this regard concerning the requirements under Community law relating to the principle of judicial protection, whilst at the same time stating that Unibet could have the question whether the Law on Lotteries is compatible with Community law examined if it breached the provisions of that law and was subject to criminal proceedings or in an action for damages or, in the event of judicial review of an administrative decision rejecting, as the case may be, an application for a licence or for an exception brought under that law.
- 28 According to the Högsta domstolen, the first application for interim relief brought before the courts hearing the merits in connection with that appeal raises similar

questions since, under Swedish law, such an application cannot be admissible if the main claim is itself inadmissible.

29 With regard to the second appeal concerning the second application for interim relief, the Högsta domstolen considers that questions of Community law arise since Unibet maintains that that application is linked to its rights under Community law. Those questions essentially concern the criteria to be applied in granting such measures in the context of the action in the main proceedings.

30 In those circumstances, taking the view that an interpretation of Community law was necessary in order for it to reach a decision in the main action, the Högsta domstolen decided to stay the proceedings and to refer the following questions to the Court for a preliminary ruling:

(1) Is the requirement of Community law that national procedural rules must provide effective protection of an individual's rights under Community law to be interpreted as meaning that an action for a declaration that certain national substantive provisions conflict with Article 49 EC must be permitted to be brought in a case where the compatibility of the substantive provisions with that article may otherwise be examined only as a preliminary issue in, for example, an action for damages, proceedings concerning infringement of the national substantive provisions or judicial review proceedings?

(2) Does the requirement of effective legal protection under Community law mean that the national legal order must provide interim protection, through which

national rules which prevent the exercise of an alleged right based on Community law may be disapplied in relation to an individual so that he is able to exercise that right until the question of the existence of the right has been finally settled by a national court?

(3) If the answer to Question 2 is in the affirmative:

Does it follow from Community law that, where the compatibility of national provisions with Community law is being challenged, in its substantive examination of an application for interim protection of rights under Community law a national court must apply national provisions governing the conditions for interim protection, or in such a situation must the national court apply Community law criteria for interim protection?

(4) If the answer to Question 3 is that Community law criteria must be applied, what are those criteria?

### **The questions referred for a preliminary ruling**

#### *Preliminary considerations*

- <sup>31</sup> The Belgian Government's argument that the present reference for a preliminary ruling is inadmissible since there is no genuine dispute pending before the Högsta domstolen must be disregarded.

- 32 As the Advocate General observed at point 23 of her Opinion, there is a dispute requiring resolution before the Högsta domstolen in that Unibet brought an action before the Swedish courts for a declaration that Section 38 of the Law on Lotteries is incompatible with Article 49 EC so that it may lawfully promote its services in Sweden and obtain compensation for the damage it has suffered as a result of the prohibition under Section 38.
- 33 The question whether Unibet's action is admissible before the Swedish courts, which is the subject of the first question referred by the Högsta domstolen, is irrelevant for the purposes of determining whether the reference for a preliminary ruling is admissible.
- 34 The reference for a preliminary ruling is therefore admissible.
- 35 It follows that it is necessary to answer the questions asked by the Högsta domstolen in the light of the information provided by that court concerning the Swedish legal framework, as set out at paragraphs 3 to 16 above.

### *Question 1*

- 36 By its first question, the Högsta domstolen asks, in essence, whether the principle of effective judicial protection of an individual's rights under Community law must be interpreted as requiring it to be possible in the legal order of a Member State to

bring a free-standing action for an examination as to whether national provisions are compatible with Article 49 EC if other legal remedies permit the question of compatibility to be determined as a preliminary issue.

37 It is to be noted at the outset that, according to settled case-law, the principle of effective judicial protection is a general principle of Community law stemming from the constitutional traditions common to the Member States, which has been enshrined in Articles 6 and 13 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (Case 222/84 *Johnston* [1986] ECR 1651, paragraphs 18 and 19; Case 222/86 *Heylens and Others* [1987] ECR 4097, paragraph 14; Case C-424/99 *Commission v Austria* [2001] ECR I-9285, paragraph 45; Case C-50/00 P *Unión de Pequeños Agricultores v Council* [2002] ECR I-6677, paragraph 39; and Case C-467/01 *Eribrand* [2003] ECR I-6471, paragraph 61) and which has also been reaffirmed by Article 47 of the Charter of fundamental rights of the European Union, proclaimed on 7 December 2000 in Nice (OJ 2000 C 364, p. 1).

38 Under the principle of cooperation laid down in Article 10 EC, it is for the Member States to ensure judicial protection of an individual's rights under Community law (see, to that effect, Case 33/76 *Rewe* [1976] ECR 1989, paragraph 5; Case 45/76 *Comet* [1976] ECR 2043, paragraph 12; Case 106/77 *Simmenthal* [1978] ECR 629, paragraphs 21 and 22; Case C-213/89 *Factortame and Others* [1990] ECR I-2433, paragraph 19; and Case C-312/93 *Peterbroeck* [1995] ECR I-4599, paragraph 12).

39 It is also to be noted that, in the absence of Community rules governing the matter, it is for the domestic legal system of each Member State to designate the courts and



tribunals having jurisdiction and to lay down the detailed procedural rules governing actions for safeguarding rights which individuals derive from Community law (see, inter alia, *Rewe*, paragraph 5; *Comet*, paragraph 13; *Peterbroeck*, paragraph 12; Case C-453/99 *Courage and Crehan* [2001] ECR I-6297, paragraph 29; and Case C-13/01 *Safalero* [2003] ECR I-8679, paragraph 49).

- 40 Although the EC Treaty has made it possible in a number of instances for private persons to bring a direct action, where appropriate, before the Community Court, it was not intended to create new remedies in the national courts to ensure the observance of Community law other than those already laid down by national law (Case 158/80 *Rewe* [1981] ECR 1805, paragraph 44).
- 41 It would be otherwise only if it were apparent from the overall scheme of the national legal system in question that no legal remedy existed which made it possible to ensure, even indirectly, respect for an individual's rights under Community law (see, to that effect, Case 33/76 *Rewe*, paragraph 5; *Comet*, paragraph 16; and *Factortame and Others*, paragraphs 19 to 23).
- 42 Thus, while it is, in principle, for national law to determine an individual's standing and legal interest in bringing proceedings, Community law nevertheless requires that the national legislation does not undermine the right to effective judicial protection (see, inter alia, Joined Cases C-87/90 to C-89/90 *Verholen and Others* [1991] ECR I-3757, paragraph 24, and *Safalero*, paragraph 50). It is for the Member States to establish a system of legal remedies and procedures which ensure respect for that right (*Unión de Pequeños Agricultores v Council*, paragraph 41).

43 In that regard, the detailed procedural rules governing actions for safeguarding an individual's rights under Community law must be no less favourable than those governing similar domestic actions (principle of equivalence) and must not render practically impossible or excessively difficult the exercise of rights conferred by Community law (principle of effectiveness) (see, *inter alia*, Case 33/76 *Rewe*, paragraph 5; *Comet*, paragraphs 13 to 16; *Peterbroeck*, paragraph 12; *Courage and Crehan*, paragraph 29; *Eribrand*, paragraph 62; and *Safalero*, paragraph 49).

44 Moreover, it is for the national courts to interpret the procedural rules governing actions brought before them, such as the requirement for there to be a specific legal relationship between the applicant and the State, in such a way as to enable those rules, wherever possible, to be implemented in such a manner as to contribute to the attainment of the objective, referred to at paragraph 37 above, of ensuring effective judicial protection of an individual's rights under Community law.

45 It is in the light of those considerations that the answer must be given to the first question referred by the Högsta domstolen.

46 According to that court, Swedish law does not provide for a self-standing action which seeks primarily to dispute the compatibility of a national provision with higher-ranking legal rules.

- 47 In that regard, it is to be noted, as is apparent from the case-law referred to at paragraph 40 above and has been argued by all the governments which have submitted observations to the Court and by the Commission of the European Communities, that the principle of effective judicial protection does not require it to be possible, as such, to bring a free-standing action which seeks primarily to dispute the compatibility of national provisions with Community law, provided that the principles of equivalence and effectiveness are observed in the domestic system of judicial remedies.
- 48 Firstly, it is apparent from the order for reference that Swedish law does not provide for such a free-standing action, regardless of whether the higher-ranking legal rule to be complied with is a national rule or a Community rule.
- 49 However, with regard to those two categories of legal rules, Swedish law permits individuals to obtain an examination of that question of compatibility in proceedings before the ordinary courts or before the administrative courts by way of a preliminary issue.
- 50 It is also apparent from the order for reference that the court which is to determine that question is required to disapply the contested provision if it considers that it conflicts with a higher-ranking legal rule, regardless of whether it is a national or a Community rule.
- 51 In that examination, it is only where a provision adopted by the Swedish Parliament or Government is manifestly in conflict with a higher-ranking legal rule that such a

provision is to be disapplied. As is apparent from paragraph 3 above, that condition does not apply, on the other hand, where the higher-ranking rule in question is a rule of Community law.

52 Therefore, as was observed by all the governments which submitted observations and by the Commission, it is clear that the detailed procedural rules governing actions brought under Swedish law for safeguarding an individual's rights under Community law are no less favourable than the rules governing actions for safeguarding an individual's rights under national provisions.

53 It is necessary, secondly, to establish whether the effect of the indirect legal remedies provided for by Swedish law for disputing the compatibility of a national provision with Community law is to render practically impossible or excessively difficult the exercise of rights conferred by Community law.

54 In that regard, each case which raises the question whether a national procedural provision renders the application of Community law impossible or excessively difficult must be analysed by reference to the role of that provision in the procedure, its progress and its special features, viewed as a whole, before the various national instances (*Peterbroeck*, paragraph 14).

- 55 It is apparent from the order for reference that Swedish law does not prevent a person, such as Unibet, from disputing the compatibility of national legislation, such as the Law on Lotteries, with Community law but that, on the contrary, there exist various indirect legal remedies for that purpose.
- 56 Thus, firstly, the Högsta domstolen states that Unibet may obtain an examination of whether the Law on Lotteries is compatible with Community law in the context of a claim for damages before the ordinary courts.
- 57 It is also clear from the order for reference that Unibet brought such a claim and that the Högsta domstolen found it to be admissible.
- 58 Consequently, where an examination of the compatibility of the Law on Lotteries with Community law takes place in the context of the determination of a claim for damages, that action constitutes a remedy which enables Unibet to ensure effective protection of the rights conferred on it by Community law.
- 59 It is for the Högsta domstolen to ensure that the examination of the compatibility of that law with Community law takes place irrespective of the assessment of the merits of the case with regard to the requirements for damage and a causal link in the claim for damages.

60 Secondly, the Högsta domstolen adds that, if Unibet applied to the Swedish Government for an exception to the prohibition on the promotion of its services in Sweden, any decision rejecting that application could be the subject of judicial review proceedings before the Regeringsrätten, in which Unibet would be able to argue that the provisions of the Law on Lotteries are incompatible with Community law. Where appropriate, the competent court would be required to disapply the provisions of that law that were considered to be in conflict with Community law.

61 It is to be noted that such judicial review proceedings, which would enable Unibet to obtain a judicial decision that those provisions are incompatible with Community law, constitute a legal remedy securing effective judicial protection of its rights under Community law (see, to that effect, *Heylens*, paragraph 14, and Case C-340/89 *Vlassopoulou* [1991] ECR I-2357, paragraph 22).

62 Moreover, the Högsta domstolen states that if Unibet disregarded the provisions of the Law on Lotteries and administrative action or criminal proceedings were brought against it by the competent national authorities, it would have the opportunity, in proceedings brought before the administrative court or an ordinary court, to dispute the compatibility of those provisions with Community law. Where appropriate, the competent court would be required to disapply the provisions of that law that were considered to be in conflict with Community law.

63 In addition to the remedies referred to at paragraphs 56 and 60 above, it would therefore be possible for Unibet to claim in court proceedings against the

administration or in criminal proceedings that measures taken or required to be taken against it were incompatible with Community law on account of the fact that it had not been permitted by the competent national authorities to promote its services in Sweden.

64 In any event, it is clear from paragraphs 56 to 61 above that Unibet must be regarded as having available to it legal remedies which ensure effective judicial protection of its rights under Community law. If, on the contrary, as mentioned at paragraph 62 above, it was forced to be subject to administrative or criminal proceedings and to any penalties that may result as the sole form of legal remedy for disputing the compatibility of the national provision at issue with Community law, that would not be sufficient to secure for it such effective judicial protection.

65 Accordingly, the answer to the first question must be that the principle of effective judicial protection of an individual's rights under Community law must be interpreted as meaning that it does not require the national legal order of a Member State to provide for a free-standing action for an examination of whether national provisions are compatible with Article 49 EC, provided that other effective legal remedies, which are no less favourable than those governing similar domestic actions, make it possible for such a question of compatibility to be determined as a preliminary issue, which is a matter for the national court to establish.

## *Question 2*

66 By its second question, the Högsta domstolen essentially asks whether the principle of effective judicial protection of an individual's rights under Community law

requires it to be possible in the legal order of a Member State to obtain interim relief suspending the application of national measures until the competent court has given a ruling on whether those measures are compatible with Community law.

<sup>67</sup> As a preliminary point, it must be pointed out that a court seised of a dispute governed by Community law must be in a position to grant interim relief in order to ensure the full effectiveness of the judgment to be given on the existence of the rights claimed under Community law (*Factortame and Others*, paragraph 21, and Case C-226/99 *Siples* [2001] ECR I-277, paragraph 19).

<sup>68</sup> Under the national law set out in the order for reference, the purpose of applications for such relief can only be to provide interim protection of the rights the applicant asserts in the substantive action, as is apparent from paragraph 9 above.

<sup>69</sup> In the action in the main proceedings, it is not disputed that Unibet made two applications for interim relief, the first in connection with an application for a declaration, and the second in connection with a claim for damages.



- 70 With regard to the first of those applications for interim relief, it is apparent from the order for reference that the application for a declaration was considered to be inadmissible, under national law, at first instance and on appeal. Whilst upholding that interpretation of national law, the Högsta domstolen none the less has doubts concerning the requirements of Community law in that regard, which led it to ask the first question referred for a preliminary ruling (see paragraphs 36 to 65 above).
- 71 According to the answer to the first question, the principle of effective judicial protection of an individual's rights under Community law does not require the national legal order of a Member State to provide for a free-standing action for an examination of whether national provisions are compatible with Community law, provided that other legal remedies make it possible for such an issue of compatibility to be determined as a preliminary issue, which is a matter for the national court to establish.
- 72 Where it is uncertain under national law, applied in accordance with the requirements of Community law, whether an action to safeguard respect for an individual's rights under Community law is admissible, the principle of effective judicial protection requires the national court to be able, none the less, at that stage, to grant the interim relief necessary to ensure those rights are respected.
- 73 However, the principle of effective judicial protection of an individual's rights under Community law does not require it to be possible in the legal order of a Member State to obtain interim relief from the competent national court in the context of an

application that is inadmissible under the law of that Member State, provided that Community law, as interpreted in accordance with paragraph 71 above, does not call into question that inadmissibility.

74 With regard to the application for interim relief made in connection with the claim for damages, it is apparent from the order for reference and from other documents in the case-file that that claim was considered to be admissible.

75 As the Advocate General stated at point 74 of her Opinion and as was noted at paragraph 67 above, the national court seised of a dispute governed by Community law must be able to grant interim relief in order to ensure the full effectiveness of the judgment to be given on the existence of the rights claimed under Community law.

76 Consequently, where the competent national court examines, in the context of the claim for damages, whether the Law on Lotteries is compatible with Community law, it must be able to grant the interim relief sought, provided that such relief is necessary, which it is a matter for the national court to determine, in order to ensure the full effectiveness of the judgment to be given on the existence of the rights claimed under Community law.

77 It follows from the foregoing that the answer to the second question must be that the principle of effective judicial protection of an individual's rights under

Community law must be interpreted as requiring it to be possible in the legal order of a Member State for interim relief to be granted until the competent court has given a ruling on whether national provisions are compatible with Community law, where the grant of such relief is necessary to ensure the full effectiveness of the judgment to be given on the existence of such rights.

### Question 3

78 By its third question, the Högsta domstolen asks essentially whether, having regard to the principle of effective judicial protection of an individual's rights under Community law, and where the compatibility of national provisions with Community law is being challenged, the grant of interim relief to suspend the application of such provisions, until the competent court has given a ruling on whether those provisions are compatible with Community law, is governed by the criteria laid down by the national law applicable before the competent court or by Community criteria.

79 It is clear from established case-law that the suspension of enforcement of a national provision based on a Community regulation in proceedings pending before a national court, whilst it is governed by national procedural law, is in all Member States subject to conditions which are uniform and analagous with the conditions for an application for interim relief brought before the Community Court (Joined Cases C-143/88 and C-92/89 *Zuckerfabrik Süderdithmarschen and Zuckerfabrik Soest* [1991] ECR I-415, paragraphs 26 and 27; Case C-465/93 *Atlanta Fruchthandelsgesellschaft* [1995] ECR I-3761, paragraph 39; and Joined Cases

C-453/03, C-11/04, C-12/04 and C-194/04 *ABNA and Others* [2005] ECR I-10423, paragraph 104). However, the case in the main proceedings is different from those giving rise to those judgments in that Unibet's application for interim relief does not seek to suspend the effects of a national provision adopted in accordance with a Community regulation where the legality of that regulation is contested, but rather the effects of national legislation where the compatibility of that legislation with Community law is contested.

80 Therefore, in the absence of Community rules governing the matter, it is for the domestic legal system of each Member State to determine the conditions under which interim relief is to be granted for safeguarding an individual's rights under Community law.

81 Accordingly, the grant of interim relief to suspend the application of national provisions until the competent court has given a ruling on whether those provisions are compatible with Community law is governed by the criteria laid down by the national law applicable before that court.

82 However, those criteria cannot be less favourable than those applying to similar domestic actions (principle of equivalence) and must not render practically impossible or excessively difficult the interim judicial protection of rights conferred by Community law (principle of effectiveness).

- 83 The answer to the third question must therefore be that the principle of effective judicial protection of an individual's rights under Community law must be interpreted as meaning that, where the compatibility of national provisions with Community law is being challenged, the grant of any interim relief to suspend the application of such provisions until the competent court has given a ruling on whether those provisions are compatible with Community law is governed by the criteria laid down by the national law applicable before that court, provided that those criteria are no less favourable than those applying to similar domestic actions and do not render practically impossible or excessively difficult the interim judicial protection of those rights.

#### *Question 4*

- 84 In the light of the answer given to the third question, there is no need to answer the fourth question.

#### **Costs**

- 85 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. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (Grand Chamber) hereby rules:

- 1. The principle of effective judicial protection of an individual's rights under Community law must be interpreted as meaning that it does not require the national legal order of a Member State to provide for a free-standing action for an examination of whether national provisions are compatible with Article 49 EC, provided that other effective legal remedies, which are no less favourable than those governing similar domestic actions, make it possible for such a question of compatibility to be determined as a preliminary issue, which is a matter for the national court to establish.**
  
- 2. The principle of effective judicial protection of an individual's rights under Community law must be interpreted as requiring it to be possible in the legal order of a Member State for interim relief to be granted until the competent court has given a ruling on whether national provisions are compatible with Community law, where the grant of such relief is necessary to ensure the full effectiveness of the judgment to be given on the existence of such rights.**
  
- 3. The principle of effective judicial protection of an individual's rights under Community law must be interpreted as meaning that, where the compatibility of national provisions with Community law is being challenged, the grant of any interim relief to suspend the application of such provisions until the competent court has given a ruling on whether those provisions are compatible with Community law is governed by the criteria laid down by the national law applicable before that court, provided that those criteria are no less favourable than those applying to similar domestic actions and do not render practically impossible or excessively difficult the interim judicial protection of those rights.**

[Signatures]