

Case C-124/97

Markku Juhani Läärä and Others
v
Kihlakunnansyyttäjä (Jyväskylä) and
Suomen valtio (Finnish State)

(Reference for a preliminary ruling
from the Vaasan Hovioikeus, Finland)

(Freedom to provide services — Exclusive operating rights — Slot machines)

Opinion of Advocate General La Pergola delivered on 4 March 1999 I-6069
Judgment of the Court, 21 September 1999 I-6104

Summary of the Judgment

Freedom to provide services — Restrictions — National legislation reserving the operation of slot machines to a public body — Justification — Consumer protection and maintenance of order in society
(EC Treaty, Art. 59 (now, after amendment, Art. 49 EC))

National legislation which grants to a single public body exclusive rights to operate slot machines in the national territory — and which thus 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 — constitutes an impediment to freedom to provide services, even if it applies without distinction.

However, in so far as such legislation involves no discrimination on grounds of nationality, that impediment may be justified on grounds relating to the protection of consumers and the maintenance of order in society. Although that legislation does not prohibit the use of slot machines but reserves the running of them to a licensed

public body, 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. It is for those authorities, therefore, 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. 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.