

Case C-219/07

Nationale Raad van Dierenkwekers en Liefhebbers VZW

and

Andibel VZW

v

Belgische Staat

(Reference for a preliminary ruling
from the Raad van State (Belgium))

(Article 30 EC — Regulation (EC) No 338/97 — Protection of species of wild fauna and flora — Prohibition on holding mammals of certain species referred to by that regulation or not covered by it — Holding permitted in other Member States)

Judgment of the Court (Third Chamber), 19 June 2008 I - 4477

Summary of the Judgment

*Free movement of goods — Quantitative restrictions — Measures having equivalent effect
(Arts 28 EC and 30 EC; Council Regulation No 338/97)*

Articles 28 EC and 30 EC, read separately or in conjunction with Regulation No 338/97 on the protection of species of wild fauna and flora by regulating trade therein, do not preclude national legislation under which a prohibition on importing, holding or trading in mammals belonging to species other than those expressly referred to in that legislation applies to species of mammals which are not included in Annex A to that regulation, if the protection of or compliance with the interests and requirements relating to the protection of animal welfare, the protection of the health and life of animals and the protection of the environment cannot be secured just as effectively by measures which obstruct intra-Community trade to a lesser extent.

It is for the national court to determine:

- whether applications to obtain the inclusion of a species of mammal in that list or to obtain individual derogations to hold specimens of species not included in that list may be refused by the competent administrative authorities only if the holding of specimens of the species concerned poses a genuine risk to the protection of the abovementioned interests and requirements; and
 - whether the drawing up of the national list of species of mammals which may be held and subsequent amendments to that list are based on objective and non-discriminatory criteria;
 - whether conditions for the holding of specimens of mammals not referred to in that list are objectively justified and do not go beyond what is necessary to achieve the objective pursued by the national legislation as a whole.
 - whether a procedure enabling interested parties to have species of mammals included in that list is provided for, readily accessible and can be completed within a reasonable time, and whether, where there is a refusal to include a species, it being obligatory to state the reasons for that refusal, that refusal decision is open to challenge before the courts;
 - whether a procedure enabling interested parties to have species of mammals included in that list is provided for, readily
- (see paras 27-29, 42, 43, operative part)