5. Is a gaming operator who has been granted a licence to operate certain gaming activities in a State and is supervised by the competent authority in that State entitled to market its gaming products in other Member States through, for example, advertisements in newspapers, without first applying for a licence from those States' competent authorities? If this question is answered in the affirmative, does this mean that a Member State's rules which are based on the imposition of criminal penalties on the promotion of participation in lotteries organised abroad constitute an obstacle to the freedom of establishment and the freedom to provide services which can never be accepted on the basis of overriding reasons in the general interest? Is it of any significance for the answer to the first question whether the Member State where the gaming operator is established invokes the same overriding reasons in the general interest as the State where the operator wishes to market its gaming activities?

Reference for a preliminary ruling from the Svea hovrätt (Sweden) lodged on 13 October 2008 — Anders Gerdin v Åklagaren

(Case C-448/08)

(2008/C 327/29)

Language of the case: Swedish

Referring court

Svea hovrätt

Parties to the main proceedings

Applicant: Anders Gerdin

Defendant: Åklagaren

Questions referred

1. May discrimination on grounds of nationality be accepted, under some circumstances, on national gaming and lottery markets on the basis of overriding reasons in the general interest?

2. If there are a number of objectives pursued by the restrictive policy adopted on a national gaming and lottery market and one of them is the financing of social activities, can the latter then be said to be an incidental beneficial consequence of the restrictive policy? If this question is answered in the negative, can the restrictive policy pursued still be acceptable if the objective of financing social activities cannot be said to be the principal objective of the restrictive policy?

3. Can the State rely on overriding reasons in the general interest as justification for a restrictive gaming policy if State-controlled companies market gaming and lotteries, the revenue from which accrues to the State, and one of several objectives of that marketing is the financing of social activities? If this question is answered in the negative, can the restrictive policy pursued still be acceptable if the financing of social activities is not found to be the principal objective of the marketing?

4. Can a total prohibition on the marketing of gaming and lotteries organised in another Member State by a gaming company established there and supervised by that Member State's authorities be proportionate to the objective of controlling and supervising gaming activity, when at the same time there are no restrictions on the marketing of gaming and lotteries organised by gaming companies established in the Member State which pursues the restrictive policy? What is the answer to the question if the objective of such an arrangement is to limit gaming?

5. Is a gaming operator who has been granted a licence to operate certain gaming activities in a State and is supervised by the competent authority in that State entitled to market its gaming products in other Member States through, for example, advertisements in newspapers, without first applying for a licence from those States' competent authorities? If this question is answered in the affirmative, does this mean that a Member State's rules which are based on the imposition of criminal penalties on the promotion of participation in lotteries organised abroad constitute an obstacle to the freedom of establishment and the freedom to provide services which can never be accepted on the basis of overriding reasons in the general interest? Is it of any significance for the answer to the first question whether the Member State where the gaming operator is established invokes the same overriding reasons in the general interest as the State where the operator wishes to market its gaming activities?

Reference for a preliminary ruling from the Simvoulio tis Epikratias (Greece) lodged on 17 October 2008 — Panagiotis I. Karanikolas, Valsamis Daravanis, Georgios Kouvoukliotis, Panagiotis Dolou, Dimitrios Z. Parisis, Konstantinos Emmanouil, Ioannis Anasoglou, Pantelis A. Beis, Dimitrios Khatziandreou, Ioannis A. Zaragkoulias, Triantafillos K. Mavrogiannis, Sotirios T. Liotakis, Vasilios Karampasis, Dimitrios Melissidis, Ioannis V. Kleovoulos, Dimitrios I. Patsakos, Theodoros Fournarakis, Dimitrios K. Dimitrakopoulos and Sinetairismos Paraktion Alieon Kavalas v Ipourgos Agrotikis Anaptixis kai Trofimon and Nomarkhiaki Aftodiikisi Dramas — Kavalas — Xanthis

(Case C-453/08)

(2008/C 327/30)

Language of the case: Greek

Referring court

Simvoulio tis Epikratias

Parties to the main proceedings

Claimants: Panagiotis I. Karanikolas, Valsamis Daravanis, Georgios Kouvoukliotis, Panagiotis Dolou, Dimitrios Z. Parisis, Konstantinos Emmanouil, Ioannis Anasoglou, Pantelis A. Beis, Dimitrios Khatziandreou, Ioannis A. Zaragkoulias, Triantafillos K. Mavrogiannis, Sotirios T. Liotakis, Vasilios Karampasis, Dimitrios Melissidis, Ioannis V. Kleovoulos, Dimitrios I. Patsakos, Theodoros Fournarakis, Dimitrios K. Dimitrakopoulos and Sinetairismos Paraktion Alieon Kavalas

Defendants: Ipourgos Agrotikis Anaptixis kai Trofimon and Nomarkhiaki Aftodiikisi Dramas — Kavalas — Xanthis

Interveners: Alieftikos Agrotikos Sinetairismos gri-gri nomou Kavalas 'Makedonia' and Panellinia Enosi Plioktiton Mesis Aliias (P.E.P.M.A.)

Questions referred

1. Is it permitted, for the purposes of Article 1(2) of Council Regulation No 1626/94, for a Member State to adopt supplementary measures consisting in the complete prohibition of the use of fishing gear whose use is in principle allowed under the provisions of that regulation?

2. Is it permitted, for the purposes of the provisions of that regulation, to use in the marine area of a Member State with a Mediterranean coastline fishing gear which is not included among the gear specified as being in principle prohibited in Article 2(3) and Article 3(1) and (1a) of the regulation and whose use was prohibited before the regulation entered into force by a national provision of the Member State?

Action brought on 21 October 2008 — Commission of the European Communities v Portuguese Republic

(Case C-458/08)

(2008/C 327/31)

Language of the case: Portuguese

Parties

Applicant: Commission of the European Communities (represented by: E. Traversa and P. Guerra e Andrade, Agents)

Defendant: Portuguese Republic

Form of order sought

— A declaration that the Portuguese Republic, by imposing in respect of the provision of building services in Portugal the same requirements as in respect of establishment, has failed to fulfil its obligations under Article 49 EC;

— an order that the Portuguese Republic should pay the costs.

Pleas in law and main arguments

The Portuguese law on access to construction activity and continued operation therein (Decree-Law No 12/2004) makes the exercise of construction activity in Portugal subject to a licence.

No undertaking, without exception, may carry on in Portugal building, rebuilding, extension, alteration, repair, conservation, cleaning, restoration or demolition work or, in general terms, any work whatsoever related to construction without prior authorisation issued by the Portuguese authorities.

The Portuguese competition legislation prohibiting undertakings, including Community undertakings, from providing construction services in Portugal without prior authorisation to enter the construction industry issued by the Portuguese authorities constitutes an infringement of Article 49 EC.

The requirements for access to the building industry, as laid down in the Portuguese legislation, are establishment requirements. The Portuguese legislation does not distinguish establishment from the provision of services of a temporary nature.

In order to provide services in Portugal undertakings established in another Member State are obliged to satisfy all the conditions necessary for establishment, which means in practice that there is no solution for those construction companies other than to establish themselves in Portugal. Such a requirement seriously restricts freedom to provide services.

The requirements in relation to continuing to operate also amount to restrictions of the freedom to provide services, for they make it impossible to provide construction services of a temporary nature.

The reasons given by the Portuguese State in order to justify the restrictions in question have not been substantiated and cannot be taken into consideration.

Action brought on 21 October 2008 — Commission of the European Communities v Hellenic Republic

(Case C-460/08)

(2008/C 327/32)

Language of the case: Greek

Parties

Applicant: Commission of the European Communities (represented by: G. Rozet and D. Triantafillou)

Defendant: Hellenic Republic