



Reports of Cases

Case C-98/14

Berlington Hungary Tanácsadó és Szolgáltató kft and Others
v
Magyar Állam (Hungarian State)

(Request for a preliminary ruling from the Fővárosi Törvényszék)

(Reference for a preliminary ruling — Freedom to provide services — Games of chance — National taxes on the operation of slot machines in amusement arcades — National legislation prohibiting the operation of slot machines outside casinos — Principles of legal certainty and of the protection of legitimate expectations — Directive 98/34/EC — Obligation to notify draft technical regulations to the Commission — Member State liability for damage caused by legislation contrary to EU law)

Summary — Judgment of the Court (First Chamber), 11 June 2015

1. *Questions referred for a preliminary ruling — Jurisdiction of the Court — Limits — Question raised concerning a dispute confined within a single Member State — Jurisdiction in the light of the possible posting of persons from other Member States*

(Art. 267 TFEU)

2. *Freedom to provide services — Restrictions — Betting and gaming — National legislation introducing a five-fold increase in the flat-rate tax to be paid on slot machines operated in amusement arcades and introducing a proportional tax on that activity — Absence of transitional period — Conditions — Verification by the national court*

(Art. 56 TFEU)

3. *Freedom to provide services — Restrictions — Betting and gaming — National legislation prohibiting the operation of slot machines outside casinos — Absence of transitional period and of compensation for operators of amusement arcades*

(Art. 56 TFEU)

4. *Freedom to provide services — Restrictions — Betting and gaming — National legislation introducing a five-fold increase in the flat-rate tax to be paid on slot machines operated in amusement arcades, introducing a proportional tax on that activity and prohibiting the operation of slot machines outside casinos — Absence of transitional period and compensation — Justification in the public interest — Protection of consumers against gambling addiction — Prevention of criminal and fraudulent activities linked to gambling — Observance of the principles of legal certainty and legitimate expectations — Global assessment by the national court*

(Art. 56 TFEU)

5. *Approximation of laws — Information procedure in the field of technical standards and regulations and of rules on Information Society services — Directive 98/34 — Technical regulation — Concept — National legislation introducing a five-fold increase in the flat-rate tax to be paid on slot machines operated in amusement arcades and introducing a proportional tax on that activity — Not included — National legislation prohibiting the operation of slot machines outside casinos — Included*

(European Parliament and Council Directive 98/34, as amended by Directive 2006/96, Art. 1, point 11, and 8(1), first para.)

6. *EU law — Rights conferred on individuals — Freedom to provide services — Infringement by a Member State — Obligation to make good damage caused to individuals — Conditions — Sufficiently serious infringement — Casual link between such infringement and the damage — Verification by the national court*

(Art. 56 TFEU)

7. *Approximation of laws — Information procedure in the field of technical standards and regulations and of rules on Information Society services — Directive 98/34 — Articles 8 and 9 — Rights conferred on individuals — None*

(European Parliament and Council Directive 98/34, as amended by Directive 2006/96, Arts 8 and 9)

8. *Questions referred for a preliminary ruling — Jurisdiction of the Court — Limits — National legislation concerning an area falling within the competence of the Member States — Situation which falls under the scope of EU law — Jurisdiction of the Court*

(Art. 267 TFEU)

1. See the text of the decision.

(see paras 24-27)

2. National legislation which, without providing for a transitional period, introduces a five-fold increase in the flat-rate tax to be paid on slot machines operated in amusement arcades and, in addition, introduces a proportional tax on that activity, constitutes a restriction on the freedom to provide services guaranteed by Article 56 TFEU provided that it is liable to prohibit, impede or render less attractive the exercise of the freedom to provide the services of operating slot machines in amusement arcades, this being a matter which it is for the national court to determine.

(see para. 42, operative part 1)

3. National legislation which, without providing for either a transitional period or compensation for operators of amusement arcades, prohibits the operation of slot machines outside casinos constitutes a restriction on the freedom to provide services guaranteed by Article 56 TFEU.

(see para. 52, operative part 2)

4. Restrictions on the freedom to provide services which may result from national legislation which, without providing for either a transitional period or compensation for operators of amusement arcades, introduce a five-fold increase in the flat-rate tax to be paid on slot machines operated in amusement arcades, introduce a proportional tax on that activity and prohibit the operation of slot

machines outside casinos, can only be justified by overriding reasons in the public interest if the national court finds, after an overall assessment of the circumstances surrounding the adoption and implementation of that legislation:

- that it actually pursues, primarily, objectives relating to the protection of consumers against gambling addiction and the prevention of criminal and fraudulent activities linked to gambling; the mere fact that a restriction on gambling activities incidentally benefits, through an increase in tax revenue, the budget of the Member State concerned, does not prevent that restriction from being considered actually to be pursuing, primarily, those objectives;
- that it pursues those goals consistently and systematically, and
- that it meets the requirements arising from general principles of EU law, in particular the principles of legal certainty and the protection of legitimate expectations and the right to property.

(see para. 92, operative part 3)

5. Article 1(11) of Directive 98/34, laying down a procedure for the provision of information in the field of technical standards and regulations and of rules on Information Society services, as amended by Directive 2006/96, must be interpreted as meaning that:

- the provisions of national legislation that introduce a five-fold increase in the flat-rate tax to be paid on slot machines operated in amusement arcades and, in addition, introduce a proportional tax on that activity, do not constitute ‘technical rules’ within the meaning of that provision, and that
- the provisions of national legislation that prohibit the operation of slot machines outside casinos constitute ‘technical rules’ within the meaning of that provision, the drafts of which must be communicated in accordance with the first subparagraph of Article 8(1) of that directive.

(see para. 100, operative part 4)

6. Article 56 TFEU is intended to confer rights on individuals, in such a way that its infringement by a Member State, including as a result of its legislative activity, gives rise to a right of individuals to obtain from that Member State compensation for the damage suffered as a result of that infringement, provided that that infringement is sufficiently serious and there is a direct causal link between that infringement and the damage sustained, this being a matter which it is for the national court to determine.

(see para. 106, operative part 5)

7. Articles 8 and 9 of Directive 98/34 laying down a procedure for the provision of information in the field of technical standards and regulations and of rules on Information Society services, as amended by Directive 2006/96, are not intended to confer rights on individuals, in such a way that their infringement by a Member State gives rise to a right of individuals to obtain from that Member State compensation for the damage suffered as a result of that infringement on the basis of EU law.

(see para 110, operative part 6)

8. The fact that national legislation concerns an area falling within the competence of the Member States does not affect the answers to the questions raised by the referring court.

The Member States must exercise their competences consistently with EU law and, in particular, the fundamental freedoms guaranteed in the Treaty, which apply to situations which fall within the scope of EU law.

In those circumstances, the justifications put forward by a Member State in support of a restriction on those freedoms must be interpreted in the light of the fundamental rights, even where that restriction concerns an area falling within the competence of that Member State, provided that the situation at issue falls within the scope of EU law.

(see paras 112, 113, 115, operative part 7)