INFORMATION ON UNPUBLISHED DECISIONS

Reports of Cases

Order of the Court (Eighth Chamber) of 16 February 2012 — Ferazzoli and Others v Ministero dell'Interno

(Joined Cases C-164/10 to C-176/10)

(Article 104(3), first subparagraph, of the Rules of Procedure — Freedom of establishment — Freedom to provide services — Betting and gaming — Collection of bets on sporting events — Licensing requirement — Consequences of an infringement of European Union law in the awarding of licences — Award of 16 300 additional licences — Principle of equal treatment and the obligation of transparency — Principle of legal certainty — Protection of holders of earlier licences — National legislation — Mandatory minimum distances between betting outlets — Whether permissible — Cross-border activities analogous to those engaged in under the licence — Prohibited by national legislation — Whether permissible)

1. *Freedom to provide services — Freedom of establishment — Restrictions — Gambling — National legislation prohibiting, on pain of criminal penalties, the collecting of bets without a licence or authorisation — Licence or authorisation refused in breach of Union law — New licences awarded in order to remedy the situation — New operators required to observe minimum distances between establishments — Whether permissible (Arts 43 EC and 49 EC) (see para. 8, operative part 1)*

2. *Freedom to provide services — Freedom of establishment — Restrictions — Gambling — National legislation prohibiting the collecting of bets without a licence or police authorisation — Operator excluded from the call for tenders for the award of such licences, in breach of Union law — Criminal penalties applied to persons linked to such an operator, acting without police authorisation — Not permissible, because of the failure to remedy properly the unlawful exclusion of that operator from an earlier call for tenders (Arts 43 EC and 49 EC) (see para. 9, operative part 2)*

3. *Freedom to provide services — Freedom of establishment — Gambling — National legislation prohibiting, on pain of criminal penalties, the collecting of bets without a licence or authorisation — Conditions for the withdrawal of licences granted at the end of a tendering procedure — Duty to draft those conditions clearly, precisely and unambiguously and to observe the principles of equal treatment and legal certainty (Arts 43 EC and 49 EC) (see para. 10, operative part 3)*

Re:

Reference for a preliminary ruling — Tribunale Amministrativo Regionale del Lazio — Freedom of movement of persons — Freedom to provide services — Activity of collecting bets — Domestic legislation reserving the right to engage in the activity of collecting bets to national operators who have obtained a licence — Restrictions of the opening of new betting outlets for the holders of new licences — Licences lost when there is cross-border organisation of gaming similar to that considered to be 'public'– Whether compatible with Articles 43 EC and 49 EC.

Operative part

1. Articles 43 EC and 49 EC and the principles of equal treatment and effectiveness must be interpreted as precluding a Member State which, in breach of Union law, has excluded a category of operators from the award of licences for undertaking an economic activity and seeks to remedy that breach by putting out to tender a significant number of new licences, from protecting the market positions acquired by the pre-existing operators, by providing, inter alia, for minimum distances between the establishments of new licence holders and those of pre-existing operators.

2. Articles 43 EC and 49 EC must be interpreted as precluding penalties for engaging in the organised activity of collecting bets without a licence or police authorisation from being imposed on persons linked to an operator that was excluded from an earlier tendering procedure, in breach of Union law, even after the new call for tenders intended to remedy that breach of Union law, in so far as that call for tenders and the subsequent award of new licences have not in fact remedied the unlawful exclusion of that operator from the earlier call for tenders.

3. It follows from Articles 43 EC and 49 EC, the principle of equal treatment, the obligation of transparency and the principle of legal certainty that the conditions and detailed rules of a call for tenders such as that at issue in the main proceedings and, in particular, the provisions concerning the withdrawal of licences granted at the end of the tendering procedure, such as those laid down in Article 23(2)(a) and (3) of the model contract between the Independent Authority for the Administration of State Monopolies and the successful tenderer for the licence for betting on events other than horse-races, must be drawn up clearly, precisely and unambiguously, a matter which it is for the referring court to verify.