



**C-170/04 Klas Rosengren and Others v Riksåklagaren, judgment of 5 June 2007**

**Internal market and freedom of movement – monopoly on importation of alcoholic beverages**

**The Court of Justice examined the Swedish law concerning the monopoly on sales of alcoholic beverages ("Systembolaget") and in particular the provisions prohibiting the importation of alcoholic beverages by private individuals. It concluded that this prohibition constituted a restriction on the free movement of goods, which could not be justified by the grounds invoked by the Swedish authorities, and which was in any case not proportionate.**

Under the Swedish law on alcoholic beverages, Systembolaget has a monopoly on retail sales of such beverages, and the importation of alcoholic beverages by private individuals is prohibited. Apart from personally transporting alcoholic beverages, anyone wishing to import alcohol from other Member States can only do so via Systembolaget, which is required to buy all alcoholic beverages at the request and expense of consumers, unless it has grounds for refusing.

Klas Rosengren and several other Swedish nationals ordered, by correspondence and without an intermediary, cases of bottles of wine produced in Spain. The wine, which had been imported into Sweden by a private transport company, was seized by the customs authorities and criminal proceedings were brought against Mr Rosengren and the other private individuals concerned for the illegal importation of alcoholic beverages.

The Högsta domstolen (Supreme Court), before which the case was brought in the last instance, asked the Court of Justice to examine the provisions in the Swedish law on alcoholic beverages to verify their compatibility with Community law, in particular with the principle of the free movement of goods.

The Court pointed out, first, that the provisions on the importation of alcoholic beverages, which are separable from the operation of the monopoly, must be examined with reference to Article 28 EC and not Article 31 EC on national commercial monopolies. In fact, these provisions affect the free movement of goods within the European Community, but do not govern the monopoly's exercise of its exclusive right of retail sale of alcoholic beverages in Swedish territory. The prohibition is not, therefore, a rule which relates to the very existence or operation of that monopoly.

The Court then pursued its analysis in the light of Article 28 EC. It pointed out that the fact that private individuals are prohibited from importing such beverages directly into Sweden, without personally transporting them, in the absence of a counter-balancing obligation in every case on the monopoly to import such beverages when requested to do so by private individuals, constitutes a quantitative restriction on imports.

There remained the question whether this restriction could be regarded as justified under Article 30 EC on grounds of protection of the health and life of humans. The Court had already ruled that legislation which has as its objective the control of the consumption of alcohol so as to prevent the harmful effects caused to health of humans and society by alcoholic substances, and which thus seeks to combat alcohol abuse, reflects health and public policy concerns recognised by Article 30 EC. Nevertheless, it pointed out that the measure under consideration must not constitute either a means of arbitrary discrimination or a disguised restriction on trade between Member States.



## Summaries of important judgments

Applying these guidelines to the case in point, the Court rejected the two justifications put forward by the Swedish Government, namely the need to limit consumption of alcohol generally and the objective of protecting young persons from the harmful effects of alcohol.

First, the prohibition appeared to be a means of favouring a distribution channel for those goods by directing requests for the importation of beverages to Systembolaget. However, the prohibition had to be considered unsuitable for achieving the objective of limiting generally the consumption of alcohol in the interest of protecting the health and life of humans because of the rather marginal nature of its effects in that regard.

Second, because the ban applied to everyone, irrespective of age, it manifestly went beyond what was necessary and did not comply with the principle of proportionality for the objective sought, which was to protect younger persons against the harmful effects of alcohol consumption.

In the light of this, the Court concluded that the ban on the importation of alcoholic beverages could not be justified on grounds of protection of the health and life of humans.