



C-409/06 Winner Wetten GmbH, judgment of 8 September 2010

The Court of Justice rules out provisionally maintaining the effects of national legislation concerning a public monopoly on bets on sporting competitions, which comprises restrictions that are incompatible with the freedom of establishment and the freedom to provide services, because those restrictions do not contribute to limiting betting activities in a consistent and systematic manner.

The company Winner Wetten has commercial premises at Bergheim, Germany, where it carries on the business of brokering bets on sporting competitions on behalf of Tipico Co. Ltd, a company established in Malta. The mayor of the town having ordered it to stop trading, this company brought an action before the Administrative Court of Cologne, claiming that the public monopoly on bets on sporting competitions in force in the Land of North Rhine-Westphalia, on which the decision it wished to have annulled was based, is contrary to the freedom to provide services guaranteed by Article 49 EC, now Article 56 TFEU.

The General Court considers that since it does not contribute to limiting betting activities in a consistent and systematic manner, the monopoly in question is contrary to both Union law and the German Basic Law, as, moreover, the Higher Administrative Court of North Rhine-Westphalia had also held. However, the latter court had deemed that the general principle of legal certainty and the need not to create a legal void threatening essential public interests required that the said interests be provisionally given priority over the interest which the offerors of private bets have in free access to the market, by providing, in derogation from the principle of the primacy of Community law, for a transitional period during which the legislation concerned could remain applicable. In this respect, it referred to a judgment of the Federal Constitutional Court of 28 March 2006 concerning the legislation of the Land of Bavaria. Since the Administrative Court of Cologne had doubts as to compatibility of the institution of such a transitional period with the requirements arising from the principle of the primacy of Union law, it referred a question to the Court of Justice for a preliminary ruling on this point.

During the proceedings, all the Member States submitting observations, in essence, maintained that recognition of a principle authorising, in exceptional circumstances, the provisional maintenance of the effects of a national rule held contrary to a directly-applicable rule of Union law would be justified by analogy, having regard to the case-law developed by the Court on the basis of the second paragraph of Article 231 EC, with the effect of provisionally maintaining the effects of measures of Union law annulled by the Court or ruled invalid.

The Court did not rule explicitly on the existence of such a principle by analogy. It merely pointed out that even assuming that considerations similar to those underlying that case-law, developed as regards acts of the Union, were capable of leading, by analogy and by way of exception, to a provisional suspension of the ousting effect which a directly-applicable rule of Union law has on national law that is contrary to it, such a suspension, the conditions of which could be determined solely by the Court of Justice, must be excluded from the outset in this case, having regard to the lack of overriding considerations of legal certainty capable of justifying the suspension. The existence of such overriding considerations is in fact required to justify maintaining the effects of an act of the Union which has been annulled or ruled invalid during the period of time necessary to enable the illegality found to be remedied.



Summaries of important judgments

The Court relied here on the fact that the referring court, which alone has jurisdiction to assess the facts of the dispute before it, held precisely that the restrictive legislation at issue in the main proceedings did not effectively contribute to limiting betting activities in a consistent and systematic manner.

It therefore finally rules that by reason of the primacy of directly-applicable Union law, national legislation concerning a public monopoly on bets on sporting competitions which, according to the findings of a national court, comprises restrictions that are incompatible with the freedom of establishment and the freedom to provide services, cannot continue to apply during a transitional period because those restrictions do not contribute to limiting betting activities in a consistent and systematic manner.