



NEWS

European Court of Justice Judgments - C-531/06 Commission v Italy and joined cases C-171/07 & C-172/07 Apothekerkammer des Saarlandes and Others (Freedom of establishment)

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SUMMARY

Judgments of the Court of Justice in Case C-531/06 and in Joined Cases C-171/07 and C-172/07
Commission v Italy

Apothekerkammer des Saarlandes and Others

OWNERSHIP AND OPERATION OF PHARMACIES CAN BE RESTRICTED TO PHARMACISTS ALONE
Italian and German legislation laying down such a rule is justified by the objective of ensuring that the provision of medicinal products to the public is reliable and of good quality.

Today, the Court of Justice has brought to a close two sets of proceedings relating to the system of pharmacy ownership.

The cases relate, principally, to the issue whether Community law precludes provisions contained in Italian and German legislation which provide that only pharmacists may own and operate a pharmacy.

Joined Cases C-171/07 and C-172/07 (Apothekerkammer des Saarlandes and Others) arose from the authorisation granted by the competent ministry in Saarland to DocMorris, a Netherlands public limited company, entitling it to operate a branch pharmacy in Saarbrücken from 1 July 2006. The ministry's decision was challenged before the Administrative Court, Saarland, by several pharmacists and their professional associations, on the ground that it was not consistent with German legislation which restricts the right to own and operate a pharmacy exclusively to pharmacists.

The Administrative Court referred questions to the Court of Justice in order to ascertain whether the Treaty provisions on freedom of establishment must be interpreted as precluding such legislation.

In addition, in Case C-531/06 (Commission v Italy) the Commission applied to the Court for, amongst others, a declaration that, by allowing only pharmacists to own and operate private pharmacies, the Italian Republic has failed to fulfil its obligations under Community law.

In its judgments delivered today, the Court states that excluding the possibility for non-pharmacists to operate pharmacies or to acquire stakes in companies or firms operating pharmacies constitutes a restriction on the freedom of establishment and the free movement of capital. That restriction can nevertheless be justified by the objective of ensuring that the provision of medicinal products to the public is reliable and of good quality.

Where there is uncertainty as to the existence or extent of risks to human health, it is important that a Member State should be able to take protective measures without having to wait until the reality of those risks becomes fully apparent. Furthermore, a Member State may take the measures that reduce, as far as possible, a public-health risk, including, more specifically, a risk to the reliability and quality of the provision of medicinal products to the public.

In this context, the Court draws attention to the very particular nature of medicinal products, whose therapeutic effects distinguish them substantially from other goods.

The Court concludes that the freedom of establishment and the free movement of capital do not preclude

national legislation which prevents persons not having the status of pharmacist from owning and operating pharmacies.

Since the Court finds that not only the exclusion of non-pharmacists from operation of a pharmacy can be justified, but also the prohibition preventing undertakings engaged in the distribution of pharmaceutical products from taking stakes in municipal pharmacies, it dismisses the action for failure to fulfil obligations brought by the Commission against Italy.

Only the original language version is authentic and it prevails in the event of its differing from the translated versions.

SHOTLIST

00:00:00	Title
00:00:05	Cutaway
00:00:14	Arrival to the judges to the Court
00:00:27	SOUNDBITE (German) by the judge: In Joined Cases C#171/07 and C#172/07, REFERENCES for a preliminary ruling under Article 234 EC from the Verwaltungsgericht des Saarlandes (Germany), Apothekerkammer des Saarlandes, Marion Schneider. These references for a preliminary ruling relate to the interpretation of Articles 43 EC and 48 EC and the principles of Community law. The references were made in two actions, brought by the Apothekerkammer des Saarlandes (Saarland Pharmacists' Association), Ms Schneider, Mr Holzapfel, Mr Trennheuser and Deutscher Apothekerverband eV (German Pharmacists' Association) (C-171/07) and Ms Neumann-Seiwert (C-172/07) against Saarland and the Ministerium für Justiz, Gesundheit und Soziales (Ministry for Justice, Health and Social Affairs; 'the Ministry'), concerning national legislation which allows only persons who have the status of pharmacist to own and operate pharmacies.
00:01:02	Cutaway
00:01:09	SOUNDBITE (Italian) by the judge: In Case C#531/06, European Commission against Italy, the Court declares that the Italian Republic has failed to fulfil its obligations under Articles 43 EC and 56 EC. Second, the European Commission, the Hellenic Republic, the Kingdom of Spain, the French Republic, the Republic of Latvia and the Republic of Austria were granted leave to intervene in the present case in support of the form of order sought by the Italian Republic.
00:01:42	Cutaways (6 shots)
00:02:39	END

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