

## V

(Announcements)

## COURT PROCEEDINGS

## COURT OF JUSTICE

**Judgment of the Court (Grand Chamber) of 1 June 2010 (reference for a preliminary ruling from the Tribunal Superior de Justicia de Asturias, Spain) — José Manuel Blanco Pérez, María del Pilar Chao Gómez v Consejería de Salud y Servicios Sanitarios (C-570/07), Principado de Asturias (C-571/07)**

(Joined Cases C-570/07 and C-571/07) <sup>(1)</sup>

*(Article 49 TFEU — Directive 2005/36/EC — Freedom of establishment — Public health — Pharmacies — Proximity — Provision of medicinal products to the public — Operating licence — Territorial distribution of pharmacies — Establishment of limits based on population density — Minimum distance between pharmacies — Candidates who have pursued professional activities on part of the national territory — Priority — Discrimination)*

(2010/C 209/03)

Language of the case: Spanish

**Referring court**

Tribunal Superior de Justicia de Asturias

**Parties to the main proceedings**

*Applicants:* José Manuel Blanco Pérez, María del Pilar Chao Gómez

*Defendants:* Consejería de Salud y Servicios Sanitarios (C-570/07), Principado de Asturias (C-571/07)

*Intervening parties:* Federación Empresarial de Farmacéuticos Españoles (C-570/07), Plataforma para la Libre Apertura de Farmacias (C-570/07), Celso Fernández Gómez (C-571/07), Consejo General de Colegios Oficiales de Farmacéuticos de España, Plataforma para la Defensa del Modelo Mediterráneo de Farmacias, Muy Ilustre Colegio Oficial de Farmacéuticos de Valencia, Asociación Nacional de Grandes Empresas de Distribución (ANGED)

**Re:**

References for a preliminary ruling — Tribunal Superior de Justicia de Asturias — Interpretation of Article 43 EC — Legislation laying down the conditions for the opening of new pharmacies

**Operative part of the judgment**

1. Article 49 TFEU must be interpreted as not precluding, in principle, national legislation, such as that at issue in the cases before the referring court, which imposes restrictions on the issue of licences for the opening of new pharmacies, by providing that:

— in each pharmaceutical area, a single pharmacy may be opened, as a general rule, per unit of 2 800 inhabitants;

— a supplementary pharmacy may not be opened until that threshold has been exceeded, that pharmacy being established for the fraction above 2 000 inhabitants; and

— each pharmacy must be a minimum distance away from existing pharmacies, that distance being, as a general rule, 250 metres.

Nevertheless, Article 49 TFEU precludes such national legislation in so far as the basic '2 800 inhabitants' and '250 metres' rules prevent, in any geographical area which has special demographic features, the establishment of a sufficient number of pharmacies to ensure adequate pharmaceutical services, that being a matter for the national court to ascertain.

2. Article 49 TFEU, read in conjunction with Article 1(1) and (2) of Council Directive 85/432/EEC of 16 September 1985 concerning the coordination of provisions laid down by Law, Regulation or Administrative Action in respect of certain activities in the field of pharmacy, and Article 45(2)(e) and (g) of Directive 2005/36/EC of the European Parliament and of the Council of 7 September 2005 on the recognition of professional qualifications must be interpreted as precluding criteria, such as those set out in points 6 and 7(c) of the Annex to Decree 72/2001 of 19 July 2001, regulating pharmacies and dispensaries in the Principality of Asturias (Decreto 72/2001 regulador de las oficinas de farmacia y botiquines en el Principado de Asturias), under which licensees for new pharmacies are to be selected.

(<sup>1</sup>) OJ C 79, 29.3.2008.

**Judgment of the Court (Grand Chamber) of 8 June 2010 (Reference for a preliminary ruling from the High Court of Justice of England and Wales, Queens's Bench Division (Administrative Court) (United Kingdom)) — The Queen on the application of Vodafone Ltd, Telefónica O2 Europe plc, T-Mobile International AG, Orange Personal Communications Services Ltd v Secretary of State for Business, Enterprise and Regulatory Reform**

(Case C-58/08) (<sup>1</sup>)

**(Regulation (EC) No 717/2007 — Roaming on public mobile telephone networks within the Community — Validity — Legal basis — Article 95 EC — Principles of proportionality and subsidiarity)**

(2010/C 209/04)

Language of the case: English

#### Referring court

High Court of Justice of England and Wales, Queens's Bench Division (Administrative Court)

#### Parties to the main proceedings

**Applicants:** The Queen on the application of Vodafone Ltd, Telefónica O2 Europe plc, T-Mobile International AG, Orange Personal Communications Services Ltd

**Defendant:** Secretary of State for Business, Enterprise and Regulatory Reform

**Interested parties:** Office of Communications, Hutchison 3G UK Ltd, GSM Association

#### Re:

Reference for a preliminary ruling — High Court of Justice of England and Wales, Queens's Bench Division (Administrative Court) — Validity of Regulation (EC) No 717/2007 of the European Parliament and of the Council of 27 June 2007 on roaming on public mobile telephone networks within the Community and amending Directive 2002/21/EC (OJ 2007 L 171, p. 32) — Choice of legal basis — Validity of Articles 4, 2(a) and 6(3) of the regulation, imposing a maximum charge for roaming calls, in light of the principles of proportionality and subsidiarity

#### Operative part of the judgment

Consideration of the questions raised has disclosed no factor of such a kind as to affect the validity of Regulation (EC) No 717/2007 of the European Parliament and of the Council of 27 June 2007 on roaming on public mobile telephone networks within the Community and amending Directive 2002/21/EC.

(<sup>1</sup>) OJ C 107, 26.4.2008.

**Judgment of the Court (Second Chamber) of 3 June 2010 (reference for a preliminary ruling from the Raad van State (Netherlands)) — The Sporting Exchange Ltd, trading as Betfair v Minister van Justitie**

(Case C-203/08) (<sup>1</sup>)

**(Article 49 EC — Restrictions on the freedom to provide services — Games of chance — Offer of games of chance via the internet — Legislation reserving a licence to a single operator — Renewal of licence without subjecting the matter to competition — Principle of equal treatment and obligation of transparency — Application in the field of games of chance)**

(2010/C 209/05)

Language of the case: Dutch

#### Referring court

Raad van State

#### Parties to the main proceedings

**Applicant:** The Sporting Exchange Ltd, trading as Betfair

**Defendant:** Minister van Justitie

**Intervening party:** Stichting de Nationale Sporttotalisator