

Reference for a preliminary ruling from the Tribunale di Santa Maria Capua Vetere (Italy) on 11 July 2011 — criminal proceedings against Raffaele Arrichiello

(Case C-368/11)

(2011/C 282/20)

Language of the case: Italian

Referring court

Tribunale di Santa Maria Capua Vetere (Italy).

Party to the main proceedings

Raffaele Arrichiello.

Questions referred

What is the interpretation to be given to Articles 43 EC and 49 EC concerning freedom of establishment and the freedom to provide services in the sector of bets on sporting events, for the purposes of determining whether or not the above-mentioned provisions of the treaty authorise national legislation establishing a monopoly regime in favour of the State and a system of concessions and authorisations which, in the case of a certain number of concessions, makes provision for: a) the existence of a general tendency to protect the holders of concessions granted in an earlier period, on the basis of a procedure which unlawfully excluded some operators; b) the presence of provisions de facto guaranteeing the maintenance of commercial positions acquired on the basis of a procedure which unlawfully excluded some operators (such as, for example, a prohibition on new concessionaires installing their windows at less than a certain distance from those already existing); and c) the setting of hypotheses for the expiry of the concession and acquisition of guarantees of a very high amount, such hypotheses including that in which the concessionaire directly or indirectly operates cross-border gaming activities similar to those forming the subject-matter of the concession?

Action brought on 12 July 2011 — European Commission v Italian Republic

(Case C-369/11)

(2011/C 282/21)

Language of the case: Italian

Parties

Applicant: European Commission (represented by: E. Montaguti and H. Støvlbæk, acting as Agents)

Defendant: Italian Republic

Form of order sought

— Declare that, by failing to adopt the laws, regulations and administrative provisions necessary to comply with Article

6(3) and Annex II of Directive 91/440/EEC ⁽¹⁾, as amended, and with Articles 4(2), 14(2), 4(1), 30(3) and 30(1) of Directive 2001/14/EC ⁽²⁾, the Italian Republic has failed to fulfil its obligations under those provisions.

— order the Italian Republic to pay the costs.

Pleas in law and main arguments

The Commission's complaints concern the independence of the body carrying out essential functions in the matter of access to infrastructure and the imposition of dues for railway access and the powers and autonomy of the body regulating the railway sector.

The Commission argues that the regime governing the exercise by the infrastructure manager of essential functions concerning access to the infrastructure does not provide sufficient guarantees that that manager operates independently of the holding company of the group of which it forms part, which also includes the main railway undertaking on the market.

Moreover, given that it is for the Minister for Transport to determine dues for access to the network, whereas the infrastructure manager can only make a proposal on the matter and has only the operating duty of calculating the dues actually payable by a single railway undertaking, the latter is deprived of an essential management tool, in contrast with the requirement for independent management.

Finally, the necessary full independence of the body for regulating all railway undertakings has not yet been assured, since the staff of the regulatory body consists of officials of the Ministry of Transport and the latter continues to exercise a decisive influence on the holding company of the group which includes the main Italian railway undertaking, and thus also on the latter.

⁽¹⁾ OJ 1991 L 237, p. 25.

⁽²⁾ OJ 2001 L 75, p. 29.

Reference for a preliminary ruling from the Hof van beroep te Gent (Belgium) lodged on 13 July 2011 — Punch Graphix Prepress Belgium N.V. v Belgische Staat

(Case C-371/11)

(2011/C 282/22)

Language of the case: Dutch

Referring court

Hof van beroep te Gent

Parties to the main proceedings

Appellant: Punch Graphix Prepress Belgium N.V.

Respondent: Belgische Staat