

Case C-438/05 International Transport Workers' Federation and Finnish Seamen's Union v Viking Line ABP and OÜ Viking Line Eesti [2007] ECR I-10779

Facts: Viking Line, a Finnish shipping company, owned a ferry flying the Finnish flag on a route between Estonia and Finland. The ferry's crew were members of a Union which was affiliated to an international federation of transport workers. Viking Line had given notice that it intended to reflag its ferry to Estonia, in the hopes that it would recruit cheaper Estonian crews. When that contract had expired, the Union, failing to negotiate its desired result (to maintain the Finnish law jurisdiction and to prevent redundancies) decided to commence an industrial strike. The question at stake was whether an individual could rely on Art. 49 TFEU against another individual.

Held: The Court acknowledged that the provisions on the fundamental freedoms within the internal market did not apply only to the actions of public authorities but extended also to rules of any other nature aimed at regulating in a collective manner gainful employment, self-employment and the provision of services. This meant that the companies could rely on the free movement provisions directly, and that the Union had breached the rules in Art. 49 TFEU.

The rationale for deciding this was that the abolition, as between Member States, of obstacles to freedom of movement for persons and freedom to provide services would be compromised if the abolition of State barriers could be neutralised by obstacles resulting from the exercise, by associations or organisations not governed by public law, of their legal autonomy, and so Art. 49 TFEU had to be interpreted as permitting reliance by a private undertaking against a trade union or an association of trade unions. This could be justified on the grounds of worker protection, as there was a serious threat on the facts.

Moreover, proportionality had been compromised, though this was explicitly left to national courts to determine. In any event, a blanket policy against flags of convenience could not be justified.