

C-275/92 Schindler [1994] ECR I-01039

Facts: The applicants were independent agents of a public body responsible for organising class lotteries on behalf of four Laender in Germany. They routinely promoted the lotteries and sold them also. On one occasion they sent advertisements from the Netherlands to UK nationals, inviting them to participate in the German lottery. They were prosecuted for breaching UK legislation banning such promotional activities. The question was whether this activity constituted a provision of services, and therefore protected under EU law.

Held: The national legislation prohibiting the holding of lotteries was contrary to Art. 56 TFEU. Firstly, the act of exporting these advertisements could not be separated from the overarching business, and so there was a genuine economic activity being pursued. In this respect, the services at issue were those provided by the operator of the lottery to enable purchasers of tickets to participate in a game of chance with the hope of winning, by arranging for that purpose for the stakes to be collected, the draws to be organized and the prizes or winnings to be ascertained and paid out. As there was remuneration in the form of the ticket price, this was a service falling under Art. 56 TFEU. As such, this law constituted an obstacle to the free movement of goods.

Secondly, the Court stated that national legislation could fall within the ambit of Art. 56 TFEU, even if it was indistinctly applicable, when it was liable to prohibit or otherwise impede the activities of a provider of services established in another Member State where he lawfully provided similar services. However, having regard to the moral, religious or cultural aspects of lotteries, the restriction could be justified on the ground of preventing the lottery from becoming a source of private profit. As such, it was within the power of the Member States to maintain order in society, as regards the manner in which lotteries are operated, the size of the stakes, and the allocation of the profits they yield.