

The Netherlands
Raad van State, Administrative Jurisdiction Division
2 March 2011
201003855/1/H2

Subject

Free movement of goods – right of establishment – shopping hours – overriding reason in the public interest

Parties

Municipal council of Westland, Koornneef Supermarkt a.o. against the Crown

Summary

1. In October 2009 the municipal council of Westland amended its regulation on the opening hours of shops and adopted an exemption of the Sunday closure for the whole municipality. The council argued that Westland was a tourist attraction. This exemption was subsequently annulled by the Crown in March 2010, a decision which was appealed by the municipality and a local chain of supermarkets.
2. The Administrative Jurisdiction Division considers that shopping hours legislation is a 'selling arrangement' in the meaning of the Keck and Mithouard judgment (C-267/91 and C-268/91), that the Dutch Trading Hours Act (*Winkeltijdenwet*) is not intended to regulate cross-border trade nor does it result in an unequal treatment of national and imported products and that therefore the Crown's annulment lies outside the scope of art. 34 TFEU.
3. The provisions on the free movement of services need not be examined as that freedom is secondary in relation to art. 34 TFEU. With regard to the right of establishment the Division considers that the Crown's decision lies outside the scope of art. 49 TFEU. Regulating shopping hours is justified by an overriding reason in the public interest as the Act in question aims at protecting Sunday's rest, the interest of small shopkeepers, the quality of life, public security and public order.
4. Finally the Division considers that the Dutch Trading Hours Act and the criterium of 'autonomous touristic attraction' complies with the requirements developed in the ECJ case law that restrictions of the four freedoms should be based on objective criteria, prior cognizable and non-discriminatory.