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Judgment of the Court of Justice in Case C-345/06

Gottfried Heinrich

A LIST OF ARTICLES PROHIBITED ON BOARD AEROPLANES CANNOT BE ENFORCED AGAINST INDIVIDUALS IF IT HAS NOT BEEN PUBLISHED

A Community regulation not published in the Official Journal of the European Union has no binding force in so far as it seeks to impose obligations on individuals

Article 254 EC provides that Regulations are published in the Official Journal of the European Union.

In 2002, the Parliament and the Council adopted Regulation 2320/2002 on aviation security¹. The annex to that regulation provided for common basic standards applicable to aviation security measures. Amongst other things, the annex stated in general terms, the kind of items that would be prohibited on board aeroplanes, which included 'Bludgeons: Blackjacks, billy clubs, baseball clubs or similar instruments'. The regulation also provided that some measures would not be published but only made available to the competent authorities. That regulation and the annex were published.

In April 2003, the Commission adopted Regulation 622/2003² implementing Regulation 2320/2002. The measures at issue were set out in an annex. That annex, amended in 2004³, was never published even though the amending regulation emphasised, in the preamble, the need for passengers to be clearly informed of the rules relating to prohibited articles.

On 25 September 2005, Gottfried Heinrich was stopped at the security control of Vienna-Schwechat Airport as his cabin baggage contained tennis racquets, considered to be prohibited articles by the Community regulations. He nevertheless boarded the aircraft with the tennis racquets in his baggage. Security staff subsequently ordered him to leave the aircraft.

¹ Regulation (EC) No 2320/2002 of the European Parliament and of the Council of 16 December 2002 establishing common rules in the field of civil aviation security (OJ 2002 L 355, p. 1).

² Commission Regulation (EC) No 622/2003 of 4 April 2003 laying down measures for the implementation of the common basic standards on aviation security (OJ 2003 L 89, p. 9).

³ Commission Regulation (EC) No 68/2004 of 15 January 2004 amending Commission Regulation (EC) No 622/2003 laying down measures for the implementation of the common basic standards on aviation security (OJ 2004 L 10, p. 14).

Mr Heinrich brought an action before the Unabhängiger Verwaltungssenat im Land Niederösterreich (Independent Administrative Chamber for the Land of Lower Austria) seeking a declaration that the measures taken against him were illegal. The Austrian court asked the Court of Justice whether regulations or parts thereof which have not been published in the Official Journal may none the less have binding force.

The Court points out that it follows from Article 254 EC that a Community regulation cannot take effect in law unless it has been published in the Official Journal. Moreover, an act adopted by a Community institution cannot be enforced against individuals before they have had the opportunity to learn of its existence by proper publication in the Official Journal. The same principles apply to

national measures implementing Community legislation.

The Court observes that Regulation 2320/2002 seeks to impose obligations on individuals in so far as it prohibits certain items on board aeroplanes, defined in a general manner, in a list attached as an annex to the Regulation.

Since the annex to Regulation 622/2003 was not published, the Court cannot hold that that annex also concerns the list of prohibited articles and therefore also seeks to impose obligations on individuals. It is possible, however, that that is the case. The fact that the regulation amending Regulation 622/2003 states in the preamble thereto that there is a need for a harmonised list, accessible to the public, setting out separately the prohibited articles, implies that the list annexed to Regulation 2320/2002 has in fact been amended. In any event, the alleged amendments at issue to the list of prohibited articles were not published in the Official Journal.

Next, the Court states that the list of prohibited articles does not fall within any of the categories of measures and information which are treated as secret and which are not published under Regulation 2320/2002. Thus, the Commission could not apply the rules on confidentiality to the measures amending the list. It follows that, if Regulation 622/2003 had in fact modified that list of prohibited articles that regulation would, for that reason, have to be held invalid.

The Court therefore concludes that the annex to Regulation 622/2003 has no binding force in so far as it seeks to impose obligations on individuals.

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Languages available: BG ES CS DE EN EL FR HU IT NL PL PT SK SL RO

*The full text of the judgment may be found on the Court's internet site
<http://curia.europa.eu/jurisp/cgi-bin/form.pl?lang=EN&Submit=rechercher&numaff=C-345/06> It
can usually be consulted after midday (CET) on the day judgment is delivered.*

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