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Provisional text

JUDGMENT OF THE COURT (Third Chamber)

14 November 2018 (\*)

(Reference for a preliminary ruling — Restrictions on freedom of establishment — Jurisdiction of the Court — Admissibility of the request for a preliminary ruling — Purely domestic situation — National legislation prohibiting any profit-making activity relating to the safekeeping of cinerary urns — Proportionality test — Coherence of national rules)

In Case C-342/17,

REQUEST for a preliminary ruling under Article 267 TFEU from the Tribunale amministrativo regionale per il Veneto (Regional Administrative Court for the Veneto Region, Italy), made by decision of 11 May 2017, received at the Court on 8 June 2017, in the proceedings

**Memoria Srl,**

**Antonia Dall'Antonia**

v

**Comune di Padova,**

intervener:

**Alessandra Calore,**

THE COURT (Third Chamber),

composed of M. Vilaras, President of the Fourth Chamber, acting as President of the Third Chamber, J. Malenovský (Rapporteur), L. Bay Larsen, M. Safjan and D. Šváby, Judges,

Advocate General: M. Campos Sánchez-Bordona,

Registrar: R. Schiano, Administrator,

having regard to the written procedure and further to the hearing on 16 April 2018,

after considering the observations submitted on behalf of:

- Memoria Srl and Ms Dall’Antonia, by G. Martini, A. Sitzia and P. Piva, avvocati,
- the Comune di Padova, by M. Lotto, V. Mizzoni, A. Sartori and P. Bernardi, avvocati,
- the Italian Government, by G. Palmieri, acting as Agent, and by E. De Bonis, avvocato dello Stato,
- the European Commission, by H. Tserepa-Lacombe and L. Malferrari, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 21 June 2018,

gives the following

### **Judgment**

1 This request for a preliminary ruling concerns the interpretation of Articles 49 and 56 TFEU.

2 The request has been made in proceedings between Memoria Srl and Ms Antonia Dall’Antonia and the Comune di Padova (municipality of Padua, Italy) concerning legislation adopted by the municipality prohibiting recipients of cinerary urns from entrusting the safekeeping of those urns to private companies in return for payment.

### **Legal context**

#### **EU law**

3 Recital 8 of Directive 2006/123/EC of the European Parliament and of the Council of 12 December 2006 on services in the internal market (OJ 2006 L 376, p. 36) provides:

‘(8) It is appropriate that the provisions of this Directive concerning the freedom of establishment and the free movement of services should apply only to the extent that the activities in question are open to competition, so that they do not oblige Member States either to liberalise services of general economic interest or to privatise public entities which provide such services or to abolish existing monopolies for other activities or certain distribution services.’

4 Under the first subparagraph of Article 1(3) of Directive 2006/123:

‘This Directive does not deal with the abolition of monopolies providing services nor with aids granted by Member States which are covered by Community rules on competition.’

#### **Italian law**

##### *Law No 234 of 24 December 2012*

5 Article 53 of legge n. 234 — Norme generali sulla partecipazione dell’Italia alla formazione e all’attuazione della normativa e delle politiche dell’Unione europea (Law No 234 on the general rules on the participation of Italy in the development and implementation of the legislation and policies of the European Union) of 24 December 2012 (GURI No 3, 4 January 2013) states:

‘Rules of the Italian legal order or domestic practices which have a discriminatory effect with respect to the condition and treatment guaranteed in Italy to citizens of the European Union are not to be applied to Italian citizens.’

*Law No 130 of 30 March 2001*

6 Article 3 of legge n. 130 — Disposizioni in materia di cremazione e dispersione delle ceneri (Law No 130 on cremation and scattering of ashes) of 30 March 2001 (GURI No 91, 19 April 2001) provides:

‘1. Within six months of the entry into force of the present Law, the [decreto del Presidente della Repubblica n. 285 approvazione del regolamento di polizia mortuaria (Decree of the President of the Republic No 285 approving the Regulation on burials) of 10 September 1990 (GURI No 239 of 12 October 1990),] may be amended by regulation adopted pursuant to Article 17(1) of Law No 400 of 23 August 1998, as amended, on a proposal from the Minister for Health, after consulting the Minister for the Interior and the Minister for Justice, and further to the opinion of the competent parliamentary committees, on the basis of the following principles:

...

(b) authorisation to perform a cremation shall be granted in accordance with the wishes expressed by the deceased or by a member of his family, in one of the following ways:

...

(c) the scattering of ashes, in accordance with the wishes of the deceased, shall be permitted only in an area within a cemetery intended for that purpose, on open ground or on private land; scattering on private land must take place outdoors with the authorisation of the landowner and may not give rise to profit-making activities; in any event, the scattering of ashes is prohibited in residential areas ...; scattering at sea, in lakes and in waterways is permitted in areas free from watercraft and buildings;

(d) ashes shall be scattered by the spouse or by any other family member entitled, by the executor, or by the legal representative of the association referred to in subparagraph (b)(2) above of which the deceased was a member, or, failing that, by a person authorised to do so by the municipality;

...

(f) transport of the urn containing the ashes shall not be subject to the precautionary health measures applicable to the transport of corpses, unless otherwise indicated by the health authorities;

...

(i) an anteroom to the crematorium shall be set up to allow the funeral rites of the deceased to be performed and last respects to be paid with dignity.

...’

7 Pursuant to Article 5(2) of that law:

‘By decree of the Minister for the Interior, in consultation with the Minister for Health, and after hearing the views of the Associazione nazionale dei comuni italiani (ANCI) (National Association of Italian Municipalities), the Confederazione nazionale dei servizi (Confservizi) (National Confederation of Services) and the most representative associations having among their objects the cremation of members, the pricing applicable to the cremation of corpses and the safekeeping or scattering of ashes in the appropriate areas within cemeteries shall be determined within six months of the entry into force of this Law.’

*Decree of the President of the Republic No 285 of 10 September 1990*

8 Pursuant to Article 92(4) of Decree of the President of the Republic No 285 of 10 September 1990:

‘No person shall grant plots for private graves to natural or legal persons seeking to profit from or speculate in them.’

*Regional Law No 18 of 4 March 2010*

9 Legge regionale n. 18 — Norme in materia funeraria, della Regione del Veneto (Regional Law No 18 on funerals, Veneto Region) of 4 March 2010 entrusted municipalities with setting the requirements relating to the safekeeping of cinerary urns and their characteristics.

*Regulation on burial services of the municipality of Padua*

10 Article 52 of the Regulation on burial services of the municipality of Padua, as amended by Decision No 84 of the municipality of Padua of 30 November 2015, provides:

1. Entrusting of the cremation urn for the purpose of safekeeping in a dwelling shall take place in accordance with the written arrangements made by the deceased during his lifetime. In the absence of such arrangements, entrusting may be requested by the spouse or, where there is no spouse, by the next of kin determined in accordance with Articles 74, 75, 76 and 77 of the Civil Code and, if there are several such relatives, by the absolute majority thereof.
2. In the event of proven emotional ties or acknowledgement of kinship, safekeeping of the urn may also be entrusted to persons other than those referred to in the second sentence of the preceding paragraph, subject to prior agreement in writing by persons having an entitlement to the deceased’s estate.
3. The recipient shall not in any circumstances be permitted to request a third party to keep the cinerary urn. This prohibition shall apply even if the deceased expressly stated his wishes during his lifetime.
4. It is obligatory to keep the urn solely at the home of the recipient, in a space protected from any possible desecration or theft. Under no circumstances shall any apertures or holes be made in the urn.
5. The burial service may at any time require the recipient to produce the cinerary urn for the purposes of verifying the integrity and state of that urn.

...

9. A recipient may be asked at any time to move to a cemetery an urn he holds for safekeeping.
10. In addition to the requirements set out in paragraph 4, in no circumstances may cinerary urns be kept for profit and economic activities relating, even non-exclusively, to the safekeeping of cinerary urns, for whatever purpose and for whatever period, shall therefore not be permitted. This prohibition shall apply even if the deceased expressly stated his wishes during his lifetime.'

The dispute in the main proceedings and the question referred for a preliminary ruling

- 11 Memoria is a company incorporated on 1 December 2014, whose activity is to offer the families of cremated deceased a service of safekeeping of cinerary urns through contracts for the lease of spaces for the placing of urns in a columbarium. That service is presented as a service which allows families to avoid having to keep such urns at home, while offering them an easier access to the premises where those urns are stored than would be the case if they were placed in a cemetery. The premises where those urns are stored are places intended exclusively for their safekeeping in an aesthetically pleasant, quiet and protected environment suitable for contemplation and prayers in memory of the deceased.
- 12 From September 2015, Memoria inaugurated premises intended exclusively for the placing of cinerary urns, which it refers to as 'places of remembrance', spread across different neighbourhoods of the municipality of Padua. Access to those premises by members of the deceased's family is subject to their acceptance of an internal code of conduct, which requires them in particular to comply with rules of good manners, propriety and dignity, imposes a ban on the consumption of alcoholic beverages and an obligation to wear proper attire.
- 13 Ms Dall'Antonia is a potential customer of Memoria since she plans to have her husband's body cremated and his ashes transferred to one of those facilities.
- 14 Nevertheless, the municipality of Padua adopted Decision No 84 of 30 November 2015, which amended the Regulation on burial services of that municipality. The amendments have the effect of expressly prohibiting the recipient of a cinerary urn from using the services of a private company, managed independently of municipal burial services, for the purpose of storing cinerary urns outside the home.
- 15 On 15 February 2016, Memoria and Ms Dall'Antonia brought proceedings before the Tribunale amministrativo regionale per il Veneto (Regional Administrative Court for the Veneto Region, Italy) seeking annulment of that decision and, in the case of Memoria, compensation for the damage suffered as a result of that decision. In support of their action, they claim, in essence, that the national legislation at issue is incompatible with EU law and, more specifically, with the principles of freedom of establishment and freedom to provide services.
- 16 The referring court expresses doubts as to whether those principles may be relied on, since the national legislation at issue does not apply to the national territory as a whole, but only to the municipality of Padua. By contrast, if it is considered that those principles can be relied on, that court considers that there is reason to question the compatibility of the national legislation at issue with those principles because that legislation is not supported by grounds of public policy, public security or public health.
- 17 In those circumstances, the Tribunale amministrativo regionale per il Veneto (Regional Administrative Court for the Veneto Region) decided to stay the proceedings and to refer the following questions to the Court for a preliminary ruling:

‘Must Articles 49 and 56 TFEU be interpreted as precluding the application of the following provisions of Article 52 of the Regulation on burial services of the municipality of Padua [as amended by Decision No 84 of the municipality of Padua of 30 November 2015, which provide that]:

“The recipient shall not in any circumstances be permitted to request a third party to keep the cinerary urn. This prohibition shall apply even if the deceased expressly stated his wishes during his lifetime.” (paragraph 3)

“It is obligatory to keep the urn solely at the home of the recipient ...” (paragraph 4)

“... In no circumstances may cinerary urns be kept for profit and economic activities relating, even non-exclusively, to the safekeeping of cinerary urns, for whatever purpose and for whatever period, shall therefore not be permitted. This prohibition shall apply even if the deceased expressly stated his wishes during his lifetime.” (paragraph 10)?’

18 By order of the President of the Court of 31 July 2017, the referring court’s request that the present reference for a preliminary ruling be dealt with under the expedited procedure provided for in Article 105 of the Rules of Procedure of the Court was refused.

### **Consideration of the question referred**

#### **Jurisdiction of the Court**

19 The Italian Government claims that the Court has no jurisdiction to answer the question referred because the provisions of EU law whose interpretation is sought do not apply to the dispute in the main proceedings, since that dispute relates to a purely domestic situation.

20 In accordance with Article 94 of the Rules of Procedure, it is for the referring court to indicate to the Court in what way the dispute pending before it, despite its purely domestic character, has a connecting factor with Articles 49 and 56 TFEU that makes their interpretation necessary for it to give judgment in that dispute (see, to that effect, judgment of 15 November 2016, *Ullens de Schooten*, C-268/15, EU:C:2016:874, paragraph 55).

21 In the absence of such information, the request for a preliminary ruling must be declared inadmissible.

22 It is therefore necessary to examine the objection raised by the Italian Government in the context of the examination of the admissibility of the request for a preliminary ruling.

#### **Admissibility of the request for a preliminary ruling**

23 It must be recalled that a dispute, despite the fact that it is between nationals of a single Member State, must be considered to have a connecting factor with Articles 49 and 56 TFEU that makes the interpretation of those provisions necessary for it to give judgment in that dispute, where national law requires the referring court to grant the same rights to those nationals as the rights which a national of another Member State in the same situation would derive from EU law (see, to that effect, judgments of 21 February 2013, *Ordine degli Ingegneri di Verona e Provincia and Others*, C-111/12, EU:C:2013:100, paragraph 35, and of 15 November 2016, *Ullens de Schooten*, C-268/15, EU:C:2016:874, paragraph 52).

24 In the present case, the dispute in the main proceedings is admittedly between, on the one hand, a company incorporated under Italian law and an Italian national and, on the other, a municipality in the territory of Italy, but the referring court states that, under Article 53 of Law No 234 of 24 December 2012, it must allow that company and that national to enjoy the benefits of Articles 49 and 56 TFEU.

25 In those circumstances, it must be stated that the referring court has established how, despite its purely domestic nature, the dispute pending before it has a connecting factor with Articles 49 and 56 TFEU that makes the requested interpretation of EU law necessary for it to give judgment in that dispute and, accordingly, that the request for a preliminary ruling is admissible in this respect.

26 Furthermore, the municipality of Padua and the Italian Government submit that the request for a preliminary ruling is also inadmissible on other grounds.

27 First of all, they submit that the request does not contain all the necessary elements of fact and law to enable the Court to give a useful answer to the question referred. In particular, the referring court did not set out the arguments of the municipality of Padua seeking to highlight the matters of public interest for the protection of which the provisions at issue in the main proceedings were adopted.

28 In that regard, it must be recalled that, in accordance with Article 94(b) and (c) of the Rules of Procedure, a request for a preliminary ruling must set out the tenor of any national provisions applicable to the dispute in the main proceedings as well as the relationship that the referring court establishes between those provisions and the provisions of EU law whose interpretation is sought.

29 In the present case, the referring court cited the relevant provisions of the Regulation on funeral services of the municipality of Padua, as amended by Decision No 84 of the municipality of Padua of 30 November 2015, and explained that the interpretation of Articles 49 and 56 TFEU was requested because the legality of that regulation was challenged on account of its alleged incompatibility with the principles of freedom to provide services and freedom of establishment.

30 It follows that the referring court has met, to the requisite legal standard, its obligation to set out the tenor of any national provisions applicable to the dispute in the main proceedings as well as the relationship between those provisions and the provisions of EU law whose interpretation is sought.

31 Therefore, the plea of inadmissibility raised by the municipality of Padua and the Italian Government must be rejected.

32 Next, the Italian Government alleges that the reference for a preliminary ruling is premature. According to that government, before referring a question to the Court for a preliminary ruling, the referring court should have considered whether the national legislation at issue in the main proceedings prohibits or authorises the exercise of an economic activity concerning the safekeeping and storage of cinerary urns and, in the course of doing so, identified the objectives pursued by that legislation.

33 In that regard, it must be recalled that national courts have the widest discretion in referring matters to the Court if they consider that a case pending before them raises questions involving the interpretation of provisions of EU law, or consideration of their validity, which are necessary for the resolution of the case before them and, in particular, that they are free to exercise that discretion at

whatever stage of the proceedings they consider appropriate (judgment of 5 July 2016, *Ognyanov*, C-614/14, EU:C:2016:514, paragraph 17 and the case-law cited).

34 Consequently, a request for a preliminary ruling cannot be declared inadmissible simply because it was submitted at an early stage of the main proceedings.

35 Therefore, the plea of inadmissibility raised by the Italian Government must be rejected.

36 Finally, the municipality of Padua considers that since the national legislation at issue in the main proceedings concerns an individual's most personal rights, the principles of legal certainty and protection of legitimate expectations in any event preclude that legislation from being called into question.

37 Nevertheless, although it cannot absolutely be ruled out that the principles of legal certainty and protection of legitimate expectations may be relevant, their possible interaction with free movement amounts to an issue of substance. Merely mentioning them is not therefore sufficient to establish that a request for a preliminary ruling lacks useful purpose since the referring court still requires an answer to that request in order to give judgment. Thus, such a request for a preliminary ruling is not inadmissible.

38 Accordingly, the plea of inadmissibility raised by the municipality of Padua must be rejected.

39 It follows from the foregoing that the request for a preliminary ruling is admissible.

## **Substance**

### *Preliminary observations*

40 First, during the hearing, the European Commission submitted that there is no need to examine the national legislation at issue in the main proceedings in the light of the provisions of the FEU Treaty on the fundamental freedoms, since Directive 2006/123 applies in the main proceedings.

41 However, it must be noted that national legislation, such as that at issue in the main proceedings, which prohibits private companies from providing a safekeeping service of cinerary urns, has the effect, as is apparent from the order for reference, of conferring on municipal departments a monopoly of services for the safekeeping of those urns. It follows from Article 1(3) of Directive 2006/123, read in the light of recital 8 thereof, that that directive does not concern the abolition of monopolies providing services.

42 Consequently, such legislation does not fall within the scope of Directive 2006/123, and it must therefore be examined solely in the light of the provisions of the Treaty.

43 Second, the referring court referred in its question to both Article 49 TFEU and Article 56 TFEU.

44 Nevertheless, in that regard, it must be noted that only the first of those two provisions is applicable in the main proceedings. Where an operator intends actually to pursue its economic activity by means of a stable arrangement and for an indefinite period, its situation must be examined in the light of freedom of establishment, as defined in Article 49 TFEU (see, in particular, judgments of 29 September 2011, *Commission v Austria*, C-387/10, not published, EU:C:2011:625,

paragraph 22, and of 23 February 2016, *Commission v Hungary*, C-179/14, EU:C:2016:108, paragraphs 148 to 150).

45 It appears that, in the main proceedings, Memoria wishes to provide on the territory of the municipality of Padua a safekeeping service of cinerary urns by means of a stable arrangement and for an indefinite period. It follows that the question referred must be regarded as concerning the interpretation of Article 49 TFEU only.

46 In the light of the above, the question referred must be understood as meaning that the referring court asks, in essence, whether Article 49 TFEU must be interpreted as precluding national legislation, such as that at issue in the main proceedings, which prohibits, even despite the express wishes of the deceased, the recipient of a cinerary urn from entrusting its safekeeping to a third party, and requires him to store the urn in his home, unless it is entrusted to a municipal cemetery, and furthermore prohibits any activity carried out for profit relating, even non-exclusively, to the safekeeping of cinerary urns, on whatever basis and for whatever period.

#### *The question*

47 From the outset, it should be recalled that Article 49 TFEU precludes any national measure constituting a restriction on the freedom of establishment, unless such a restriction is justified by overriding reasons in the public interest (see, to that effect, inter alia, judgment of 5 December 2013, *Venturini and Others*, C-159/12 to C-161/12, EU:C:2013:791, paragraphs 30 and 37).

48 In the first place, in accordance with settled case-law, any national measure which, albeit applicable without discrimination on grounds of nationality, prohibits, hinders or renders less attractive the exercise by EU nationals of the freedom of establishment guaranteed by the Treaty constitutes a restriction within the meaning of Article 49 TFEU (see, to that effect, judgment of 28 January 2016, *Laezza*, C-375/14, EU:C:2016:60, paragraph 21).

49 In the present case, taking into account the statements of the referring court, it must be stated that national legislation, such as that at issue in the main proceedings, which prohibits EU nationals from providing a safekeeping service for the custody of cinerary urns in the Member State in question hinders those nationals from establishing themselves in that Member State for the purpose of performing such a safekeeping service and is therefore liable to hinder the exercise by those nationals of the freedom of establishment guaranteed by the Treaty.

50 Consequently, such legislation introduces a restriction on the freedom of establishment for the purposes of Article 49 TFEU.

51 In the second place, according to settled case-law, a restriction on freedom of establishment may be justified, if applied without discrimination on grounds of nationality, by overriding reasons in the public interest, provided that it is appropriate for securing the attainment of the objective which it pursues and does not go beyond what is necessary in order to attain it (see, to that effect, inter alia, judgment of 9 March 2017, *Piringer*, C-342/15, EU:C:2017:196, paragraph 53 and the case-law cited).

52 More specifically, it must also be recalled that national legislation is appropriate for ensuring attainment of the objective relied upon only if it genuinely reflects a concern to attain that objective in a consistent and systematic manner (see, to that effect, judgments of 10 March 2009, *Hartlauer*, C-169/07, EU:C:2009:141, paragraph 55, and of 23 December 2015, *Hiebler*, C-293/14, EU:C:2015:843, paragraph 65).

53 In the present case, the municipality of Padua and the Italian Government claim that the national legislation at issue in the main proceedings, which the parties agree applies without discrimination on grounds of nationality, is justified by overriding reasons in the public interest relating to the protection of public health, the need to ensure the respect owed to the memory of the deceased, and the protection of the moral and religious values prevailing in Italy, being values which oppose the existence of commercial and worldly activities related to the storage of ashes of the deceased and accordingly oppose the performance for profit of activities of safekeeping of mortal remains.

54 In that regard, as regards, first, the justification based on the protection of public health, it admittedly follows from settled case-law of the Court that the protection of public health is one of the overriding reasons in the public interest recognised by EU law and that Member States have a wide margin of discretion in this area (see, to that effect, judgment of 1 June 2010, *Blanco Pérez and Chao Gómez*, C-570/07 and C-571/07, EU:C:2010:300, paragraphs 44, 68 and 106).

55 However, that objective cannot justify the restriction at issue in the main proceedings in so far as cremation ashes, unlike corpses, are biologically inert, since they have been sterilised by heat, and accordingly their safekeeping cannot amount to a constraint imposed by public health considerations.

56 Consequently, the objective of protection of public health put forward by the municipality of Padua and the Italian Government is not appropriate for justifying the restrictions on freedom of establishment introduced by the national legislation at issue in the main proceedings.

57 As regards, second, the objective of protection of the respect owed to the memory of the deceased, this too is capable of amounting to an overriding reason in the public interest.

58 Moreover, it may indeed be considered that national legislation prohibiting private companies from holding cinerary urns for safekeeping is appropriate for ensuring that that objective is achieved. First, such a prohibition is likely to guarantee that the safekeeping of cinerary urns is entrusted to structures subject to specific obligations and checks designed to guarantee the respect owed to the memory of the deceased. Second, it is appropriate for ensuring that, in the event that the companies in question cease their safekeeping activities, the urns are not abandoned or their contents disposed of in an inappropriate way or place.

59 Nevertheless, it must be noted that there are less stringent measures which make it possible to achieve that objective, such as, in particular, the obligation to ensure the safekeeping of cinerary urns in similar conditions to those of municipal cemeteries and, in the event of cessation of activities, the obligation to transfer those urns to a public cemetery or to return them to the relatives of the deceased.

60 Accordingly, the national legislation at issue in the main proceedings goes beyond what is necessary to attain the objective of protection of the respect owed to the memory of the deceased.

61 In those circumstances, the restrictions on the freedom of establishment introduced by that legislation cannot be justified in terms of protection of the respect owed to the memory of the deceased.

62 As regards, third, the moral and religious values prevailing in the Member State in question, the Italian Government submits that they oppose activities of safekeeping of mortal remains being performed for profit.

63 Nevertheless, without it being necessary to take a view on the merit of such an objective, it must be noted that it is apparent from the actual wording of Article 5(2) of Law No 130 of 30 March 2001 that the activity of the safekeeping of cremated ashes is subject in that Member State to pricing fixed by the Minister for the Interior after consulting the Minister for Health and certain associations.

64 The opening up to private companies of activities of safekeeping of mortal remains could have been made subject to that pricing structure, which in itself is clearly not considered by the Member State in question to be contrary to its moral and religious values.

65 Therefore, as that was not done, the national legislation at issue in the main proceedings goes beyond what is necessary to attain the objective relied on, and, consequently, it cannot in any event be justified in the light of that objective.

66 It follows from the foregoing that the answer to the question referred is that Article 49 TFEU must be interpreted as precluding national legislation, such as that at issue in the main proceedings, which prohibits, even despite the express wishes of the deceased, the recipient of a cinerary urn from entrusting its safekeeping to a third party, and requires him to store the urn in his home, unless it is entrusted to a municipal cemetery, and furthermore prohibits any activity carried out for profit relating, even non-exclusively, to the safekeeping of cinerary urns, on whatever basis and for whatever period.

#### **Costs**

67 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national court, the decision on costs is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (Third Chamber) hereby rules:

**Article 49 TFEU must be interpreted as precluding national legislation, such as that at issue in the main proceedings, which prohibits, even despite the express wishes of the deceased, the recipient of a cinerary urn from entrusting its safekeeping to a third party, and requires him to store the urn in his home, unless it is entrusted to a municipal cemetery, and furthermore prohibits any activity carried out for profit relating, even non-exclusively, to the safekeeping of cinerary urns, on whatever basis and for whatever period.**

[Signatures]

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\* Language of the case: Italian.