Court of Justice of the European Communities: Opinion of First Advocate General in Cases C-262/02 and C-429/02

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In his Opinion dated 11 March 2004, Advocate General Tizzano concluded in favour of the compatibility with Community law of the French legislation on tobacco and alcohol addiction ("the Loi Evin ") and of the code of conduct drawn up by the Conseil Supérieur de l'Audiovisuel (the French audiovisual regulatory body CSA). The latter lays down detailed rules for the implementation of the Law.

The Loi Evin prohibits, in France, direct and indirect television advertising of alcoholic beverages. Infringement of that provision is an offence punishable by a fine. The Code distinguishes between international sporting events, whose images are broadcast in a large number of countries and which are therefore not considered to concern mainly French viewers, from other events, the broadcast of which is specifically aimed at the French viewing public. It requires that, where the latter events take place abroad, French broadcasters make use of available means in order to prevent advertising for alcoholic beverages from appearing on television screens.

This law came to the attention of the Court in two distinct cases: in an infringement proceeding (C262/02), the Commission asked the Court to declare the French legislation incompatible with the freedom to provide services because of the obstacles which the Loi Evin places in the way of the broadcasting in France of foreign sporting events. In the proceedings for a preliminary ruling (C-429/02), the French television channel TF1 required of the companies responsible for negotiating television broadcasting rights for football matches to ensure that the brand names of alcoholic beverages did not appear on television screens. Consequently, a number of foreign football clubs refused to let Bacardi France, which produces and markets many alcoholic beverages, to rent advertising hoarding space around the pitch. The French Court of Cassation's reference to the Court aimed at clarifying whether the French rules are contrary to Community law, in particular to the freedom to provide services and to the "Television Without Frontiers" Community directive.

The Advocate General first considers that the directive is not applicable in that case, mainly since the definition of "advertising" included in the Directive does not cover advertising messages present at the stadium with no economic

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relationship between advertisers and broadcaster.

As to the rules on free movement of services, he considers that the measures adopted by the Conseil Supérieur de l'Audiovisuel, requiring the negotiators of television rights to use every "means available" to prevent advertising for alcoholic beverages from appearing on French television screens, effectively constitutes a restriction on that freedom. But nevertheless he concludes that the restriction is justified, since the purpose of the Loi Evin is the protection of public health, which is one of the justifications under the EC Treaty for restricting the freedom to provide services. In addition, he considers the French legislation proportionate to the objective pursued: the choice of the French Government not to ban completely all advertising of alcoholic beverages in stadiums falls within the freedom which the Member States have to decide the degree to which and the way in which public health is protected. According to the Advocate General, it is reasonable to consider that the French measures limiting advertising for alcoholic beverages may also reduce instances in which television viewers consume alcoholic beverages in response to the blandishments of advertising. Furthermore, the distinction between international events and other events makes it easier to reconcile the objective of protection of public health with the principle of the freedom to provide services in that it reduces the number of cases in which the broadcasting in France of sporting events abroad is prohibited.

Opinion of Advocate General Tizzano, delivered on 11 March 2004, Case C262/02 Commission of the European Communities v. France and Case C-429/02 Bacardi France v. Télévision Française TFI and Others

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