[CZ] Decision of the Supreme Adminstative Court on defective advertising

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On 31 March 2021, the Czech Supreme Administrative Court upheld the judgement of the Regional Court of Brno in the case INDEX ČECHY s.r.o. against the Ministry of Industry and Trade concerning unlawful advertising.

In 29 June 2016, the Regional Office of the South Moravian Region imposed a fine of CZK 50,000 on the plaintiff for committing an administrative offence pursuant to Section 8a (3) d) of Act No. 40/1995 Coll., on the regulation of advertising. It produced an advertisement in the form of a double-sided leaflet, which was publicly distributed in a quantity of 213,689, and which contained a nearly naked female body unrelated to the activity being promoted, which is generally contrary to good morals, and in particular discriminatory against the female sex and degrading to human dignity.

The plaintiff appealed against the decision of the regional authority to the Ministry of Industry and Trade, which confirmed the decision of the Regional Office.

The plaintiff challenged the defendant's decision in an action before the Regional Court in Brno, objecting that the requirements for the content of advertising set out in § 2 paragraph 3 of the Act on the Regulation of Advertising do not require that the advertisement be linked to the promoted activity.

The Regional Court dismissed the action and upheld the defendant's decision. In the judgment of 4 June 2019, the Regional Court concluded that the depiction of a woman in the advertisement in question was contrary to the requirement of respect for human dignity, since the use of a woman's almost naked body merely as an accessory or decoration serves to attract attention. Such a depiction reduces the woman to a mere object and creates the idea that it is acceptable to perceive and treat persons in that way. Such an advertisement is also discriminatory because it portrays women in a role that puts them at a disadvantage precisely because of their gender. This approach leads to the reinforcement of stereotypical images of women and places them in a degrading position as sexual objects. The depiction of the woman in question fulfils the elements of sexism as one of the manifestations of sex discrimination, consisting in unequal treatment on the basis of sex. The Regional Court also noted that not every depiction of a naked body leads to the conclusion that the advertisement is

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prohibited. The examples cited by the applicant (e.g. advertisements for cosmetic products, perfumes, massages, lingerie) do not generally suffer from a lack of connection between the form of the advertising message used and the type of activity advertised. The fact that the person depicted in the advertisement acts voluntarily does not alter the matter, since the right to protection of human dignity cannot be waived.

The plaintiff filed a cassation appeal against the judgment of the Regional Court with the Supreme Administrative Court, which concluded that the appeal was not well-founded and therefore dismissed it pursuant to the second sentence of Article 110(1) of the Code of Civil Procedure.

Rozsudek Nejvyššího správního soudu č.j. 8 As 202/2019-43 ze dne 31.3.2021

http://kraken.slv.cz/8As202/2019

Judgement of the Supreme Adminstrative Court, 8 As 202/2019-43, 31 March 2021

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