Reports of Cases

JUDGMENT OF THE COURT (First Chamber)

8 May 2014*

(Reference for a preliminary ruling — Charter of Fundamental Rights of the European Union — Principles of equality and non-discrimination — Implementation of EU law — Scope of application of EU law — None — Lack of jurisdiction of the Court)

In Case C-483/12,

REQUEST for a preliminary ruling under Article 267 TFEU from the Grondwettelijk Hof (Belgium), made by decision of 18 October 2012, received at the Court on 29 October 2012, in the proceedings

Pelckmans Turnhout NV

v

Walter Van Gastel Balen NV,

Walter Van Gastel NV,

Walter Van Gastel Lifestyle NV,

Walter Van Gastel Schoten NV,

intervening parties:

Ministerraad,

THE COURT (First Chamber),

composed of A. Tizzano (Rapporteur), President of the Chamber, A. Borg Barthet, M. Berger, S. Rodin and F. Biltgen, Judges,

Advocate General: N. Jääskinen,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

— Pelckmans Turnhout NV, by G. Philipsen, advocaat,

* Language of the case: Dutch.

— Walter Van Gastel Balen NV, Walter Van Gastel NV, Walter Van Gastel Lifestyle NV and Walter Van Gastel Schoten NV, by P. Wytinck, P. Verstraeten and D. Dobson, advocaten,

— the Belgian Government, by T. Materne and J.-C. Halleux, acting as Agents, assisted by J.-F. De Bock and V. De Schepper, advocaten,

— the German Government, by T. Henze and J. Möller, acting as Agents,

— the European Commission, by W. Roels and E. White, acting as Agents,

having decided, after hearing the Advocate General, to proceed to judgment without an Opinion,

gives the following

Judgment

1 This request for a preliminary ruling concerns the interpretation of Articles 6(3) TEU and 20 and 21 of the Charter of Fundamental Rights of the European Union ('the Charter'), read in the light of Articles 15 and 16 of the Charter and Articles 34 TFEU to 36 TFEU, 56 TFEU and 57 TFEU.

2 The request has been made in proceedings between Pelckmans Turnhout NV ('Pelckmans') and Walter Van Gastel Balen NV, Walter Van Gastel NV, Walter Van Gastel Lifestyle NV and Walter Van Gastel Schoten NV, all companies which run garden centres.

Belgian legal context

3 Article 8 of the Law of 10 November 2006 on opening hours in commerce, crafts and services (*Belgisch Staatsblad*, 19 December 2006, p. 72879, 'the LHO') is worded as follows:

'Access of consumers to a unit of an establishment, the direct sale of goods and services to consumers and home deliveries shall be prohibited during an uninterrupted period of twenty-four hours beginning on Sunday at 05.00 or at 13.00 and finishing at the same time on the following day.'

4 Article 9 of the LHO provides:

'Any trader or service provider may choose a weekly rest day other than that referred to in Article 8, beginning on the day chosen at 05.00 or at 13.00 and finishing at the same time on the following day.'

5 Article 13 of the LHO provides:

'A trader or service provider which chooses a weekly rest day other than that referred to in Article 8 shall indicate, in a manner which is clear and visible from the outside, the rest day and the time at which it commences.'

6 Article 14 of the LHO is worded as follows:

'A trader or service provider which does not choose a weekly rest day other than Sunday may derogate from the obligation referred to in Article 8 in order to ensure coverage of their business on Sunday.'

7 Article 16 of the LHO provides:

‘§ 1. The prohibitions referred to in Article 6 and Article 8 shall not apply to:

(a) sales at the home of a consumer other than the purchaser, on condition that the sale takes place in the inhabited part of a dwelling used exclusively for private purposes;

(b) home sales at the invitation of the consumer, in respect of which the customer has expressly requested in advance a visit by the vendor, for the purposes of negotiating the purchase of goods or services;

(c) sales and the provision of services in retail outlets of public transport companies and in railway stations run directly or indirectly by NMBS-Holding (Belgian National Railways Company-Holding) or its subsidiaries, as well as in all the immovable property in which those stations are located;

(d) sales and the provision of services in airports and port areas open to international travel;

(e) the provision of services to be effected in the event of overriding necessity;

(f) sales, in petrol stations or units of establishments located in motorway areas, of an assortment of general foodstuffs and household items, with the exception of distilled alcohol beverages and yeast-based beverages with an alcohol volume exceeding 6%, on condition that the net commercial surface area does not exceed 250 m^2.

Where a consumer accepts an offer of a visit at the initiative of the vendor, this shall not constitute an invitation within the meaning of (b).

§ 2. In addition, those prohibitions shall not apply to the units of an establishment whose main activity is the sale of one of the following groups of goods:

(a) newspapers, magazines, tobacco products and smoking accessories, telephone cards and National Lottery products;

(b) audiovisual media and video games, as well as the rental thereof;

(c) fuel and oil for automobile vehicles;

(d) ice cream in individual portions;

(e) foodstuffs prepared in the unit of an establishment which are not consumed there.

A main activity arises where the sale of the group of goods which constitutes the main activity accounts for at least 50% of annual turnover. ...’

8 Article 17(1) of the LHO provides inter alia:

‘The prohibitions referred to in Article 6(a) and (b) and in Article 8 shall not apply in seaside resorts and communes or parts of communes recognised as tourist centres.’

The facts in the main proceedings and the questions referred for a preliminary ruling

9 The order for reference indicates that the defendants open their garden centres to the public seven days a week. Considering the practice to be contrary to Article 8 et seq. of the LHO, Pelckmans applied to the Rechtbank van koophandel te Antwerpen (Commercial Court, Antwerp), requesting that they be ordered to cease the practice and comply with the requirement to observe one day of rest per week.

10 Before the referring court, the defendants in the main proceedings contest the action brought by Pelckmans, arguing that the provisions of the LHO relied on are contrary to EU law, including Directive 2005/29/EC of the European Parliament and of the Council of 11 May 2005 concerning unfair business-to-consumer commercial practices in the internal market and amending Council Directive 84/450/EEC, Directives 97/7/EC, 98/27/EC and 2002/65/EC of the European Parliament and of the Council and Regulation (EC) No 2006/2004 of the European Parliament and of the Council ('Unfair Commercial Practices Directive') (OJ 2005 L 149, p. 22), and Articles 10 and 11 of the Belgian Constitution.

11 Before ruling on the merits of the case, by decision of 27 October 2001 the Rechtbank van koophandel te Antwerpen referred two questions to the Court of Justice for a preliminary ruling concerning the interpretation of the Unfair Commercial Practices Directive and Articles 34 TFEU, 35 TFEU, 49 TFEU and 56 TFEU, as well as one question to the Grondwettelijk Hof (Constitutional Court).

12 By order of 4 October 2012 in Case C-559/11 *Pelckmans Turnhout* EU:C:2012:615, the Court of Justice answered the first question referred and the second part of the second question referred to the effect that 'the [Unfair Commercial Practices] Directive ... must be interpreted as not applying to national legislation, such as that at issue in the main proceedings, which does not pursue consumer protection objectives'. The Court held that the second part of the second question was manifestly inadmissible on the ground that the [Rechtbank van koophandel te Antwerpen] had not provided a sufficient explanation of the reasons why it considered that the interpretation of the provisions of the TFEU sought was necessary in order to resolve the dispute in the main proceedings and had not provided any explanation of the connection between those provisions and the national legislation applicable to that dispute.

13 The Grondwettelijk Hof, before which the question of constitutionality had been brought, decided to stay the proceedings and to refer the following question to the Court of Justice for a preliminary ruling:

'Must the principle of equality, which is enshrined in Article 6(3) [TEU] and in Articles 20 and 21 of the Charter …, in conjunction with Articles 15 and 16 of [the] Charter and Articles 34 to 36, 56 and 57 [TFEU], be interpreted as precluding rules such as those contained in Articles 8, 9, 16 and 17 of the [LHO], in so far as the obligation contained in those articles that a weekly closing day be provided for:

— does not apply to traders established in railway stations or in units of establishment of public transport companies, to sales in airports and port areas open to international travel or to sales in petrol stations or units of establishment located in motorway areas, but does apply to traders established in other locations,

— does not apply to traders engaged in the sale of goods such as newspapers, magazines, tobacco products and smoking accessories, telephone cards and National Lottery products, the sale of audiovisual media and video games and the sale of ice cream, but does apply to traders who offer other goods for sale,

— applies only to the retail trade, namely to undertakings which are engaged in sales to consumers, whilst it does not apply to other traders,

— entails, at least for traders who carry out their activity by means of a physical sales point and who are in direct contact with consumers, a significantly larger restriction than for traders who carry out their activity via an online shop or possibly via other forms of distance selling?'

Jurisdiction of the Court

14 By its question, the referring court asks, in essence, whether the principles of equality and non-discrimination, laid down in Articles 20 and 21 of the Charter, read in the light of Articles 15 and 16 of the Charter and Articles 34 TFEU to 36 TFEU, 56 TFEU and 57 TFEU, must be interpreted as precluding national legislation such as the LHO which, subject to a few exceptions, prohibits traders from opening their establishments seven days a week by imposing a requirement of one day of rest per week.

15 The German Government and the European Commission take the view that the Court of Justice has no jurisdiction to answer that question because there is nothing in the order for reference establishing that the subject-matter of the main proceedings has any connection with EU law.

16 In that regard, it should be borne in mind that, under Article 94(c) of the Rules of Procedure of the Court of Justice, a request for a preliminary ruling must contain a statement of the reasons which prompted the referring court or tribunal to inquire about the interpretation or validity of certain provisions of EU law, and the connection between those provisions and the national legislation applicable to the main proceedings. That statement of reasons, like the summary of the relevant findings of fact required under Article 94(a) of those Rules, must be of such a kind as to enable the Court to ascertain, not only whether the request for a preliminary ruling is admissible, but also whether it has jurisdiction to answer the question referred.

17 It should also be remembered that the Charter's field of application so far as concerns action of the Member States is defined in Article 51(1) thereof, according to which the provisions of the Charter are addressed to the Member States only when they are implementing EU law (Case C-617/10 *Åkerberg Fransson* EU:C:2013:105, paragraph 17).

18 That provision confirms the Court's settled case-law, according to which the fundamental rights guaranteed in the legal order of the European Union are applicable in all situations governed by EU law, but not outside such situations (see *Åkerberg Fransson* EU:C:2013:105, paragraph 19 and the case-law cited).

19 That definition of the field of application of the fundamental rights of the European Union is borne out by the explanations relating to Article 51 of the Charter, which, in accordance with the third subparagraph of Article 6(1) TEU and Article 52(7) of the Charter, have to be taken into consideration for the purpose of interpreting it. According to those explanations, 'the requirement to respect fundamental rights defined in the context of the Union is only binding on the Member States when they act in the scope of Union law' (*Åkerberg Fransson* EU:C:2013:105, paragraph 20).

20 It follows that, where a legal situation does not come within the scope of EU law, the Court does not have jurisdiction to rule on it and any provisions of the Charter relied upon cannot, of themselves, form the basis for such jurisdiction (see, to that effect, the order in Case C-466/11 *Currà and Others* EU:C:2012:465, paragraph 26, and *Åkerberg Fransson* EU:C:2013:105, paragraph 22).

21 These considerations correspond to those underlying Article 6(1) TEU, according to which the provisions of the Charter are not to extend in any way the competences of the European Union as defined in the Treaties. Likewise, the Charter, pursuant to Article 51(2) thereof, does not extend the field of application of EU law beyond the powers of the European Union or establish any new power or task for the European Union, or modify powers and tasks as defined in the Treaties (see Case C-400/10 PPU *McB.* EU:C:2010:582, paragraph 51; Case C-256/11 *Dereci and Others* EU:C:2011:734, paragraph 71; and *Åkerberg Fransson* EU:C:2013:105, paragraph 23).

22 There is nothing specific in the order for reference demonstrating that the legal situation at issue in the main proceedings comes within the scope of EU law.

23 Like the written observations submitted to the Court, that order contains nothing which establishes a connection between the facts of those proceedings and the Treaty provisions referred to by the referring court.

24 In any event, as regards the application of Articles 34 TFEU to 36 TFEU governing the free movement of goods, referred to by that court, it must be borne in mind, as this Court has observed on a number of occasions, that those provisions do not apply to national rules concerning the closure of shops that are enforceable against all economic operators pursuing activities within the national territory and that affect, in the same way, in law and in fact, the sale of domestic products and of products from other Member States (see, inter alia, Joined Cases C-69/93 and C-258/93 *Punto Casa and PPV* EU:C:1994:226, paragraph 15, and Joined Cases C-418/93 to C-421/93, C-460/93 to C-462/93, C-464/93, C-9/94 to C-11/94, C-14/94, C-15/94, C-23/94, C-24/94 and C-332/94 *Semeraro Casa Uno and Others* EU:C:1996:242, paragraph 28).

25 Similarly, as regards Articles 56 TFEU and 57 TFEU governing the freedom to provide series, also referred to by the referring court, suffice it to state that the legislation in question is applicable to all traders exercising their activity on national territory; that its purpose is not to regulate the conditions concerning the establishment of the undertakings concerned; and that any restrictive effects which it might have on freedom of establishment are too uncertain and indirect for the obligation laid down to be regarded as being capable of hindering that freedom (see, by analogy, *Semeraro Casa Uno and Others* EU:C:1996:242, paragraph 32).

26 It follows from all the foregoing that it has not been established that the Court has jurisdiction to interpret the provisions of the Charter referred to by the referring court.

27 In those circumstances, the Court has no jurisdiction to answer the question referred by the Grondwettelijk Hof.

Costs

28 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 (First Chamber) hereby rules:

The Court of Justice of the European Union has no jurisdiction to answer the question referred by the Grondwettelijk Hof (Belgium).

[Signatures]