Reports of Cases

ORDER OF THE COURT (Third Chamber)

26 October 2017*

(Reference for a preliminary ruling — Article 99 of the Rules of Procedure of the Court of Justice — Directive 2005/29/EC — Unfair commercial practices — National legislation prohibiting the advertising of procedures relating to plastic surgery or non-surgical plastic medicine)

In Case C-356/16,

REQUEST for a preliminary ruling under Article 267 TFEU from the Nederlandstalige rechtbank van eerste aanleg te Brussel, strafzaken (Dutch-language Court of First Instance, Brussels, criminal cases, Belgium), made by decision of 26 May 2016, received at the Court on 27 June 2016, in the criminal proceedings against

Wamo BVBA,

Luc Cecile Jozef Van Mol,

THE COURT (Third Chamber),

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

Advocate General: Y. Bot,

Registrar: A. Calot Escobar,

having decided, after hearing the Advocate General, to give a decision by reasoned order, pursuant to Article 99 of the Rules of Procedure of the Court of Justice,

makes the following

Order

1 This request for a preliminary ruling concerns the interpretation of 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 ('the Unfair Commercial Practices Directive') (OJ 2005 L 149, p. 22).

* Language of the case: Dutch.

2 The request has been made in criminal proceedings brought against Wamo BVBA and Mr Luc Cecile Jozef Van Mol, prosecuted for the infringement of a national law prohibiting any natural or legal person from disseminating advertising for procedures relating to plastic surgery or non-surgical plastic medicine.

Legal context

EU law

3 Recital 9 of Directive 2005/29 states:

'This Directive is without prejudice to individual actions brought by those who have been harmed by an unfair commercial practice. It is also without prejudice to Community and national rules on … the health and safety aspects of products … The Member States will thus be able to retain or introduce restrictions and prohibitions of commercial practices on grounds of the protection of the health and safety of consumers in their territory wherever the trader is based, for example in relation to alcohol, tobacco or pharmaceuticals. …'

4 Article 2 of that directive, headed 'Definitions', provides:

'For the purposes of this Directive:

…

(c) "product" means any goods or service including immovable property, rights and obligations;

(d) "business-to-consumer commercial practices" (hereinafter also referred to as commercial practices) means any act, omission, course of conduct or representation, commercial communication including advertising and marketing, by a trader, directly connected with the promotion, sale or supply of a product to consumers.

…'

5 Article 3 of that directive provides:

'1. This Directive shall apply to unfair business-to-consumer commercial practices, as laid down in Article 5, before, during and after a commercial transaction in relation to a product.

…

3. This Directive is without prejudice to Community or national rules relating to the health and safety aspects of products.

…

8. This Directive is without prejudice to any conditions of establishment or of authorisation regimes, or to the deontological codes of conduct or other specific rules governing regulated professions in order to uphold high standards of integrity on the part of the professional, which Member States may, in conformity with Community law, impose on professionals.

…'

Belgian law

6 Under Article 2(6) of the Wet tot regeling van de vereiste kwalificaties om ingrepen van niet-heelkundige esthetische geneeskunde en esthetische heelkunde uit te voeren en tot regeling van de reclame en informatie betreffende die ingrepen (Law regulating the qualifications required to perform procedures relating to non-surgical plastic medicine and plastic surgery and regulating the advertising and information relating to such procedures), 23 May 2013 (*Belgisch Staatsblad*, 2 July 2013, p. 41511), as amended by the Wet houdende diverse bepalingen inzake gezondheid (Law containing various provisions relating to health), 10 April 2014 (*Belgisch Staatsblad*, 30 April 2014, p. 35442) ('the Law of 23 May 2013'), 'advertising' means any form of communication or action directed at the public which has the direct or indirect objective of promoting the procedures referred to in Article 3 of that law, regardless of the place, medium or techniques used, including reality TV broadcasts.

7 Article 20(1) of the Law of 23 May 2013, read in conjunction with Article 3 of that law, specifies that it is prohibited for any natural or legal person to disseminate advertising for procedures relating to plastic surgery or non-surgical plastic medicine.

8 Article 22(1) of that law provides that a person who has committed an infringement under Article 20(1) is to be punished by imprisonment of between eight days and six months and a fine of between EUR 250 and EUR 5 000 or by one of those penalties alone, and specifies that the court may, in addition, order the publication of the judgment in three newspapers.

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

9 It is apparent from the order for reference that, following a notification by the Federale Overheidsdienst Volksgezondheid, veiligheid van de voedselketen en leefmilieu (Federal Public Service Health, Food Chain Safety and Environment, Belgium) to the Procureur des Konings (Public Prosecutor, Belgium), criminal proceedings were brought against Wamo, an operator of clothing stores under the commercial name ZEB, and against Mr Van Mol, the managing director of Mosa, which is the managing company of Wamo, on the ground that, between 8 and 13 June 2015, they disseminated advertising for procedures relating to plastic surgery, contrary to Belgian law.

10 The prosecution file contains an advertising brochure promoting a competition relating to plastic surgery distributed by ZEB to its customers, and a copy of Wamo's website, where a similar advertisement appears.

11 Wamo and Mr Van Mol contend before the national court that, in particular, the provisions of Belgian law prohibiting the dissemination of advertising for procedures relating to plastic surgery or non-surgical plastic medicine are contrary to Directive 2005/29.

12 It is in that context that the Nederlandstalige rechtbank van eerste aanleg te Brussel, strafzaken (Dutch-language Court of First Instance, criminal cases, Brussels, Belgium) decided to stay the proceedings and to refer the following question to the Court for a preliminary ruling:

'Should Directive [2005/29] be interpreted as precluding a national law which prohibits any natural or legal person from disseminating advertising relating to procedures involving plastic surgery or non-surgical plastic medicine, as provided by Article 20(1) of the [Law of 23 May 2013]?'

Consideration of the question referred

13 Pursuant to Article 99 of its Rules of Procedure, where the answer to a question referred to the Court for a preliminary ruling may clearly be deduced from existing case-law, the Court may at any time, on a proposal from the Judge-Rapporteur and after hearing the Advocate General, give its decision by reasoned order.

14 That provision must be applied in the present case.

15 By its question, the national court asks, in essence, whether Directive 2005/29 must be interpreted as precluding a provision of national law, such as that at issue in the main proceedings, which protects public health and the dignity and integrity of the professions of plastic surgeon and plastic doctor by prohibiting any natural or legal person from disseminating advertising for procedures relating to plastic surgery or non-surgical plastic medicine.

16 In order to reply to the question referred, it is necessary first of all to determine whether the advertisements that are the subject matter of the prohibition at issue in the main proceedings constitute commercial practices within the meaning of Article 2(d) of Directive 2005/29 and are, therefore, subject to the rules laid down by that directive (see, by analogy, judgment of 4 May 2017, *Vanderborght*, C-339/15, EU:C:2017:335, paragraph 22 and the case-law cited).

17 In that regard, it must be recalled that Article 2(d) of that directive gives a particularly wide definition of the concept of 'commercial practices' as 'any act, omission, course of conduct or representation, commercial communication including advertising and marketing, by a trader, directly connected with the promotion, sale or supply of a product to consumers' (judgments of 9 November 2010, *Mediaprint Zeitungs- und Zeitschriftenverlag*, C-540/08, EU:C:2010:660, paragraph 17, and of 4 May 2017, *Vanderborght*, C-339/15, EU:C:2017:335, paragraph 23).

18 In addition, under Article 2(c) of that directive, the concept of a 'product' covers any goods or service.

19 It follows that the advertising of procedures relating to plastic surgery such as that at issue in the main proceedings, whether through publications in advertising brochures or on the internet, constitutes a 'commercial practice' for the purposes of Directive 2005/29.

20 However, according to Article 3(3), that directive is without prejudice to EU or national rules relating to the health and safety aspects of products.

21 Moreover, it must be pointed out that, according to Article 3(8), that directive is without prejudice to the deontological codes of conduct or other specific rules governing regulated professions in order to uphold high standards of integrity on the part of the professional, which Member States may, in conformity with EU law, impose on professionals.

22 Thus, it follows from those provisions that Directive 2005/29 does not call into question the national rules relating to the health and safety aspects of products or the specific provisions governing regulated professions (judgment of 4 May 2017, *Vanderborght*, C-339/15, EU:C:2017:335, paragraph 28).

23 It is apparent from the order for reference that the national legislation at issue in the main proceedings, that is to say, Article 20(1) of the Law of 23 May 2013, protects public health and the dignity and integrity of the professions of plastic surgeon and plastic doctor, so that that legislation comes under Article 3(3) and (8) of Directive 2005/29 (see, by analogy, judgment of 4 May 2017, *Vanderborght*, C-339/15, EU:C:2017:335, paragraph 29).

24 In the light of all the foregoing considerations, the answer to the question referred is that Directive 2005/29 must be interpreted as not precluding a provision of national law, such as that at issue in the main proceedings, which protects public health and the dignity and integrity of the professions of plastic surgeon and plastic doctor by prohibiting any natural or legal person from disseminating advertising for procedures relating to plastic surgery or non-surgical plastic medicine.

Costs

25 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.

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

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 ('the Unfair Commercial Practices Directive') must be interpreted as not precluding a provision of national law, such as that at issue in the main proceedings, which protects public health and the dignity and integrity of the professions of plastic surgeon and plastic doctor by prohibiting any natural or legal person from disseminating advertising for procedures relating to plastic surgery or non-surgical plastic medicine.

[Signatures]