

Case law

Case Details

National ID: Joint Criminal Appeals 143, 144 & 145/2011

Member State: Cyprus

Common Name:link

Decision type: Court decision in appeal

Decision date: 23/10/2012

Court: Supreme Court of Cyprus

Subject:

Plaintiff: Ermes Department Stores Public Plc, George Aniliades and Andreas Solomonides

Defendant: Attorney General of the Republic

Keywords: discounts, economic interests, full harmonisation, unfair commercial practices

Directive Articles

Unfair Commercial Practices Directive, [link](#)

Headnote

A national legal provision, which sets forth restrictions/limitations other than those provided under Directive 2005/29/EC, on carrying out fair commercial practices, is contrary to the full harmonization of the principles of Directive 2005/29/EC.

Facts

The present appeals, examined jointly, were filed against a first instance judgement which convicted the defendants (superstore, manager of the superstore and officer of the superstore) to financial penalties for selling clothing items at discount prices outside the period fixed for selling merchandise at discount, pursuant to the national The Conditions for Sale of Merchandise at Discount Prices Law 34/90 (the "National Discount Law"), which, inter alia, allows the sale of goods at discount prices only during fixed periods regulated there under, unless certain circumstances, explicitly referenced under article 4, apply. The first instance court rejected the position of the defendants that article 3(1) of the National Discount Law was contrary to Directive 2005/29/EC.

The subject matter of the present appeals was the following:

- the first instance court's decision that that the commercial practice of selling at discount does not fall within the scope of Directive 2005/29/EC was wrong; and
- the first instance court wrongfully did not examine whether article 3(1) of the National Discount Law is compatible with the principles of Directive 2005/29/EC.

The plaintiffs argued that:

- Directive 2005/29/EC (implemented into the national Unfair Commercial Practices From Business to Consumers Law 103(I)/2007) includes in exhaustive way a list of the unfair commercial practices that are prohibited in which the selling at discount without limitations/restrictions is not included;
- the selling at discount constitutes "commercial practice" under the meaning of article 2 of Directive 2005/29/EC which has been interpreted by European Court's decisions that its aim is to give protection to the consumers as well as to unfair competition between undertakings;
- Member States cannot provide for restrictive measures other than those provided under Directive 2005/29/EC, unless the aim is to ensure a higher level of protection to the consumers;
- Directive 2005/29/EC does not only regulate/ prohibit all unfair, misleading and aggressive practices, which is just a kind of a prohibition, since the thinking of the Directive 2005/29/EC includes wider objectives; therefore the decision of the first instance court that the selling at discount does not in any circumstances fall within the scope of Directive 2005/29/EC was wrong.

The defendants argued that:

- the objective of Directive 2005/29/EC is to regulate only the harmful to the consumers commercial practices, and not any commercial practices, in particular the favorable to the consumers which include the discounts, which, however, may harm the undertakings that are in competition; therefore, the regulation of selling at discount, as a favorable to consumers practice, should be left to the national legislation of each Member State;
- the commercial practice of selling at discount is totally out of the scope of Directive 2005/29/EC; the objective of Directive 2005/29/EC is the protection of the competition between undertakings; therefore, even though the commercial practice of selling at discount does not harm the economic interests of the consumers, it harms the economic interests of the competitors when such practice is performed uncontrolled;
- the commercial practice of selling at discount does not fall within the scope of Directive 2005/29/EC, therefore the restrictions/limitations of article 3(1) of the National Discount Law cannot be examined or judged in accordance with the provisions of Directive 2005/29/EC.

Legal issue

The court decided, inter alia, that:

- the first instance court's decision that that the commercial practice of selling at discount does not fall within the scope of Directive 2005/29/EC was wrong; the commercial practice of selling at discount is a fair commercial practice and falls within the meaning of the definition "commercial practice"; the fact that the practice of selling at discount does not constitute unfair, misleading or aggressive practice does not mean that it does not fall within the scope of Directive 2005/29/EC;
- Directive 2005/29/EC does not only regulate/ prohibit all unfair, misleading and aggressive practices, including the practices that are considered unfair under any circumstances which are listed in Annex I, but also regulates in a positive manner all fair practices; such fair practice is the practice of selling at discount, therefore fall within the scope of Directive 2005/29/EC;
- In accordance to article 4 of Directive 2005/29/EC, Member States cannot provide for restrictive measures other than those provided under Directive 2005

/29/EC, even if the national legislation's target is to ensure a higher level of protection to the consumers;

- the practice of selling clothing items at discount without any period limitation does not constitute unfair commercial practice, therefore is allowed; the National Discount Law limits the offering of discounts only during fixed periods provided under article 3(1), therefore is contrary to full harmonization of the principles of Directive 2005/29/EC;

- the provisions of the National Discount Law on which the accusations were based are contrary to the provisions of Directive 2005/29/EC.

Decision

Is a national legal provision, which sets forth restrictions/limitations other than those provided under Directive 2005/29/EC, on carrying out fair commercial practices, contrary to the full harmonization of the principles of Directive 2005/29/EC?

URL: http://www.cylaw.org/cgi-bin/open.pl?file=apofaseis/aad/meros_2/2012/rep/2012_2_0655.htm&qstring=143%20w%2F1%202011

Full text: [Full text](#)

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Member State: Cyprus

National ID: 26326/2009

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Directive Articles:

Decision Date: 10/11/2011

Member State: European Union

National ID: C-261/07

Common Name: VTB-VAB NV v Total Belgium NV

Directive Articles:

Decision Date: 23/04/2009

Member State: European Union

National ID: C-299/07

Common Name: Galatea BVBA v Sanoma Magazines Belgium NV

Directive Articles:

Decision Date: 23/04/2009

Legal Literature

No results available

Result

The court rejected the first instance court's judgment.

The plaintiffs' reasons for appeal were accepted and the plaintiffs were acquitted.