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Judgment of the Court of Justice in Case C-500/06

Corporación Dermoestética SA v To Me Group Advertising Media

**LEGISLATION RESULTING IN A PROHIBITION OF ADVERTISEMENTS FOR
MEDICAL AND SURGICAL TREATMENTS ON NATIONAL TELEVISION
NETWORKS WHILE AT THE SAME TIME PERMITTING SUCH ADVERTISEMENTS
ON LOCAL NETWORKS IS CONTRARY TO COMMUNITY LAW**

*Such legislation constitutes an unjustified restriction on the freedom of establishment and the
freedom to provide services*

In October 2005, Corporación Dermoestética, a Spanish undertaking operating in the cosmetic treatment sector, entered into a contract with the To Me Group advertising agency entrusting it with carrying out an advertising campaign for its services, to be broadcast on the Italian television channel Canale 5.

After taking receipt of a payment on account, To Me Group informed Corporación Dermoestética that, in view of the provisions in an Italian law of 1992, it would be impossible to broadcast the television advertisements envisaged on the national television network. Under that law, the broadcasting on television of advertisements for medical and surgical treatments carried out in private health care establishments was permitted, under certain conditions, only on local television networks, which effectively prohibited the broadcasting of such advertisements on national television networks.

Since To Me Group refused to refund the payment on account it had received, Corporación Dermoestética brought proceedings before the Italian court for termination of the contract concluded between the two companies and applied for the advertising agency to be ordered to refund the payment on account.

In order to resolve the dispute pending before it, the Italian court asks the Court of Justice whether the principles of freedom of establishment and freedom to provide services preclude national legislation such as the Italian legislation in question.

The Court finds, first of all, that **the prohibition on advertising laid down by the Italian law of 1992 goes beyond that laid down in the Television without Frontiers Directive¹**, one of the

¹ Directive 89/552/EEC of 3 October 1989 on the coordination of certain provisions laid down by Law, Regulation or Administrative Action in Member States concerning the pursuit of television broadcasting activities (OJ 1989 L

provisions of which prohibits advertising for medical treatments available only on prescription. Although, under that directive, the Member States remain free to lay down more detailed or stricter rules in the areas covered by the directive, the Court points out that, when exercising that right, they must respect the basic freedoms guaranteed by the EC Treaty.

The Court finds that **rules on advertising such as those laid down in the Italian law of 1992 restrict freedom of establishment**, since they constitute, for companies established in Member States other than Italy, a serious obstacle to the pursuit of their activities by means of a subsidiary established in that Member State. The Court also observes that **those rules constitute a restriction on the freedom to provide services**, in so far as they prevent companies such as Corporación Dermoestética using services for broadcasting television advertisements.

However, the Court states that it must be borne in mind that such restrictions may be justified if they fulfil four conditions: they must be applied in a non-discriminatory manner; they must be justified by overriding reasons based on the general interest; they must be suitable for securing the attainment of the objective which they pursue; and they must not go beyond what is necessary in order to attain that objective.

Accordingly, the Court notes, first of all, that the rules on advertising in question apply without distinction as to the Member State in which the undertaking at which those rules are directed is established. Secondly, it states that the rules regulating television advertising for medical and surgical treatments can be justified in the light of the objective of protection of public health. However, the Court observes, thirdly, that, by introducing a measure resulting in a prohibition on advertisements for medical and surgical treatments on national television networks, while at the same time making it possible to broadcast such advertisements on local television networks, **the rules in question exhibit an inconsistency which the Italian Government has not attempted to justify**. Therefore, **the Court considers that national legislation such as that at issue is not appropriate for the purpose of securing the attainment of the objective of public health and constitutes an unjustified restriction on both freedoms**.

Consequently, the Court **declares that the freedom of establishment and the freedom to provide services must be interpreted as precluding legislation, such as that at issue, in so far as it prohibits the broadcasting of advertisements for medical and surgical treatments provided by private health care establishments on national television networks while at the same time permitting such advertisements, subject to certain conditions, on local television networks**.

Unofficial document for media use, not binding on the Court of Justice.

Languages available: BG, DE, EL, EN, ES, FR, IT

*The full text of the judgment may be found on the Court's internet site
<http://curia.europa.eu/jurisp/cgi-bin/form.pl?lang=EN&Submit=rechercher&numaff=C-500/06>*

It can usually be consulted after midday (CET) on the day judgment is delivered.

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*Pictures of the delivery of the judgment are available on EbS "Europe by Satellite",
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