

Press and Information Division

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Opinion of First Advocate General Antonio Tizzano in Cases C-262/02 and C-429/02

Commission v France Bacardi France SAS v Télévision Française TF1, Groupe Jean-Claude Darmon SA Girosport Sarl

**FIRST ADVOCATE GENERAL TIZZANO DELIVERS HIS OPINION ON THE
COMPATIBILITY OF THE PROHIBITION ON TELEVISED ADVERTISING OF
ALCOHOLIC BEVERAGES WITH COMMUNITY LAW**

According to Mr Tizzano, such a prohibition constitutes a restriction on the freedom to provide services which is justified by the objective of protecting public health.

The French legislation on tobacco and alcohol addiction (“the Loi Evin”) prohibits, in France, direct and indirect television advertising of alcoholic beverages. Infringement of that provision is an offence punishable by a fine of approximately EUR 75 000 to which may be added 50% of the amount spent on the banned advertising. A code of conduct, drawn up by the Conseil Supérieur de l’Audiovisuel, lays down detailed rules for the implementation of that Law. It takes no account of whether the beverages are French or foreign but distinguishes, rather, between international sporting events, whose images are broadcast in a large number of countries and which are therefore not considered to concern mainly French viewers, from other events, the broadcast of which is specifically aimed at the French viewing public. The code requires that, where the latter events take place abroad, French broadcasters make use of available means in order to prevent advertising for alcoholic beverages from appearing on television screens.

Two cases are currently pending before the Court regarding the French rules.

In the infringement proceedings (C-262/02), the Commission is seeking a declaration of the Court that the French legislation is incompatible with the freedom to provide services because of the obstacles which the Loi Evin places in the way of the broadcasting in France of foreign sporting events.

In the proceedings for a preliminary ruling (C-429/02), the French television channel TF1 had required of the companies Groupe Jean-Claude Darmon and GiroSport, responsible for negotiating television broadcasting rights for football matches, to ensure that the brand names of alcoholic beverages did not appear on television screens. Consequently, a number of foreign football clubs refused to let Bacardi France, which produces and markets many alcoholic beverages, to rent advertising hoarding space around the pitch. The French Court of Cassation wishes to know whether the French rules are contrary to Community law, in particular to the freedom to provide services and to the 'Television Without Frontiers' Community directive.¹

First Advocate General Tizzano today submits his Opinion in that case.

The Advocate General takes the view, first, that the televised images of those panels placed around the playing field necessarily appear throughout the event without it being possible to separate them clearly from the images of the action on the field, as required by the directive. The directive is, in his view, therefore not applicable in that case.

He considers that the measures adopted by the Conseil Supérieur de l'Audiovisuel, requiring the negotiators of television rights to use every 'means available' to prevent advertising for alcoholic beverages from appearing on French television screens, effectively constitutes a restriction on the freedom to provide services.

Is that restriction **justified**?

Mr Tizzano agrees with the parties, which do not dispute that the purpose of the Loi Evin is the **protection of public health**, which is one of the justifications under the Treaty for restricting the freedom to provide services.

Is this French legislation **proportionate**?

Measures restrictive of fundamental freedoms are lawful only where they are proportionate to the objective pursued.

The First Advocate General ascertains, first of all, **whether the French legislation achieves the objective** of protection of public health. The choice of the French Government not to ban completely all advertising of alcoholic beverages in stadia may be questionable but, in the view of the Advocate General, it falls within the freedom which the Member States have to decide the degree to which and the way in which public health is protected. According to the Advocate General, it is reasonable to consider that the French measures limiting advertising for alcoholic beverages may also reduce instances in which television viewers consume alcoholic beverages in response to the blandishments of advertising. Furthermore, the distinction between international events and other events makes it easier to reconcile the objective of protection of public health with the principle of the freedom to provide services in that it reduces the number of cases in which the broadcasting in France of sporting events abroad is prohibited. Mr Tizzano observes that neither French law nor practice restricts the prohibition at issue to alcoholic products

1 Council 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 298, p. 23.

marketed on the French market but applies the same prohibition also in respect of foreign alcoholic beverages.

Mr Tizzano goes on to examine whether **the French legislation goes beyond what is necessary** in order to protect public health. He takes the view, in that regard, that television broadcasters do not have the means to obscure hoardings advertising alcoholic beverages and that modern image masking techniques cannot be used because they are costly. Next, the Advocate General points out that excessive consumption of alcoholic beverages is a danger to health, irrespective of their alcohol content. The speed with which that form of advertising appears on the screen does not make it possible to control the content nor is it possible to insert a warning concerning the risks linked to alcohol.

Finally, the Advocate General notes that, as the Court has held, the mere fact that another Member State imposes less strict rules concerning advertising of alcoholic beverages does not mean that the French rules are disproportionate.

The First Advocate General therefore proposes that the Court should rule that neither the directive nor the principle of freedom to provide services enshrined in the Treaty preclude the prohibition laid down by French law regarding televised advertising of alcoholic beverages.

Reminder: The opinion of the Advocate General does not bind the Court of Justice. The task of the Advocate General is to propose to the Court, in complete independence, a legal solution to the case in question. The Court will now begin its deliberations in this case. The judgment will be delivered at a later date.

Unofficial document, for media use only, which does not bind the Court of Justice.

Available languages: English,, French, Italian, Greek, German, Spanish.

The full text of the Opinion can be found on the internet (www.curia.eu.int).

In principle it will be available from midday CET on the day of delivery.

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