



Press and Information

Court of Justice of the European Union
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Judgment in Case C-452/20
Agenzia delle dogane e dei monopoli and
Ministero dell'Economia e delle Finanze

Combatting tobacco consumption among young people: Member States may impose administrative sanctions on economic operators who infringe the prohibition on sales to minors, such as suspension of their trading licence for a period of 15 days

The interest of protecting human health takes precedence over the right of the trader to sell tobacco products

Following an inspection, the Italian Customs Agency established that PJ, who holds a licence to operate a café in which tobacco products can be purchased, had sold cigarettes to a minor. Pursuant to national law,¹ the Customs Agency imposed on PJ an administrative fine of EUR 1 000 and an **ancillary administrative penalty consisting of the suspension of his licence to operate a café in which tobacco products can be purchased for a period of fifteen days.**

PJ paid the fine imposed on him. However, he challenged the ancillary administrative penalty, claiming that the national law was incompatible with EU law, in particular because the suspension of his trading licence was excessive and disproportionate.

The Consiglio di Stato (Council of State, Italy), hearing the case on final appeal, referred a question to the Court in order to obtain clarification as to whether the principle of proportionality precludes national legislation which, in the case of a **first infringement of the prohibition on selling tobacco products to minors**, provides for, in addition to the imposition of an administrative fine, the suspension of the trading licence for a period of 15 days.

In that regard the Court observes that the Framework Convention,² having been approved on behalf of the European Union, is an integral part of EU law, and that Directive 2014/40/EU³ leaves it to the Member States to establish rules on penalties designed to prohibit tobacco consumption by minors. Against that background, the Court points out that the national provision at issue must, in principle, be assessed in the light of the requirements laid down by the FCTC as regards the sale of tobacco to minors. It is apparent from Article 16 of the FCTC that each party to that convention is required to adopt and implement **effective measures to prohibit the sale of tobacco products to persons under the age set by domestic law, national law or 18, including penalties against sellers and distributors.**

¹ Second paragraph of Article 25 of regio decreto no 2316 – Approvazione del testo unico delle leggi sulla protezione ed assistenza della maternità ed infanzia (Royal Decree No 2316 approving the consolidated law on the protection and assistance of motherhood and childhood) of 24 December 1934, as replaced by Article 24(3) of decreto legislativo no 6 – Recepimento della direttiva 2014/40/UE (Legislative Decree No 6 transposing Directive 2014/40/EU) of 12 January 2016), provides as follows: 'Anyone who sells or supplies tobacco products or electronic cigarettes or refill containers containing nicotine or novel tobacco products to minors under the age of 18 shall be liable to a financial administrative penalty of EUR 500 to EUR 3 000 and a 15-day trading licence suspension. For repeat offences, a financial administrative penalty of EUR 1 000 to EUR 8 000 shall apply and the trading licence shall be revoked'.

² World Health Organisation (WHO) Framework Convention on Tobacco Control (FCTC), signed at Geneva on 21 May 2003 and approved by Council Decision 2004/513/EC of 2 June 2004 (OJ 2004 L 213, p. 8).

³ Directive 2014/40/EU of the European Parliament and of the Council of 3 April 2014 on the approximation of the laws, regulations and administrative provisions of the Member States concerning the manufacture, presentation and sale of tobacco and related products and repealing Directive 2001/37/EC (OJ 2014 L 127, p. 1).

As regards the **penalties applicable**, the Court points out that Member States are empowered to choose the penalties which seem to them to be appropriate, in compliance with EU law and its general principles, in particular in compliance with the principle of proportionality.

In particular, the administrative or punitive measures permitted under national legislation must not go beyond what is appropriate and necessary to attain the objectives legitimately pursued by that legislation.

In addition, the Court has stated that the severity of the penalties must be commensurate with the gravity of the infringements for which they are imposed, in particular by ensuring a genuinely dissuasive effect, while respecting the general principle of proportionality.

In those circumstances, the Court observes that the Italian legislature has provided for a combination of penalties in the case of a first infringement of the prohibition on selling tobacco products to minors, consisting of, first, the imposition of a financial penalty and, second, the suspension of the licence to operate a café in which tobacco products can be purchased for a period of 15 days. According to the Court, **that system of penalties appears appropriate for attaining the objective of protecting human health and reducing, in particular, smoking prevalence among young people**, as set out in the FCTC.

As to whether **the severity of the penalties** exceeds the limits of what is necessary in order to attain the objectives legitimately pursued by the national legislation, the Court points out that a high level of human health protection must be ensured in the definition and implementation of all the European Union's policies and activities. The Court also notes that **the objective of the protection of health takes precedence over economic considerations**, the importance of that objective being such as to justify negative economic consequences. In that respect, the Court considers that suspension of the licence to operate a café in which tobacco products can be purchased for a limited period of time in the case of a first infringement of the prohibition on selling tobacco products to minors cannot, in principle, be regarded as a disproportionate interference with the legitimate right of economic operators to carry out their business activity. The Court takes the view that the balance between the severity of the penalties and the gravity of the infringement concerned appears to be ensured by two factors: in the first place, the fine accompanying the suspension of the licence to operate a café in which tobacco products can be purchased varies according to the gravity of the infringement; in the second place, the penalty of revocation of the licence is provided for only in the case of a repeat offence.

In those circumstances, the Court takes the view that **it does not appear that that system of penalties exceeds the limits of what is necessary to ensure attainment of the objective of protecting human health** and reducing, in particular, smoking prevalence among young people.

NOTE: A reference for a preliminary ruling allows the courts and tribunals of the Member States, in disputes which have been brought before them, to refer questions to the Court of Justice about the interpretation of European Union law or the validity of a European Union act. The Court of Justice does not decide the dispute itself. It is for the national court or tribunal to dispose of the case in accordance with the Court's decision, which is similarly binding on other national courts or tribunals before which a similar issue is raised.

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