



Case 1992-006f

Order No. 6/92 dated February, 1992

Country: Belgium

Region: Europe

Year: 1992

Court: Court constitutionnelle [Constitutional Court of Belgium]

Health Topics: Health information, Tobacco

Facts

Article 7, Â§ 2 of the law dated January 24, 1977 regulated the protection of consumer health and specifically gave the national legislature authority to regulate tobacco advertising. In 1980,Â a special law was passed, which deemed the authority of the Communities under the Constitution to include the right to regulate "health education as well as the activities and services of preventive medicine, except for national prophylactic measures." Thereafter, the French Community passed a decree related to a smoking ban, the dissemination of information and tobacco advertising.

Plaintiffs filed suit, argued that, because the national legislature alone had the authority to regulate, the Communities were not authorized to pass an act regulating tobacco advertising. However, Defendants argued that, under the Constitution, the Communities had the right to publish decrees in certain matters. The tribunal of first instance asked the Court of Arbitration to review the case on constitutional grounds.

Decision and Reasoning

The Court noted that while the preparatory work for the special law had envisioned the Communities' authority to encompass health information, education and protection, "regulation related to nutritional foodstuffs" was specifically excluded from the Communities' authority. Thus, while a campaign regarding the consumption of tobacco would fall under the Communities' authority, a regulation addressed exclusively against tobacco advertising would not. The Court therefore held that the French Community had exceeded its authority in passing such a decree.

Decision Excerpts

B.5. Indeed, from the preparatory work for the special law, it became apparent that the community authority encompassed, in particular, health information and health education, the health protection of the population, in particular by the prevention (of) cancer, and the improvement of the health status of the population, either in the framework of health education or by other appropriate means Still, the same preparatory work also showed that the special legislator understood that among other matters, the "regulation related to nutritional foodstuffs" was excluded from the authority of the Communities with respect to health policy. Given that at the time that the special law was prepared, the regulation of advertising for tobacco and similar products was part of the "regulation related to nutritional foodstuffs."

B.5 En effet, il ressort des travaux préparatoires de la loi spéciale que la compétence communautaire englobe notamment l'information et l'éducation sanitaire, la protection sanitaire de la population, notamment par la prévention (...) du cancer (...), et l'amélioration de l'état sanitaire de la population, soit dans le cadre de l'éducation sanitaire soit par d'autres moyens appropriés. . . . Toutefois, les mêmes travaux préparatoires font également apparaître que le législateur spécial a entendu que, parmi d'autres matières, la "réglementation relative aux denrées alimentaires" soit exclue de la compétence des Communautés en ce qui concerne la politique de santé. Etant donné qu'à l'époque de l'élaboration de la loi spéciale, la réglementation de la publicité pour le tabac et les produits similaires faisait partie de la "réglementation relative aux denrées alimentaires."

B.5. Blijkens de parlementaire voorbereiding van de bijzondere wet omvat de gemeenschapsbevoegdheid immers onder meer de gezondheidsopvoeding en -voorlichting, de vrijwaring van de volksgezondheid, met name door het voorkomen van (...) kanker (...), en de verbetering van de gezondheidstoestand van de bevolking, het zij in het kader van de gezondheidsopvoeding of door andere passende middelen

Evenwel, uit dezelfde parlementaire voorbereiding blijkt eveneens dat de bijzondere wetgever onder meer de "levensmiddelenwetgeving" heeft uitgesloten van de bevoegdheid van de Gemeenschappen inzake gezondheidsbeleid. Aangezien ten tijde van de totstandkoming van de bijzondere wet de reglementering van de reclame voor tabak en aanverwante producten deel uitmaakte van de "levensmiddelenwetgeving."

B.6. Concerning the measures of preventive medicine or information campaigns regarding the consumption of tobacco, it is without doubt that they would belong to the customizable matters listed in article 5, 1st ¶, 1, 2°. . . . Such is however not the case of a regulation or an interdiction that is addressed exclusively against those who engage in commercial advertising for the promotion of tobacco.

B.6. Sans doute des mesures de médecine préventive ou des campagnes d'information relatives à la consommation de tabac relèveraient-elles des matières personnalisables à l'article 5, ¶ 1er, 1, 2°. . . . Tel n'est cependant pas le cas d'une réglementation ou d'une interdiction qui s'adresse exclusivement à ceux qui font de la publicité commerciale en faveur du tabac.

B.6. Ongetwijfeld behoren maatregelen van preventieve gezondheidszorg of informatiecampagnes betreffende het verbruik van tabak tot de persoonsgebonden aangelegenheden die zijn opgesomd in artikel 5, ¶ 1, 1, 2°. . . . Zulks is echter niet het geval voor een reglementering of een verbod dat uitsluitend bestemd is voor degenen die handelsreclame maken voor tabak."

Copyright © 2015 www.GlobalHealthRights.org