



Advertising Mineral Water

Fact of the case:

The company Aquarius sells and distributes natural sparkling mineral waters denominated 'Nymph' and 'Fairywell'. In 2009, the French administration (Regional Directorate for Competition, Consumption and Suppression of Fraud) ordered Aquarius to remove any statement leading the consumer to believe that those waters were low or very low in salt or in sodium.

The following indications in particular were concerned:

Nymph contains only 0.53 g of salt (or sodium chloride) per litre, that is to say less than a litre of milk!!!

and

Fairywell contains only 0.39 g of salt per litre or 2 to 3 times less than is contained in a litre of milk.

The decision was challenged by Aquarius and the case was later referred to the CJEU.

Arguments to be considered

Since sodium is a component of various chemical compounds, consumers might be misled, if mineral water were to be described as low in sodium or salt, or as being suitable for a low-sodium diet, even though it contained high levels of sodium bicarbonate.

If sodium bicarbonate had to be taken into account in the calculation of the sodium content, distributors of natural mineral waters could be deprived of the opportunity to rely on information that is nonetheless correct, which could limit their fundamental rights.

Sodium bicarbonate might be regarded as less damaging to human health than sodium chloride, as, currently, there is no scientific data confirming that sodium bicarbonate brings on or aggravates arterial hypertension in the same way and in the same proportions as table salt.

Legal Framework

Relevant European Law

Regulation No 1924/2006 on nutrition and health claims prohibits the use of the claim "very low in sodium/salt" with respect to natural mineral waters and other waters. This applies to any claim likely to have the same meaning for the consumer.



Co-funded by the Justice Programme
of the European Union



Ludwig Boltzmann Institute
Human Rights



CENTRE FOR
EUROPEAN
CONSTITUTIONAL
LAW



INPRIS



National Research Council of Italy
ISGI
Institute for International Legal Studies



REPUBLIC OF AUSTRIA
FEDERAL MINISTRY OF JUSTICE



REPUBLIKA HRVATSKA
Pučki pravobranitelj

Directive 2000/13 provides that labelling, presentation and advertising must not mislead the purchaser as to the characteristics of the product.

Directive 2009/54 on natural mineral water provides, in Article 9, that:

“1. It shall be prohibited, both on packaging or labels and in advertising in any form whatsoever, to use indications, designations, trademarks, brand names, pictures or other signs, whether figurative or not, which:

(a) in the case of a natural mineral water, suggest a characteristic which the water does not possess, in particular as regards its origin, the date of the authorisation to exploit it, the results of analyses or any similar references to guarantees of authenticity; [...]

2. All indications attributing to a natural mineral water properties relating to the prevention, treatment or cure of a human illness shall be prohibited.”

According to the Annex of this Directive, the claims “low in sodium or salt” and “suitable for a low-sodium diet” are permitted only if the “sodium content is less than 20 mg/l”.

Relevant National Law

The national Consumer Code, which is intended to transpose Article 2 of Directive 2000/13, states:

“The labels and labelling methods used must not be such as to give rise to confusion in the mind of the purchaser or the consumer, particularly as to the characteristics of the foodstuff and, specifically, as to its nature, identity, properties, composition, quantity, durability, method of conservation, origin or provenance, method of manufacture or production. The prohibitions or restrictions referred to above ... shall also apply to the presentation of foodstuffs and ... advertising.”

Furthermore, articles of the national Health Code are intended to transpose Directive 2009/54.

Questions

(1) Is the Charter applicable in this case?

- a. What is relevant for deciding on the applicability of the Charter?
- b. Which Charter rights are relevant?

(2) Under which circumstances could the relevant Charter rights legitimately be restricted?

(3) Would the application of Charter rights make a difference when you take into account the situation in your national context?