



Advertising Mineral Water

Follow-Up Question

In your national context, do you have experience with cases, where different fundamental rights are weighed against each other?

Findings of the Court of Justice of the European Union

The CJEU was asked to answer the following questions: (1) Whether the total amount of sodium has to be taken into account; and (2) Whether provisions prohibiting certain claims are valid in light of Article 11(1) (freedom of expression and information) and Article 16 (freedom to conduct a business) of the Charter.

The Court held that, in order to avoid misleading consumers, packaging, labels and advertising for natural mineral waters must take into account the total amount of sodium present in the natural mineral waters- whatever its chemical form. The statements “low in sodium/salt” and “suitable for a low-sodium diet” may only be used provided that the total sodium content is less than 20 mg/l because EU legislation does not differentiate according to the chemical compounds of sodium.

With regards the restriction of fundamental rights, the Court noted that the freedom of expression and information and the freedom to conduct a business are not absolute rights. These rights can be limited by the Union legislators under certain circumstances (restrictions must be laid down in law, respect the essence of those freedoms, be necessary and genuinely meet objectives of general interest recognised by the Union or the need to protect the rights and freedoms of others).

Provisions which regulate the use statements on the beneficial properties of mineral waters do not violate the essence of the freedom of expression and information and the freedom to conduct a business. Such provisions are justified and proportionate to attain the objectives of:

- (1) Ensuring a high level of consumer protection (enshrined in Art. 38 of the Charter) and fair commercial practices among operators;
- (2) Enabling consumers to have the most accurate and transparent information possible to ensure the protection of human health in the EU (enshrined in Art. 35 of the Charter);
- (3) Implementing the precautionary principle: A risk to human health caused by a high level of consumption of sodium present in various chemical compounds (in particular sodium bicarbonate) cannot be excluded with certainty.

See: *Neptune Distribution v Ministre de l'Économie et des Finances*, Case C-148/13 to C-157/14, Judgement of 17.12.2015

