

SUMMARY

2014/64 Court orders union to stop using false and misleading slogan while boycotting employer's products but allows boycott per se (GR)

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Facts

The plaintiff in this case was the well-known Greek company COCA COLA 3E SA. In February 2012 it closed down one of its production plants, in Thessaloniki, but retained its local distribution activities. In September 2013, it decided to outsource its distribution department. This led to the dismissal of 30 truck drivers. Following lengthy negotiations and consultations with the employees' representatives, the company offered the drivers a number of alternative

arrangements. These included: the transfer to the truck drivers of the company's trucks, free of charge; payment of their legal expenses and tax to enable them to set up personal limited companies; the guarantee of a long-term distribution services agreement between each one of them and the company; and exit packages. The drivers turned down all offers and, through the company's local union, went on several strikes. They demanded reinstatement and the re-opening of the Thessaloniki production plant.¹ The company brought various actions, claiming the strikes were unlawful, given the unreasonableness of the strikers' demands and their long duration, and that they were harming the company. Finally, following judgments by the Thessaloniki First Instance Court and several appeals against that judgment, the Thessaloniki Court of Appeal held the strikes to be unlawful and abusive and ordered the union and its legal representatives to abstain from striking again on the basis of the same demands, on pain of a fine of € 2,000 for each violation. The union appealed to the Supreme Court. That appeal is currently pending.

Meanwhile, the redundant truck drivers have brought proceedings contesting the validity of their dismissals. These proceedings are currently also still pending.

Whilst on strike, the union decided to proceed with a parallel course of action. With the support of the large national Panhellenic Federation of Employees of Bottled Drinks Companies and other sympathisers, it and its members began a boycott of the company's products, protesting against the company's "plant closures and layoffs in Greece". The boycott was conducted by various means, including an online campaign and the distribution of posters, brochures, T-shirts and petitions. The aim of the boycott was to force the company to reopen the Thessaloniki production plant and to rehire the dismissed employees. One of the slogans used in the boycott was "BoyCoke" (derived from "BoyCott"), as well as the widespread slogan that the company's products are being "produced in Bulgaria, taxed in Switzerland and consumed in Greece". This boycott soon spread all over Greece.

The plaintiff company filed a petition before the Athens First Instance Court, requesting an interim court order against the unions, their board members and certain other boycotters, requiring them to abstain from further action that could harm the company's welfare and reputation. The court did not prohibit the boycott itself but, taking into consideration the unreasonable and unrealistic claims made as part of the boycott, it ordered the union to abstain from publishing defamatory and false slogans that implied that the company's products were not of Greek origin (which they are, as the unions very well knew). In the court's view, these were misleading for consumers.

Judgment

In an interim relief judgment the Athens First Instance Court held that the slogan “Coca Cola: produced in Bulgaria, taxed in Switzerland, consumed in Greece” was false and capable of damaging the company, since it could lead consumers to stop buying the company’s products. Therefore, the defendants were ordered to cease uploading the slogan on the internet or to reproduce it in any other form.

As for the boycott per se, the court referenced Article 14 of the Greek

1It is interesting to note that the union’s irrational claim for the reopen- ing of the plant appeared one and a half years after the plant had closed down!

Constitution, which protects freedom of expression. The court found that the boycott itself fell within the scope of Article 14 and that it could therefore not be prohibited. It rejected the plaintiff’s argument that the union and its members should be regarded as an entity in competition with the company and therefore subject to the rules on unfair competition.

For these reasons, the Court granted relief in relation to the slogan, as it was false and capable of misleading consumers, but denied relief in relation to the boycott as a whole, as this was aimed at the reopening of the plant, rather than being anti-competitive.

Commentary

The right to strike is protected by the Greek Constitution in general (Article 23, paragraph 2). It is also protected in the context of the freedom of association (Article 23, paragraph 1), as well as by the International Labour Convention 87/1948, as implemented in Greek Law. The strike action was taken by the collective bodies protecting the employees’ interests (the unions) and the conditions of its lawful exercise were regulated by law, since the employment relationship was suspended during the strike.

A strike is considered to be the ultimate weapon in industrial relations. The boycott, as an expression of the freedom of opinion, is a form of collective action **not** regulated by law. Consequently, it is reasonable to question whether a boycott can be considered as a form of labour struggle. Legal theory suggests (and we agree) that boycotts are not a form of strike, as they do not involve withdrawing or reducing labour and are not regulated. The legality of a boycott needs or be assessed on a case-by-case basis and the principle of proportionality should apply. A boycott should be considered as unlawful when a union uses unlawful means, such as misleading communications with defamatory content to persuade the public to boycott products and services. A boycott should be considered abusive if it includes unrealistic requests and/or exceeds the limits of the exercise of freedom of expression set by the Constitution, law or the rights of other individuals (which are also protected by the

Constitution). In particular, the rights of others would include the right to run a business and the right to own property.

This judgment has been wrongly interpreted as accepting that the incitement to boycott the products of companies which take action against employees is a legitimate way for the unions to put pressure on employers and does not constitute an anti-competitive act.

We consider that the court should have taken into account the fact that all strikes had been declared illegal and their continuation prohibited. Further, the content of the boycott was unfounded and its message was unrealistic, in that the plant had closed down in 2012. Therefore, applying the principle of proportionality between freedom of expression and economic freedom, it should have ruled that the boycott was unlawful.

Following this judgment, the case is still pending, since the action brought by the company has to be dealt with after any request for interim relief. It is scheduled to be heard in June 2015 before the Athens First Instance Multi Member Court.

Comments from other jurisdictions

Austria (Daniela Krömer): Austria has no laws on collective action, and very little case law on those matters. One of the few judgements of the Austrian Supreme Court (Oberster Gerichtshof) concerns defamatory campaigns. Spreading false information on a company and/or its products cannot be justified by collective action (9 ObA 125/03b, case commentary by Robert Rebhahn in ZAS 2005/6). There is no case law on the legality or illegality of strikes and/or boycotts.

Subject: Unions

Parties: Coca Cola 3E et al – v – Union of the Employees and Workers of the Thessaloniki

Court: First Instance Court of Athens (Interim Relief Procedure)

Date: 14 August 2014

Case number: 8839/2014

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Creator: Athens Court of First Instance

Verdict at: 2014-08-14

Case number: 8839/2014