



Reports of Cases

JUDGMENT OF THE COURT (Grand Chamber)

3 September 2014*

(Reference for a preliminary ruling — Directive 2001/29/EC — Copyright and related rights — Reproduction right — Exceptions and limitations — Concept of ‘parody’ — Autonomous concept of EU law)

In Case C-201/13,

REQUEST for a preliminary ruling under Article 267 TFEU from the hof van beroep te Brussel (Belgium), made by decision of 8 April 2013, received at the Court on 17 April 2013, in the proceedings

Johan Deckmyn,

Vrijheidsfonds VZW

v

Helena Vandersteen,

Christiane Vandersteen,

Liliana Vandersteen,

Isabelle Vandersteen,

Rita Dupont,

Amoras II CVOH,

WPG Uitgevers België,

THE COURT (Grand Chamber),

composed of V. Skouris, President, K. Lenaerts, Vice-President, R. Silva de Lapuerta, M. Ilešič, L. Bay Larsen, A. Borg Barthet and M. Safjan, Presidents of Chambers, A. Rosas, G. Arestis, D. Šváby, A. Prechal (Rapporteur), C. Vajda and S. Rodin, Judges.

Advocate General: P. Cruz Villalón,

Registrar: M. Ferreira, Principal Administrator,

having regard to the written procedure and further to the hearing on 7 January 2014,

* Language of the case: Dutch.

after considering the observations submitted on behalf of:

- J. Deckmyn, by B. Siffert, advocaat,
- the Belgian Government, by J.-C. Halleux and C. Pochet, acting as Agents,
- the European Commission, by J. Samnadda, F. Wilman and T. van Rijn, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 22 May 2014

gives the following

Judgment

- 1 This request for a preliminary ruling concerns the interpretation of Article 5(3)(k) of Directive 2001/29/EC of the European Parliament and of the Council of 22 May 2001 on the harmonisation of certain aspects of copyright and related rights in the information society (OJ 2001 L 167, p. 10).
- 2 The request has been made in proceedings between Mr Deckmyn and the Vrijheidsfonds VZW, a non-profit association, and various heirs of Mr Vandersteen, author of the *Suske en Wiske* comic books (known in English as *Spike and Suzy*, and in French as *Bob and Bobette*), and the holders of the rights associated with those works ('Vandersteen and Others') as well, about the handing-out by Mr Deckmyn of a calendar that contained a reproduction of a drawing ('the drawing at issue') which resembled a drawing appearing on the cover of one of the books in the *Suske en Wiske* series.

Legal context

EU law

- 3 Recital 3 in the preamble to Directive 2001/29 states:

'The proposed harmonisation will help to implement the four freedoms of the internal market and relates to compliance with the fundamental principles of law and especially of property, including intellectual property, and freedom of expression and the public interest.'

- 4 Recital 31 in the preamble to that directive states:

'A fair balance of rights and interests between the different categories of rightholders, as well as between the different categories of rightholders and users of protected subject-matter must be safeguarded. ...'

- 5 Article 5 of that directive, entitled 'Exceptions and limitations', provides in paragraph 3:

'Member States may provide for exceptions or limitations to the rights provided for in Articles 2 and 3[, entitled respectively "Reproduction right" and "Right of communication to the public of works and right of making available to the public other subject-matter",] in the following cases:

...

(k) use for the purpose of caricature, parody or pastiche;

...'

Belgian law

- 6 Article 22(1) of the Law of 30 June 1994 on copyright and related rights (*Belgisch Staatsblad* of 27 July 1994, p. 19297) states:

‘Once a work has been lawfully published, its author may not prohibit:

...

6. caricature, parody and pastiche, observing fair practice;

...’

The dispute in the main proceedings and the questions referred for a preliminary ruling

- 7 Mr Deckmyn is a member of the Vlaams Belang political party, while the object of the Vrijheidsfonds, according to its articles of association, is to support that political party financially and materially, to the exclusion of any profit motive.
- 8 At the reception held on 9 January 2011 by the City of Ghent (Belgium) to celebrate the New Year, Mr Deckmyn handed out calendars for 2011 in which he is named as the editor. On the cover page of those calendars appeared the drawing at issue.
- 9 The drawing at issue resembled that appearing on the cover of the *Suske en Wiske* comic book entitled ‘De Wilde Weldoener’ (which may roughly be translated as ‘The Compulsive Benefactor’), which was completed in 1961 by Mr Vandersteen. That drawing is a representation of one of the comic book’s main characters wearing a white tunic and throwing coins to people who are trying to pick them up. In the drawing at issue, that character was replaced by the Mayor of the City of Ghent and the people picking up the coins were replaced by people wearing veils and people of colour.
- 10 Taking the view that the drawing at issue and its communication to the public constituted an infringement of their respective copyrights, Vandersteen and Others brought an action against Mr Deckmyn and the Vrijheidsfonds before the rechtbank van eerste aanleg te Brussel (Court of First Instance, Brussels), which ordered the defendants to cease all use of the drawing, failing which they would have to pay a periodic penalty.
- 11 Before the referring court hearing the appeal against the decision at first instance, Mr Deckmyn and the Vrijheidsfonds submitted, in particular, that the drawing at issue is a political cartoon which falls within the scope of parody accepted under point (6) of Article 22(1) of the Law of 30 June 1994 on copyright and related rights.
- 12 Vandersteen and Others dispute that interpretation, since, according to them, parody must meet certain criteria, which are not fulfilled in this case, namely: to fulfil a critical purpose; itself show originality; display humorous traits; seek to ridicule the original work; and not borrow a greater number of formal elements from the original work than is strictly necessary in order to produce the parody. In those circumstances, they also allege that the drawing at issue conveyed a discriminatory message, since the characters who, in the original work, pick up the scattered coins, were replaced in the drawing at issue by people wearing veils and people of colour.
- 13 In those circumstances, the hof van beroep te Brussel (Court of Appeal, Brussels) decided to stay the proceedings and to refer the following questions to the Court for a preliminary ruling:

‘1. Is the concept of “parody” an autonomous concept of EU law?

2. If so, must a parody satisfy the following conditions or conform to the following characteristics:
 - display an original character of its own (originality);
 - display that character in such a manner that the parody cannot reasonably be ascribed to the author of the original work;
 - seek to be humorous or to mock, regardless of whether any criticism thereby expressed applies to the original work or to something or someone else;
 - mention the source of the parodied work?
3. Must a work satisfy any other conditions or conform to other characteristics in order to be capable of being labelled as a parody?

The questions referred for a preliminary ruling

The first question

- 14 It must be noted that the Court has consistently held that it follows from the need for uniform application of EU law and from the principle of equality that the terms of a provision of EU law which makes no express reference to the law of the Member States for the purpose of determining its meaning and scope must normally be given an autonomous and uniform interpretation throughout the European Union, having regard to the context of the provision and the objective pursued by the legislation in question (judgment in *Padawan*, C-467/08, EU:C:2010:620, paragraph 32 and the case-law cited).
- 15 It is clear from that case-law that the concept of ‘parody’, which appears in a provision of a directive that does not contain any reference to national laws, must be regarded as an autonomous concept of EU law and interpreted uniformly throughout the European Union (see, to that effect, judgment in *Padawan*, EU:C:2010:620, paragraph 33).
- 16 That interpretation is not invalidated by the optional nature of the exception mentioned in Article 5(3)(k) of Directive 2001/29. An interpretation according to which Member States that have introduced that exception are free to determine the limits in an unharmonised manner, which may vary from one Member State to another, would be incompatible with the objective of that directive (see, to that effect, judgments in *Padawan*, EU:C:2010:620, paragraph 36, and *ACI Adam and Others*, C-435/12, EU:C:2014:254, paragraph 49).
- 17 Accordingly, the answer to the first question is that Article 5(3)(k) of Directive 2001/29 must be interpreted as meaning that the concept of ‘parody’ appearing in that provision is an autonomous concept of EU law.

The second and third questions

- 18 By its second and third questions, which it is appropriate to examine together, the referring court is asking the Court how the exception for parody, provided for under Article 5(3)(k) of Directive 2001/29, should be understood. In particular, it is asking whether the concept of parody requires certain conditions, which are listed in its second question, to be fulfilled.

- 19 It should be noted that, since Directive 2001/29 gives no definition at all of the concept of parody, the meaning and scope of that term must, as the Court has consistently held, be determined by considering its usual meaning in everyday language, while also taking into account the context in which it occurs and the purposes of the rules of which it is part (see, to that effect, judgment in *Diakité*, C-285/12, EU:C:2014:39, paragraph 27 and the case-law cited).
- 20 With regard to the usual meaning of the term ‘parody’ in everyday language, it is not disputed, as the Advocate General stated in point 48 of his Opinion, that the essential characteristics of parody are, first, to evoke an existing work while being noticeably different from it, and, secondly, to constitute an expression of humour or mockery.
- 21 It is not apparent either from the usual meaning of the term ‘parody’ in everyday language, or indeed, as rightly noted by the Belgian Government and the European Commission, from the wording of Article 5(3)(k) of Directive 2001/29, that the concept is subject to the conditions set out by the referring court in its second question, namely: that the parody should display an original character of its own, other than that of displaying noticeable differences with respect to the original parodied work; could reasonably be attributed to a person other than the author of the original work itself; should relate to the original work itself or mention the source of the parodied work.
- 22 That interpretation is not called into question by the context of Article 5(3)(k) of Directive 2001/29, which lays down an exception to the rights provided for in Articles 2 and 3 of that directive and must, therefore, be interpreted strictly (see, to that effect, judgment in *ACI Adam and Others*, EU:C:2014:254, paragraph 23).
- 23 The interpretation of the concept of parody must, in any event, enable the effectiveness of the exception thereby established to be safeguarded and its purpose to be observed (see, to that effect, judgment in *Football Association Premier League and Others*, C-403/08 and C-429/08, EU:C:2011:631, paragraph 163).
- 24 The fact that Article 5(3)(k) of Directive 2001/29 is an exception does therefore not lead to the scope of that provision being restricted by conditions, such as those set out in paragraph 21 above, which emerge neither from the usual meaning of ‘parody’ in everyday language nor from the wording of that provision.
- 25 As regards the objective referred to in Article 5(3)(k) of Directive 2001/29, the objectives of that directive in general must be recalled, which include, as is apparent from recital 3 in the preamble to that directive, a harmonisation which will help to implement the four freedoms of the internal market and which relates to observance of the fundamental principles of law and especially of property, including intellectual property, and freedom of expression and the public interest. It is not disputed that parody is an appropriate way to express an opinion.
- 26 In addition, as stated in recital 31 in the preamble to Directive 2001/29, the exceptions to the rights set out in Articles 2 and 3 of that directive, which are provided for under Article 5 thereof, seek to achieve a ‘fair balance’ between, in particular, the rights and interests of authors on the one hand, and the rights of users of protected subject-matter on the other (see, to that effect, judgments in *Padawan*, EU:C:2010:620, paragraph 43, and *Painer*, C-145/10, EU:C:2011:798, paragraph 132).
- 27 It follows that the application, in a particular case, of the exception for parody, within the meaning of Article 5(3)(k) of Directive 2001/29, must strike a fair balance between, on the one hand, the interests and rights of persons referred to in Articles 2 and 3 of that directive, and, on the other, the freedom of expression of the user of a protected work who is relying on the exception for parody, within the meaning of Article 5(3)(k).

- 28 In order to determine whether, in a particular case, the application of the exception for parody within the meaning of Article 5(3)(k) of Directive 2001/29 preserves that fair balance, all the circumstances of the case must be taken into account.
- 29 Accordingly, with regard to the dispute before the national court, it should be noted that, according to Vandersteen and Others, since, in the drawing at issue, the characters who, in the original work, were picking up the coins were replaced by people wearing veils and people of colour, that drawing conveys a discriminatory message which has the effect of associating the protected work with such a message.
- 30 If that is indeed the case, which it is for the national court to assess, attention should be drawn to the principle of non-discrimination based on race, colour and ethnic origin, as was specifically defined in Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin (OJ 2000 L 180, p. 22), and confirmed, *inter alia*, by Article 21(1) of the Charter of Fundamental Rights of the European Union.
- 31 In those circumstances, holders of rights provided for in Articles 2 and 3 of Directive 2001/29, such as Vandersteen and Others, have, in principle, a legitimate interest in ensuring that the work protected by copyright is not associated with such a message.
- 32 Accordingly, it is for the national court to determine, in the light of all the circumstances of the case in the main proceedings, whether the application of the exception for parody, within the meaning of Article 5(3)(k) of Directive 2001/29, on the assumption that the drawing at issue fulfils the essential requirements set out in paragraph 20 above, preserves the fair balance referred to in paragraph 27 above.
- 33 Consequently, the answer to the second and third questions is that Article 5(3)(k) of Directive 2001/29 must be interpreted as meaning that the essential characteristics of parody, are, first, to evoke an existing work, while being noticeably different from it, and secondly, to constitute an expression of humour or mockery. The concept of ‘parody’, within the meaning of that provision, is not subject to the conditions that the parody should display an original character of its own, other than that of displaying noticeable differences with respect to the original parodied work; that it could reasonably be attributed to a person other than the author of the original work itself; that it should relate to the original work itself or mention the source of the parodied work.
- 34 However, the application, in a particular case, of the exception for parody, within the meaning of Article 5(3)(k) of Directive 2001/29, must strike a fair balance between, on the one hand, the interests and rights of persons referred to in Articles 2 and 3 of that directive, and, on the other, the freedom of expression of the user of a protected work who is relying on the exception for parody, within the meaning of Article 5(3)(k).
- 35 It is for the national court to determine, in the light of all the circumstances of the case in the main proceedings, whether the application of the exception for parody, within the meaning of Article 5(3)(k) of Directive 2001/29, on the assumption that the drawing at issue fulfils the essential requirements of parody, preserves that fair balance.

Costs

- 36 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national court, the decision on costs is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (Grand Chamber) hereby rules:

1. **Article 5(3)(k) of Directive 2001/29/EC of the European Parliament and of the Council of 22 May 2001 on the harmonisation of certain aspects of copyright and related rights in the information society, must be interpreted as meaning that the concept of ‘parody’ appearing in that provision is an autonomous concept of EU law.**
2. **Article 5(3)(k) of Directive 2001/29 must be interpreted as meaning that the essential characteristics of parody, are, first, to evoke an existing work, while being noticeably different from it, and secondly, to constitute an expression of humour or mockery. The concept of ‘parody’, within the meaning of that provision, is not subject to the conditions that the parody should display an original character of its own, other than that of displaying noticeable differences with respect to the original parodied work; that it could reasonably be attributed to a person other than the author of the original work itself; that it should relate to the original work itself or mention the source of the parodied work.**

However, the application, in a particular case, of the exception for parody, within the meaning of Article 5(3)(k) of Directive 2001/29, must strike a fair balance between, on the one hand, the interests and rights of persons referred to in Articles 2 and 3 of that directive, and, on the other, the freedom of expression of the user of a protected work who is relying on the exception for parody, within the meaning of Article 5(3)(k).

It is for the national court to determine, in the light of all the circumstances of the case in the main proceedings, whether the application of the exception for parody, within the meaning of Article 5(3)(k) of Directive 2001/29, on the assumption that the drawing at issue fulfils the essential requirements of parody, preserves that fair balance.

[Signatures]