



**If a parody conveys a discriminatory message, a person holding rights in the parodied work may demand that that work should not be associated with that message**

*The only, and essential, characteristics of parody are, on the one hand, to evoke an existing work while being noticeably different from it and, on the other, to constitute an expression of humour or mockery*

The copyright directive<sup>1</sup> provides that authors have the exclusive right to authorise the reproduction and communication to the public of their works. Member States may however allow a work to be used, without its author's consent, for the purpose of caricature, parody or pastiche.

At a reception held by the city of Ghent to celebrate the New Year, Mr Deckmyn, a member of the Vlaams Belang (a Flemish political party), handed out calendars for the year 2011. The cover page of those calendars featured a drawing which resembled that appearing on the cover of one of the *Suske en Wiske* — known in English as *Spike and Suzy* — comic books with the original title 'De Wilde Weldoener' (which may be rendered as 'The compulsive benefactor'), produced in 1961 by Willy Vandersteen. The original drawing represented an allegorical character in the series wearing a white tunic and surrounded by people trying to pick up the coins he was scattering all around. In the drawing appearing on Mr Deckmyn's calendars, that character was replaced by the mayor of the city of Ghent, while the people picking up the coins were replaced by people wearing veils and people of colour.

Taking the view that the drawing and its communication to the public constituted an infringement of their copyright, several of Mr Vandersteen's heirs and other holders of the rights to that comic book series brought an action against Mr Deckmyn and the Vrijheidsfonds (an organisation financing the Vlaams Belang). Mr Deckmyn and the Vrijheidsfonds asserted before the Belgian courts that the drawing at issue constituted a political caricature and, therefore, a parody, with the result that the exception established by the directive for that type of work must apply. By contrast, Mr Vandersteen's heirs and the other rightholders asserted that a parody must itself display originality, which was manifestly not the case here. They also alleged that the drawing in issue conveyed a discriminatory message.

The hof van beroep te Brussel (Court of Appeal, Brussels), hearing the matter on appeal, requested the Court of Justice to clarify the conditions that a work must fulfil in order to be classifiable as parody.

In its judgment delivered today, the Court has noted, in the first place, that 'parody' must be defined in accordance with its usual meaning in everyday language, while account must also be taken of the context in which it is used and of the objectives pursued by the directive. In that regard, the Court notes that, in everyday language, **the essential characteristics of parody are, on the one hand, to evoke an existing work while being noticeably different from it and, on the other, to constitute an expression of humour or mockery.**

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<sup>1</sup> 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).

By contrast, **a parody need not display an original character of its own, other than that of displaying noticeable differences with respect to the original work parodied.** In the same way, it is not necessary that it could be attributed to a person other than the author of the original work itself, or that it should relate to the original work itself or mention the source of the work parodied.

In the second place, the Court notes that the application of the exception for parody, established by the directive, must strike a fair balance between, on the one hand, the interests and rights of authors and other rights holders and, on the other, the freedom of expression of the person who wishes to rely on that exception. In that context, the Court declares that, **if a parody conveys a discriminatory message** (for example, by replacing the original characters with people wearing veils and people of colour), **the holders of the rights to the work parodied have, in principle, a legitimate interest in ensuring that their work is not associated with such a message.**

It is for the Belgian court to determine, having regard to all the circumstances of the case, whether the application of the exception for parody does strike a fair balance between the differing interests of the persons concerned.

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**NOTE:** A reference for a preliminary ruling allows the courts and tribunals of the Member States, in disputes which have been brought before them, to refer questions to the Court of Justice about the interpretation of EU law or the validity of a European Union act. The Court of Justice does not decide the dispute itself. It is for the national court or tribunal to dispose of the case in accordance with the Court's decision, which is similarly binding on other national courts or tribunals before which a similar issue is raised.

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The [full text](#) of the judgment is published on the CURIA website on the day of delivery.

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