Health professional prosecuted for having used a prohibited advertising method (Article R.4322-39 of the Public Health Code) – Scope of Article 56 of the TFEU, which precludes a general and absolute penalty for any advertising of healthcare services.

Although Article 56 of the Treaty on the Functioning of the European Union (TFEU), as interpreted by the Court of Justice of the European Union (CJEU), in particular in its judgment of 4 May 2017 in Case C-339/15, precludes the imposition of a general and absolute penalty for any advertising of healthcare services, it does not preclude the imposition of a penalty, on the basis of the rules and principles of professional conduct applicable to the profession concerned, if a health professional undermines, by means of advertising, the requirements of the protection of public health, the dignity of his or her profession, professional secrecy or the trust placed in him or her by patients.

Consequently, the reason given by a health professional prosecuted for having used a prohibited advertising method, based on the fact that Article 56 TFEU would prevent him from being punished, involves an assessment of factual circumstances which prevents the Court of Cassation from substituting it for the erroneous reason given by the disciplinary court in rejecting the complaint.