[ES] Application of the Ownership Limits of the Private TV Law

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The Audiencia Nacional (High Court) held that the acquisition by Telefónica of a 25% stake in the private broadcaster Antena 3 TV was lawful. This operation took place in July 1997, and was authorised by the Ministerio de Fomento (Ministry of Development). The authorisation granted by the Ministerio de Fomento was challenged in court by the Spanish media group PRISA , which has joint control, together with Canal Plus , of the Spanish private broadcaster Sogecable .

The High Court has been asked for the first time to establish the precise meaning of the provisions of the 1988 Private Television Law related to concentration in the television sector.

According to Article 19 of the Private TV Law, no individual or corporate legal entity shall own, either directly or indirectly, shares in more than one licensee company.

PRISA claimed that the operation approved by the Ministerio de Fomento had led to a breach of this provision by two banks, Banco Bilbao Vizcaya (BBV) and Cajamadrid . Both banks directly own shares in the private broadcaster Sogecable , as well as a stake in Telefónica , which, after the notified operation was approved, became the main shareholder of the private broadcaster Antena 3 TV .

The High Court dismissed the argument put forward by PRISA . The decision of the High Court was based on its interpretation of Article 23 of the 1988 Private TV Law, which defines «indirect holdings» as those which allow an enterprise to effectively control, by means of agreements, decisions or concerted practices, a capital share that exceeds the limits established in this Law. According to the High Court, the fact that these two banks held small Telefónica stakes in could not be considered as an «indirect holding» within the meaning of the Law because it had not been proved that those banks effectively controlled Telefónica or Sogecable . The High Court stated that it was also necessary to take into account that the goal of Article 19 was to safeguard a basic constitutional principle, pluralism, which could not be considered to be endangered in this case.

One of the judges filed a dissenting opinion. According to this judge, Article 19 of the Private TV Law had been breached, and therefore the authorisation granted by the Ministerio de Fomento should have been declared void.

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Sentencia de la Audiencia Nacional, Sala de lo Contencioso-Administrativo, Sección Octava, Promotora de Informaciones, S.A. (PRISA) ./. Ministerio de Fomento, Telefónica de España, Telefónica Multimedia y Antena 3 TV de 29 de Junio de 1999.

Judgement of the High Court of 29 June 1999, Promotora de Informaciones, S.A. (PRISA) vs. Ministerio de Fomento, Telefónica de España, Telefónica Multimedia and Antena 3 TV.

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