[GR] New Law on the Incompatibility Between Media Companies and State Contracts

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A new media bill has been voted by the Greek Parliament on 25 January, aimed at enforcing a constitutional provision preventing media owners and executives from obtaining state contracts.

According to art.14 para. 9 of the Constitution (as revised in 2001), spouses and relatives of the above persons are considered to be counted as such persons, and are therefore also subject to the obligation of incompatibility.On the contrary, Law 3021/2002, proposed by the former socialist government, provided the opportunity to a relative to prove that he was financially independent of the owner of a media enterprise and therefore the provision of incompatibility did not to apply in this case. The new law makes the ban on relatives up to the third degree of relation absoluteand sets at 1 percent the minimum percentage of share capital of a media enterprise whose ownership legally precludes businesspeople from winning state contracts (whereas in the previous law the threshold was set at 5 percent).

The new law also prohibits off-shore companies from participating with more than a 1 percent stake in a media company or in a company bidding for public contracts.

The Ethniko Symvoulio Radiotileorasis (National Council for Radio and Television - ESR, the Greek Independent Regulatory Authority), which is responsible for the application of the law, will have to register all companies taking part in tenders for major public works and could revoke the license of a media company caught in breach of the law.

This new legislation is the consequence of a key slogan of the New Democracy (the party that received the highest number of votes in the elections last March) aiming at cracking down on corruption concerning state contracts with construction firms which in parallel possessed media holdings. The Federation of Greek Industries expressed its opposition to the law, describing it as a “Greek patent” that will hurt competition and add huge costs to enterprises that are in no way involved in the media but do have transactions with the State.

The new legislation still has to face three main obstacles: two of them concern its conformity with European and Greek constitutional law and the third one relates to its effective application.

In fact, the European Commission has already cited a conflict with the fundamental freedoms (free movement of persons, capital and services) enshrined in the Treaty of the European Community. The European Court of Justice has ruled that in certain cases pertaining to services that involve the public good, the fundamental freedoms of the European internal market can be curtailed. A European Court challenge to the new law, which is inevitable, would have to weigh the aim of the law against how it affects free trade within the Community.

The Greek parliamentary legal committee underlined, in a special report issued on 16 January, an internal conflict in the Greek Constitution. The absolute business restrictions posed by the new law for relatives of media owners conflict with basic constitutional freedoms. The report states that the restriction on relatives simply because of their blood ties "does not appear to agree with the respect and protection for the value of the individual, which is a paramount responsibility of the state according to article 2, paragraph 1 of the constitution".

The third obstacle is that of the capability of ESR to apply the new legislation. This authority already has difficulties in setting up a register of all companies involved in media law since 1996, not to mention the additional problems of regulation of a great number of television and radio stations broadcasting without a license.

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