Court of Justice of the European Union: Idrima Tipou AE v. Ipourgos Tipou kai Meson Mazikis Enimerosis

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On 21 October 2010 the Second Chamber of the Court of Justice of the European Union issued a preliminary ruling on request of the Greek Simvoulio tis Epikratias (Council of State). The preliminary question was whether penalties imposed on shareholders of public limited companies operating television stations are contrary to the principles of freedom of establishment and of the free movement of capital.

The action was brought by Idrima Tipou AE, a shareholder of the public limited company Nea Tileorasi AE. Nea Tileorasi AE is the owner of the television station Star Channel. Idrima Tipou AE, Nea Tileorasi AE and other shareholders were jointly and severally fined approximately EUR 30,000 by the Minister for the Press and the Mass Media due to the infringement of their obligation to respect the honour and reputation of various personalities in a broadcast.

Relevant national legislation limits the maximum holding that a natural or legal person can have in the share capital of a company operating a television station to 25%. Furthermore, it imposes penalties not only on the company, but also on shareholders with a holding of over 2.5% when rules of national legislation or of good conduct are infringed in a broadcast.

The Court reiterated, in accordance with its settled case-law, that “measures which prohibit or impede the exercise of freedom of establishment or render it less attractive, or which are liable to prevent or limit the acquisition of shares in undertakings or to deter investors of other Member States from investing in their capital, entail ‘restrictions’ on freedom of establishment or on the free movement of capital”.

According to the Court these measures have a deterrent effect on shareholders because they are responsible for ensuring the compliance of the company with national legislation, even though they cannot influence compliance due to the limitations set on the amount of shares one is allowed to hold. Moreover, the Court observed that Greek law provides for other possible penalties in respect of television operations that are more appropriate to the legitimate objective pursued of compliance with national legislation.

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As a result, according to the preliminary ruling of the Court, the principles of freedom of establishment and free movement of capital preclude the abovementioned measures.

Case C-81/09, Idrima Tipou AE v. Ipourgos Tipou kai Meson Mazikis Enimerosis, 21 October 2010

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