Court of Justice of the European Union: European Commission v Kingdom of Spain

IRIS 2012-1:1/3

Edith van Lent
Institute for Information Law (IViR), University of Amsterdam

On 22 July 2009 the European Commission submitted a request to the Court of Justice to declare Spain to be in violation of the Television without Frontiers Directive (Directive 89/552/EEC).

The Commission argued that the Kingdom of Spain has failed to fulfill its obligation under Article 3(2) of the TWF Directive to ensure within the framework of its legislation that television broadcasters under their jurisdiction comply with the provisions of the Directive. The Commission referred in particular to the incorrect and overly narrow interpretation by the Spanish authorities of the concept of ‘advertising spots’. As a result of the Spanish approach to the concept, certain types of television advertising broadcast in Spain, namely advertorials, telepromotions, sponsorship credits and micro-ads are excluded from the advertising hourly restrictions. The main question in these proceedings was to determine whether the four aforementioned types of advertisement can be classified as ‘advertising spots’, as claimed by the Commission or rather constitute ‘other forms of advertising', as claimed by Spain.

The European Court of Justice found a violation of the TWF Directive by Spain. According to the Court, Spain exceeds the advertising maximum limit of 20% broadcasting time per hour. As the Court reasoned, “[i]t follows that any type of television advertising broadcast between programmes or during breaks constitutes, as a general rule, an ‘advertising spot’ within the meaning of the TWF Directive, unless the type of advertising concerned were to be covered by another form of advertising expressly governed by that directive […]”.

The Court concluded that “by tolerating a situation in which the broadcasting of certain types of advertising, such as advertorials, telepromotion spots, sponsorship credits and micro-ads, on Spanish television channels has a duration which exceeds the maximum limit of 20% of the transmission time within a clock hour, as laid down in Article 18(2) of Directive 89/552, the Kingdom of Spain has failed to fulfil its obligations under Article 3(2) of that directive”.

Judgment of the Court (First Chamber), Case C-281/09, 24 November 2011

http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:62009CJ0281:EN:HTML

© European Audiovisual Observatory (Council of Europe) 2026

© European Audiovisual Observatory (Council of Europe) 2026