[CY] Supreme Court rejects request to refer media law case to the CJEU

IRIS 2017-6:1/9

Christophoros Christophorou
Council of Europe expert in Media and Elections

In a pretrial decision the Supreme Court rejected on 5 April 2017 a request by the House of Representatives of the Republic to seek the opinion of the Court of Justice of the European Union (CJEU) on a number of pretrial questions related to media issues. The Court found that the questions were formulated in a generic manner, while in the application of the House of Representatives, the reason(s) the interpretation of the CJEU was sought were not precisely determined as requested by the rules of pretrial reference. Moreover, “the formulation of the questions refers and seeks the opinion of the ECJ on the compatibility of national law with the Convention, not solely an interpretation of articles of the Convention”. This would constitute a claim for “the enforcement by the Court (ECJ) of the proposed law on the facts […] in a non-acceptable manner”.

The case related to a referral by the President of the Republic to the Supreme Court concerning a law voted by the House of Representatives amending the Law on Radio and Television Organizations L. 7(I)/1998. The President sought the opinion of the Supreme Court on whether the amending law was in conflict or discrepancy with several articles of the Constitution, namely Article 25 (right to employment), Article 28 (equality before the law, non-discrimination) and Article 179 (Constitution as the supreme law, compliance of laws with it); Articles 49 and 56 of the European Convention as well as Articles 15 and 16 of the European Charter of Fundamental Rights.

The amending law, voted on 4 April 2016 by the House of Representatives, introduced Article 12(2) in the basic law providing that the Cypriot Radio Television Authority would not grant new television licenses if the financial viability of existing licensees was endangered. It further provided that services from EU or third countries retransmitting in Cyprus should not include advertisements or commercial messages addressed to the territory of the Republic. When the President referred the voted law to the Supreme Court, the House of Representatives made the request for referral to the ECJ on the grounds that “there is reasonable doubt with respect to the right interpretation of the respective provisions of the European Law”. The questions raised by the House of Representatives focused on whether the European Convention, the Charter, or the AVMS directive allowed (or prohibited) member states to regulate in a specific direction or to adopt the provisions voted by the Parliament.

© European Audiovisual Observatory (Council of Europe) 2026

The Supreme Court endorsed the objections and arguments of the President of the Republic that the request did neither make substantive reference to Articles 49 and 56 of the Convention, nor to Articles 15 and 16 of the European Charter, and further failed to include the reason(s) for which the request was made. The Supreme Court held that the exceptions to the free establishment of persons and legal entities established by the case law of the Court would not include restrictions on grounds of general economic interests. The same would apply to the free provision of services within the EU. Furthermore, the protection of interests of a purely economic nature would not be among the reasons that could justify restrictions to freedoms in the name of public interest.

The Court noted that “it is obvious from the formulation of the questions that they are all founded and are reasoned on [...] the economic viability of the existing licensed television organisations”; this purely economic basis of the proposed regulation would be contrary to the case law of the CJEU, the Court concluded. In summary, it endorsed the argument that the application of EU Law was clear and that the existing interpretation of EU Law by the CJEU demonstrated the validity of the principle of an “acte éclairé”. Thus, referral to the CJEU seeking interpretation was not justified.

Αναφορά Αρ. 5/2016, 5 Απριλίου 2017

http://www.cylaw.org/cgi-bin/open.pl?file=/apofaseis/aad/meros_3/2017/3-201704-5-16anaforaait181016.htm

Decision by the Supreme Court, request of pretrial reference, case Reference President of the Republic v. The House of Representatives #5/2016, 5 April 2017

© European Audiovisual Observatory (Council of Europe) 2026

© European Audiovisual Observatory (Council of Europe) 2026