[IT] Decision of the Court of Cassation on the Application of the “Television without Frontiers” Directive to Teleshopping Channels

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On 15 April 1997, the Court of Cassation decided on the application of the "Television without Frontiers" A national broadcaster, Telemarket, the holder of a national licence to broadcast via terrestrial frequencies, was condemned by the Garante per l'editoria e la radiodiffusione to the payment of a fine. The broadcaster had transmitted fifteen hours of teleshopping programmes on one and the same day, therefore violating Article 18, paragraph 9 of Italian law n° 223 of 1990, enacted to transpose the "Television without Frontiers" Directive into Italian law. The broadcaster took legal action against this decision, arguing that the Directive did not intend to cover the activities of broadcasters which limit their transmissions to teleshopping programmes. After a negative ruling by a lower court, the matter was referred to the Court of Cassation, which did not accept the argument. Having held that Article 18 of the Directive is so clear in its wording that no preliminary ruling on its interpretation was neccessary from the European Court of Justice (so applying the acte clair doctrine), the Court of Cassation considered that the Directive is of general application, so to cover all the channels which are under the jurisdiction of a Member State of the European Community. Monothematic channels, wholly devoted to teleshopping, do not fall outside the scope of the Directive, but they are not permitted. It should be noted that the revised "Television without Frontiers" Directive now permits channels exclusively devoted to teleshopping. Member States are requested to transpose the revised Directive into their national laws not later than eighteen months after its adoption (30 December 1998). The Court of Cassation also held that the norms which limit the amount of time to be devoted to advertising and teleshopping are consistent with constitutionnal values such as freedom of private initiative, since they are devoted to create a pluralistic system necessary to ensure the preminent value of freedom of information.

Corte Suprema di Cassazione, sezione prima civile. Sentenza del 15 Aprile 1997, SIT Teleservice contro Garante per l'editoria e la radiodiffusione

Court of Cassation, ruling of 15 April 1997, SIT Teleservice vs. Garante per l'editoria e la radiodiffusione

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