



The 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 Greek legislation has a deterrent effect on investors

The Greek law which defines the legal regime governing private television and local radio and the framework within which they operate 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%. If rules of national legislation or of good conduct (respect for the character, honour, reputation, private and family life and professional activity of every person whose image appears on the screen) are infringed in a broadcast, that law prescribes penalties not only on the company but also on shareholders with a holding of over 2.5%.

Idrima Tipou AE is a shareholder of Nea Tileorasi AE, a public limited company which is the owner of the television station Star Channel. In 2001 the Minister for the Press and the Mass Media imposed a fine of approximately €30 000 jointly and severally upon Idrima Tipou together with Nea Tileorasi and the other shareholders and the members of the board of directors of Nea Tileorasi on the ground that, during the main news programme of Star Channel on 14 February 2000, it infringed the obligation to respect the honour and reputation of various personalities.

Idrima Tipou challenged that decision before the Simvoulío tis Epikratias (Council of State, Greece). Certain judges took the view that the national law can be interpreted as obliging shareholders to pay not their own debt but a company debt, which could be contrary to the principle – applicable to public limited companies – that a shareholder is not liable for company debts. They questioned whether national law is compatible with Community rules.

The Court of Justice observes that the First Company Law Directive¹ has the aim of protecting the interests of members and third parties. The directive does not prescribe a uniform concept of companies limited by shares or otherwise having limited liability that is based on a principle that only companies are required to pay, out of their assets, company debts to third parties. The Court infers from this that the directive does not impose a rule that a shareholder can never be held liable for a fine imposed on a company, including where it is imposed jointly and severally on a public limited company and on the shareholder.

On the other hand, national legislation not intended to apply only to those shareholdings which enable the holder to have a definite influence on a company's decisions but which applies irrespective of the size of the holding that the shareholder has falls within the ambit of both the principle of freedom of establishment and the principle of the free movement of capital.

In the present instance, Greek legislation, first, limits to 25% the maximum holding that a natural or legal person can have in the share capital of a company operating a television station and, second, provides that a fine may be imposed on a shareholder once he holds more than 2.5% of the

¹ Council Directive 68/151/EEC of 9 March 1968 on co-ordination of safeguards which, for the protection of the interests of members and others, are required by Member States of companies within the meaning of the second paragraph of Article 58 of the Treaty, with a view to making such safeguards equivalent throughout the Community (OJ, English Special Edition 1968 (I), p. 41).

company's shares. Depending on the manner in which the remainder of a company's capital is distributed, a holding of 25% may be sufficient to have control of a company or at least to influence its decisions. On the other hand, a holding of 2.5%, or more, of the shares is not sufficient to allow the shareholder to control the company.

In accordance with the Court's settled case-law, 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.

The Greek law provides for shareholders of a public limited company in the television sector to be held liable in order that they ensure that the company observes national legislation and rules of good conduct, whereas the powers accorded to them within the framework of the company's organs do not actually give them a possibility of so doing. **In thereby inducing shareholders to ally themselves with other shareholders, the law has a deterrent effect on investors and affects their access to the equity market. This deterrent effect is greater for investors from other Member States, who know less about the realities of media life in Greece and find observance thereof more difficult** – despite the fact that the deterrent effect is applicable to them and to Greek investors without distinction.

As the national court has noted, the law's objective – which is moreover a legitimate one – is to secure compliance by television companies with legislation and journalists' rules of professional conduct, in order to prevent the honour or the private life of persons whose image appears on the screen from being adversely affected. Greece stated at the hearing that, at the time when the law was adopted, numerous journalists were also shareholders having a holding of more than 2.5% in a television company.

The Court observes that the Greek law provides for other possible penalties that are more appropriate, being imposed not in respect of the mere holding of share capital but in respect of television operations (the suspension or cessation of the broadcasting of a programme, the revocation of the station's operating licence or penalties of an ethical nature). Furthermore, to assume that all the shareholders of a public limited company are journalists would be the very negation of the free movement of capital, which applies to investments made solely with the intention of making a financial investment and without any intention to influence the management and control of the undertaking.

It follows that **the principles of freedom of establishment and of the free movement of capital preclude national legislation which imposes fines for infringement of the legislation and rules of good conduct governing the operation of television stations not only on the company which holds the licence to found and operate the television station but also jointly and severally on all shareholders with a holding of over 2.5%.**

NOTE: A reference for a preliminary ruling allows the courts and tribunals of the Member States, in disputes which have been brought before them, to refer questions to the Court of Justice about the interpretation of European Union law or the validity of a European Union act. The Court of Justice does not decide the dispute itself. It is for the national court or tribunal to dispose of the case in accordance with the Court's decision, which is similarly binding on other national courts or tribunals before which a similar issue is raised.

Unofficial document for media use, not binding on the Court of Justice.

The [full text](#) of the judgment is published on the CURIA website on the day of delivery.

Press contact: Christopher Fretwell ☎ (+352) 4303 3355

Pictures of the delivery of the judgment are available from "[Europe by Satellite](#)" 📠 (+32) 2 2964106