



Press and Information

Court of Justice of the European Union

PRESS RELEASE No 5/13

Luxembourg, 22 January 2013

Judgment in Case C-283/11

Sky Österreich GmbH v Österreichischer Rundfunk (ORF)

The limitation of costs for broadcasting short news events of high interest to the public, such as football matches, is valid

The Charter of Fundamental Rights does not preclude the compensation which holders of exclusive broadcasting rights may seek from other channels for short news reports from being limited to technical costs

The Audiovisual Media Services Directive¹ authorises any broadcaster established in the EU to produce short news reports on events of high interest to the public, where those events are subject to exclusive broadcasting rights. Short extracts may be chosen freely from the signal of the holder of the exclusive broadcasting rights, which may request compensation corresponding only to the additional costs directly incurred in providing access to the signal.

Sky Österreich contests those financial conditions in the context of a dispute with ORF (an Austrian public broadcaster). Sky broadcasts by satellite the coded digital television programme 'Sky Sport Austria' and acquired exclusive rights to broadcast Europa League matches in the 2009/2010 to 2011/2012 seasons in Austrian territory. Sky states that it spends several million euros each year on the licence and production costs. KommAustria, the Austrian communications regulator, required Sky to grant ORF the right to make short news reports, without taking those costs into consideration. No costs were directly incurred in providing access to the satellite signal in this case.

The Bundeskommunikationssenat (the Austrian Federal Communications Senate), before which this case has been brought, asks the Court of Justice whether the Audiovisual Media Services Directive, in so far as it limits the compensation in question to additional costs directly incurred in providing access to the signal, is compatible with the Charter of Fundamental Rights of the European Union which guarantees the right to property and the freedom to conduct a business.

In today's judgment, the Court responds that the Charter does not preclude such a limitation.

In so far as concerns the **protection of property**, as a fundamental right, the Court recognises that exclusive broadcasting rights, as acquired by Sky, have asset value and do not constitute mere commercial interests or opportunities. However, when Sky acquired those rights by means of a contract (in August 2009), EU law already provided for the right to make short news reports, while limiting the amount of compensation to the additional costs directly incurred in providing access to the signal². Therefore, Sky cannot rely on an established legal position enabling it to exercise its exclusive broadcasting rights autonomously. Consequently, Sky cannot rely on the protection of property, laid down in the Charter of Fundamental Rights.

¹ Directive 2010/13/EU of the European Parliament and of the Council of 10 March 2010 on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services (Audiovisual Media Services Directive) (OJ 2010 L 95, p. 1, and corrigendum OJ 2010 L 263, p. 15).

² Directive 2007/65/EC of the European Parliament and of the Council of 11 December 2007 amending Directive 89/552/EEC of 3 October 1989 on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the pursuit of television broadcasting activities (OJ 2007 L 332, p. 27) came into force on 19 December 2007 and had to be transposed by the Member States by 19 December 2009 at the latest.

By contrast, the Court finds that the legislation in dispute encroaches upon **the freedom to conduct a business**. It prevents, in particular, the holder of exclusive broadcasting rights from deciding freely on the price to be charged for access to the signal and from making broadcasters which produce short news reports contribute to the costs involved in acquiring those rights.

However, the Court points out that the freedom to conduct a business, as a fundamental freedom, is particular in that it may be subject to a broad range of interventions on the part of public authorities which may limit the exercise of economic activity in the public interest. That fact is reflected, *inter alia*, in the way in which the principle of proportionality must be implemented.

The Court concludes that the limitation in dispute on the freedom to conduct a business is justified and that it is in line with the principle of proportionality, *inter alia*.

That limitation pursues, without affecting the essential content of the freedom to conduct a business, an objective in the general interest in that it seeks to safeguard the fundamental freedom to receive information and to promote pluralism of the media, guaranteed by the Charter. In that respect, the Court states that the marketing on an exclusive basis of events of high interest to the public is increasing and is liable to restrict considerably the access of the general public to information relating to those events.

Moreover, the limitation in question is necessary and appropriate for the purpose of ensuring that the objective pursued of protecting the general interest is achieved. The EU legislature could legitimately consider that legislation providing for compensation to holders of exclusive broadcasting rights exceeding the costs directly incurred in providing access to the signal would not have achieved the objective pursued as effectively.

Finally, the contested legislation must be considered to be proportionate. In the light, first, of the importance of safeguarding the fundamental freedom to receive information and the freedom and pluralism of the media guaranteed by the Charter and, second, of the protection of the freedom to conduct a business as guaranteed the Charter, the EU legislature was entitled to adopt rules such as those at issue, which limit the freedom to conduct a business and give priority in the necessary balancing of the rights and interests at issue to public access to information over contractual freedom.

In particular, the contested legislation ensures a fair balance between the various rights and fundamental freedoms at issue in the case. The Audiovisual Media Services Directive provides that short news reports may only be produced for general news programmes and not, for example, programmes serving entertainment purposes. In addition, those short extracts should not exceed ninety seconds and their source must be indicated. Moreover, the directive does not prevent holders of exclusive broadcasting rights from charging for the use of their rights. Similarly, the absence of a possibility of refinancing through set-off and any reduction in the commercial value of those exclusive broadcasting rights may, in practice, be taken into account during contractual negotiations relating to the acquisition of the rights at issue and be reflected in the price paid for that acquisition.

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.

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

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