

Case C-260/89

Elliniki Radiophonia Tileorassi AE

v

Dimotiki Etairia Pliroforissis and Sotirios Kouvelas

(Reference for a preliminary ruling from the
Monomeles Protodikeio (Regional Court) Thessaloniki)

(Exclusive rights in the matter of radio and television
broadcasting — Free movement of goods — Freedom to provide
services — Rules on competition — Freedom of expression)

Report for the Hearing	2927
Opinion of Advocate General Lenz delivered on 23 January 1991	2939
Judgment of the Court, 18 June 1991	2951

Summary of the Judgment

- 1. Competition — Undertakings to which Member States grant special or exclusive rights — Television monopoly — Compatibility with Community law — Conditions (EEC Treaty, Art. 90)*
- 2. Free movement of goods — Quantitative restrictions — Measures having equivalent effect — Grant of a television monopoly coupled with exclusive rights in respect of certain materials and products — Permissibility — Conditions (EEC Treaty, Art. 30 et seq.)*
- 3. Freedom to provide services — Television monopoly — Discrimination by reason of source of broadcasting — Not permissible — Justification — Conditions (EEC Treaty, Arts 56, 59 and 66)*

4. *Competition — Undertakings to which Member States grant special or exclusive rights — Television monopoly — Abuse of a dominant position — Not permissible — Justification — Conditions*
(EEC Treaty, Arts 86 and 90)
5. *EEC Treaty — Article 2 — Irrelevance for appraisal and permissibility of a television monopoly*
(EEC Treaty, Art. 2)
6. *Freedom to provide services — Restrictions justified by reasons relating to public policy, public security and public health — Permissibility subject to respect for fundamental rights*
(EEC Treaty, Arts 56 and 66)

1. Community law does not preclude the granting of a television monopoly for considerations of a non-economic nature relating to the public interest. However, the manner in which such a monopoly is organized and exercised must not infringe the provisions of the Treaty on the free movement of goods and services or the rules on competition.

2. The articles of the EEC Treaty on the free movement of goods do not preclude the granting to a single undertaking of exclusive rights relating to television broadcasting and the granting for that purpose of exclusive authority to import, hire or distribute materials and products necessary for that broadcasting, provided that no discrimination is thereby created between domestic products and imported products to the detriment of the latter.

3. Article 59 of the Treaty prohibits national rules which create a monopoly comprising exclusive rights to transmit the broadcasts of the holder of the monopoly and to retransmit broadcasts from other Member States, where such a monopoly gives rise to discriminatory

effects to the detriment of broadcasts from other Member States, unless those rules are justified on one of the grounds indicated in Article 56 of the Treaty, to which Article 66 thereof refers. The objective of avoiding disturbances due to the restricted number of channels available cannot however constitute such a justification where the undertaking in question uses only a limited number of those channels.

4. Article 90(1) of the Treaty prohibits the granting of an exclusive right to transmit and an exclusive right to retransmit television broadcasts to a single undertaking, where those rights are liable to create a situation in which that undertaking is led to infringe Article 86 by virtue of a discriminatory broadcasting policy which favours its own programmes, unless the application of Article 86 obstructs the performance of the particular tasks entrusted to it.

5. No criteria for deciding whether a national television monopoly is in

conformity with Community law can be derived from Article 2 of the Treaty which describes the task of the European Economic Community.

6. Where a Member State relies on the combined provisions of Articles 56 and 66 of the Treaty in order to justify, by reasons relating to public policy, public security and public health, rules which are likely to obstruct the exercise of the freedom to provide services, such justification, provided for by Community law,

must be interpreted in the light of the general principles of law and in particular of fundamental rights. Thus the national rules in question can fall under the exceptions provided for in those provisions only if they are compatible with the fundamental rights the observance of which is ensured by the Court. As regards rules relating to television, this means that they must be appraised in the light of freedom of expression, as embodied in Article 10 of the European Convention on Human Rights, as a general principle of law the observance of which is ensured by the Court.

REPORT FOR THE HEARING in Case C-260/89*

I — Facts and procedure

1. *Legal background*

1. Under Article 15 of the Hellenic Constitution of 1975 radio and television are subject to direct control by the State and their aims are the objective and balanced broadcasting of information and news and of intellectual and artistic material; the same article provides that the quality of the programmes must always be of a level that accords with their social function and the cultural development of the country.

2. The public limited liability company Elliniki Radiophonia Tiléorassi — Anonimi Etairia (hereinafter referred to as 'ERT'), a public undertaking placed under the control and supervision of the State, was created by Law No 1730/1987 (*Official Journal of the Hellenic Republic* No 145 A of 18 August 1987, p. 144).

ERT comprises Hellenic television (ET1 and ET2), Hellenic radio broadcasting, the Institute of Audiovisual Methods and the production and marketing company for broadcasting and ERT radio and television programmes.

* Language of the case: Greek