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Judgment of the Court of Justice in Case C-250/06

*United Pan-Europe Communications Belgium SA (UPC)
Coditel Brabant Sprl
Société Intercommunale pour la Diffusion de la Télévision (Brutélé)
Wolu TV asbl v État belge*

**THE AWARD OF MUST-CARRY STATUS TO BROADCASTERS MAY BE
JUSTIFIED BY REASON OF A CULTURAL POLICY**

That status must be awarded under a transparent procedure and be based on objective non-discriminatory criteria

UPC, Coditel Brabant SPRL, Brutélé and Wolu TV ASBL are cable operators which broadcast, through cable distribution networks, the programmes of a number of broadcasters, particularly in the bilingual region of Brussels-Capital (Belgium).

National legislation requires them to broadcast, in that region, the television programmes transmitted by certain broadcasters falling under the French and Flemish Communities, which have ‘must-carry’ status. The purpose of that regime is to safeguard the pluralistic and cultural range of programmes on television networks and to ensure that all television viewers have access to that pluralism.

However, the cable operators take the view that that legislation constitutes an unjustified restriction on freedom to provide services. In those circumstances, the Belgian Conseil d’État (Council of State), before which the cable operators have challenged that legislation, decided to refer a number of questions to the Court of Justice of the European Communities for a preliminary ruling.

That Court has decided, first of all, that such a must-carry regime directly determines the conditions for access to the market for services, by requiring the providers of services established in Member States other than the Kingdom of Belgium which do not have must-carry status a burden, namely that of negotiating the conditions for access to the network, which is not imposed on the providers of services having that status. In addition, even if that legislation were to be construed as not expressly reserving must-carry status to broadcasters established in Belgium, since that status represents an instrument of cultural policy, the essential purpose of which is to guarantee Belgian citizens access to local and national news and to their own culture, it is more likely to be granted to those organisations than to those established in other Member States.

Such legislation is accordingly liable to hinder the provision of services between Member States.

However, **the Court notes, first, that a cultural policy may constitute an overriding requirement relating to the general interest which justifies a restriction on the freedom to provide services.**

Consequently, it must be accepted that the national legislation at issue pursues an aim in the general interest, since it seeks to preserve the pluralist nature of the range of television programmes and thus forms part of a cultural policy the aim of which is to safeguard, in the audiovisual sector, the freedom of expression of the different social, cultural, religious, philosophical or linguistic components which exist in that region.

Secondly, having regard to the bilingual nature of the Brussels-Capital region, such a regime constitutes an appropriate means of achieving the cultural objective pursued, since it guarantees to television viewers that they will not be deprived of access, in their own language, to local and national news as well as to programmes which are representative of their culture.

As regards, thirdly, the question whether the legislation is necessary in order to attain the aim pursued, the Court notes that, while the national authorities have a wide margin of discretion in that regard, the requirements imposed under measures designed to implement such a policy must in no case be disproportionate in relation to that aim and the manner in which they are applied must not bring about discrimination against nationals of other Member States.

Therefore, **the award of must-carry status must first of all be subject to a transparent procedure** based on criteria known by broadcasters in advance, so as to ensure that the discretion vested in the Member States is not exercised arbitrarily. In particular, each broadcaster must be able to determine in advance the nature and scope of the precise conditions to be satisfied and, where relevant, the public service obligations it is required to observe if it is to apply for that status. In that regard, the mere setting out, in the statement of reasons for the national legislation, of declarations of principle and general policy objectives cannot be considered sufficient.

Next, **the award of must-carry status must be based on objective criteria which are suitable for securing pluralism** by allowing, where appropriate, by way of public service obligations, access inter alia to national and local news on the territory in question. Thus, such status should not automatically be awarded to all television channels transmitted by a private broadcaster, but must be strictly limited to those channels having an overall content which is appropriate for the purpose of attaining such an objective. In addition, the number of channels reserved to private broadcasters having must-carry status must not manifestly exceed what is necessary in order to attain that objective.

Lastly, **the criteria on the basis of which must-carry status is awarded must be non-discriminatory.** In particular, the award of that status must not, either in law or in fact, be subject to a requirement of establishment on the national territory.

It is for the national court to determine whether those conditions are satisfied.

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Languages available: FR DE EN NL ES EL PL PT RO

The full text of the judgment may be found on the Court's internet site
<http://curia.europa.eu/jurisp/cgi-bin/form.pl?lang=EN&Submit=rechercher&numaff=C-250/06>

It can usually be consulted after midday (CET) on the day judgment is delivered.

For further information, please contact Christopher Fretwell

Tel: (00352) 4303 3355 Fax: (00352) 4303 2731