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Judgment of the Court of Justice in Case C-222/07

UTECA v. Administración General del Estado

**A MEMBER STATE CAN REQUIRE TELEVISION OPERATORS TO EARMARK
PART OF THEIR OPERATING REVENUE FOR THE FUNDING OF EUROPEAN
CINEMATOGRAPHIC AND TV FILMS**

National legislation may also provide for a specific rate of funding for works whose original language is one of the official languages of that Member State.

The Spanish legislation transposing the Television Broadcasting Directive¹ requires television operators to earmark 5% of their operating revenue for the previous year for the funding of full-length and short cinematographic films and European films made for television. 60% of that funding must be reserved for the production of films of which the original language is one of the official languages of Spain.

The Unión de Television Comerciales Asociadas (UTECA) brought an action before the Tribunal Supremo seeking to have that national legislation declared inapplicable on the ground that it infringes Community law.

That court decided to refer questions to the Court in order to verify the compatibility of the Spanish legislation with the Television Broadcasting Directive and with certain provisions of the Treaty.

The Court recalls that Member States remain free to lay down more detailed or stricter rules than those laid down in the Directive. Nevertheless, when exercising that right, they must respect the fundamental freedoms guaranteed by the Treaty.

The Court finds, firstly, that the measure adopted by Spain, in so far as it lays down a specific rate of funding reserved for works of which the original language is one of the official languages of that Member State constitutes a restriction on several fundamental freedoms, that is to say freedom to provide services, freedom of establishment, the free movement of capital and freedom of movement of workers. However, such a restriction may be justified where it serves

¹ Council 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 1989 L 298, p. 23), as amended by Directive 97/36/EC of the European Parliament and of the Council of 30 June 1997.

overriding reasons relating to the general interest, is suitable for securing the attainment of the objective which it pursues and does not go beyond what is necessary in order to attain it.

In the present case, the Court considers that cultural grounds of defence of Spanish multilingualism, on which the measure at issue in the main proceedings is based, constitutes an overriding reason in the public interest. Since the measure introduces an obligation to invest in cinematographic films and films made for television the original language of which is one of the official languages of that Member State, it appears appropriate to ensure that such an objective is achieved. Moreover, such a measure does not go beyond what is necessary to attain the objective pursued. The fact that a linguistic criterion may constitute an advantage for the undertakings benefiting from the funding, which are mostly cinema production undertakings which are established in that Member State cannot, of itself, constitute proof of the disproportionate nature of the measure at issue without rendering nugatory the recognition, as an overriding reason in the public interest, of the objective pursued by a Member State of defending and promoting one or several of its official languages.

The Court holds that **Community law does not preclude a measure adopted by a Member State which requires television operators to earmark 5% of their operating revenue for the pre-funding of European cinematographic films and films made for television and, more specifically, to reserve 60% of that 5% for works of which the original language is one of the official languages of that Member State.**

With regard to the compatibility of such a measure with the State aid legislation, the Court, after having recalled the conditions which financing must satisfy in order to be classified as State aid, states that in the present case the advantage given by way of the measure at issue to the cinematographic industry does not constitute an advantage granted directly by the State and those granted by a public or private body designated or established by that State. Such an advantage is the result of general legislation applicable to all television operators, whether public or private. Furthermore, since the measure at issue applies to public television operators, it does not appear that the advantage in question is dependent on the control exercised by the public authorities over such operators or on directives issued by those authorities.

The Court concludes that **the measures adopted in the present case do not constitute State aid in favour of the cinematographic industry.**

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Languages available: DE EL EN ES IT NL CS HU PL SK

*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-222/07>*

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

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*Pictures of the delivery of the judgment are available on EbS "Europe by Satellite",
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