



Press and Information

Court of Justice of the European Union

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Judgment in Case C-52/10

Eleftheri tileorasi AE 'ALTER CHANNEL', Konstantinos Giannikos v Ipourgos
Tipou kai Meson Mazikis Enimerosis, Ethniko Simvoulío Radiotileorasis

The fact that no payment is made does not mean that the intentional nature of surreptitious advertising can be ruled out

If payment were treated as a necessary condition for establishing intention, the protection of television viewers' interests could be undermined

In order to ensure that the interests of consumers as television viewers are fully and properly protected, the 'Television without Frontiers' Directive¹ makes TV advertising subject to a number of minimum rules and standards.

The Directive prohibits 'surreptitious advertising', which it defines as 'the representation in words or pictures of goods, services, the name, the trade mark or the activities of a producer of goods or a provider of services in programmes when such representation is intended by the broadcaster to serve advertising and might mislead the public as to its nature'. Such representation is considered to be intentional *in particular* if it is done in return for payment or for similar consideration.

During a programme broadcast in 2003 on the private TV channel called 'ALTER CHANNEL', a cosmetic dental treatment was presented in three sequences: before, during and after the treatment of a patient. The presenter spoke with a dentist, who stated that the treatment was a worldwide innovation. Information was provided about the efficacy and the costs of the treatment.

Subsequently, the ESR (Ethniko Simvoulío Radiotileorasis: Greek National Council for Radio and Television) imposed a fine of €25 000 on Eleftheri tileorasi (the company which owns and operates the TV channel) and Mr Giannikos, its Chairman and Managing Director, on the ground that the TV programme had contained surreptitious advertising.

Eleftheri tileorasi and Mr Giannikos brought an action for annulment of the ESR's decision before the Simvoulío tis Epikratias (Council of State, Greece), which has referred a question to the Court concerning the interpretation of the Television without Frontiers Directive. The Simvoulío tis Epikratias would like to know whether the Directive must be interpreted as meaning that the provision of payment or of consideration of another kind is a necessary condition for establishing the intentional nature of surreptitious advertising.

It is first pointed out that, while a number of language versions of the relevant provision of the Directive contain an adverb or adverbial phrase meaning 'in particular', the Greek version does not.

In its judgment delivered today, the Court states that the need for a uniform interpretation and application of EU law means that the text of a provision must be interpreted and applied in the light of the versions existing in the other official languages. Where there is a divergence between the various language versions, the provision in question must be interpreted by reference to the purpose and general scheme of the rules of which it forms part.

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).

The Court states that the aim of the Television without Frontiers Directive is to ensure that television viewers' interests are protected and that, to that end, 'television advertising' has been made subject to a number of minimum rules and standards.

'Surreptitious advertising' constitutes, in relation to 'television advertising', a separate notion which meets specific criteria. The defining feature of surreptitious advertising is that it must be 'intended by [a] broadcaster to serve advertising'.

Although the provision of payment or similar consideration is indicative of an intention to advertise, it is clear from the definition set out in the Directive, and from the purpose and general scheme of that Directive, that the lack of such payment or consideration does not mean that such an intention can be ruled out. In other words, the fact that no payment is made does not mean that there is no surreptitious advertising.

Furthermore, given the difficulty, or even the impossibility, in certain cases of proving the provision of payment or of consideration of another kind for TV advertising which nevertheless displays all the characteristics of surreptitious advertising, treating payment as a necessary condition could undermine the protection of the interests of television viewers and deprive the prohibition of surreptitious advertising of its effectiveness.

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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