OPINION OF MR ADVOCATE GENERAL LENZ
delivered on 23 January 1991 *

Mr President,
Members of the Court,

A — Facts

1. The case in which I am giving my opinion today is concerned with a television monopoly which the plaintiff in the main proceedings, a public undertaking under State control in accordance with Greek Law No 1730/1987 (the rigour of which, let me say so immediately, was, however, mitigated by Law No 1866/1989 according to which television stations of a local character may be approved by ministerial decision).

2. In view of the fact that in December 1988 the defendants in the main proceedings (a legal person governed by private law and the Mayor of Thessaloniki) set up a television station and began to transmit television broadcasts, proceedings were brought before a judge sitting alone (who has referred the matter to the Court) for protective measures with a view to obtaining, on the basis of the prohibition in Article 16 of Law No 1730/1987, an injunction restraining the transmission of broadcasts and an order for the seizure of the technical equipment and its sequestration.

3. The defendants relied mainly on Community law and the European Convention on Human Rights. Since, in the view of the national judge, serious problems of Community law arose (in particular in relation to the principle of the free movement of goods and the corresponding exception in Article 36 of the EEC Treaty; to Article 90 of the EEC Treaty, applicable, in conjunction with Articles 3(f), 85 and 86, to public undertakings; and to the general provision of Article 2 of the EEC Treaty) and since also problems were seen in relation to Article 10 of the Convention on Human Rights, an order was made on 2 April 1989 to stay the proceedings and refer 10 questions to the Court for a preliminary ruling which I shall not now repeat but which were received by the Court only on 16 August 1989.

4. Having regard to everything that the parties to the main proceedings, the French Government and the Commission of the European Communities have said, my Opinion is as follows.

B — Opinion

5.1. In view of the critical observations of the plaintiff to the effect that a reference under Article 177 of the EEC Treaty is not possible in proceedings for protective measures (since in Greece proceedings must be begun by an *action*) and that it is also not appropriate to refer questions to the Court

* Original language: German

of justice which have already been settled (an obvious reference to the judgment in Case C-155/73 [1]), it must straight away be said that that is no ground for finding that the reference is inadmissible.

6. There is well-established authority as regards the first point (Cases C-29/69 [2] and C-78/70 [3]).

7. As regards, on the other hand, the preliminary ruling in Case C-155/73, it is significant for the purposes of the present proceedings that in the questions which are now referred to the Court it is obvious that additional aspects are mentioned. In principle however it must be said that even after certain legal questions have been clarified, a national court remains at liberty to refer to the Court once again a question which has been dealt with if in its view it has not been sufficiently clarified.

8.2. As far as concerns the *first question*, namely whether a law which allows a single television broadcaster to have a television monopoly for the entire territory of a Member State and to make television broadcasts of any kind is consistent with Community law, it must first be observed that in proceedings under Article 177 of the EEC Treaty, as has been repeatedly stressed in the case-law, the Court cannot judge the compatibility of national laws with Community law. It can only — and the question must be reframed accordingly — interpret Community law in relation to the facts at issue in the main proceedings and thus put the national court in a position to form a judgment on the applicability of national law (which, moreover, contrary to the view of the plaintiff in the main proceedings, also applies in regard to constitutional law, which has no precedence over Community law).

9. It may then be said, with regard to the first question, that there is nothing in Community law to suggest that monopolies are in principle illegal. That follows already from Article 37 of the Treaty which only requires monopolies of a commercial character to be *adjusted* in order to ensure that there is no discrimination between nationals of Member States. The same may also be inferred from Article 90 of the Treaty under which on the one hand it is possible to grant undertakings *exclusive* rights (admittedly with the proviso that no measures are adopted which are incompatible with the Treaty and in particular with Articles 7 and 85 to 94 thereof) and in which, on the other hand, in relation to *financial monopolies*, there is reference only to a limited application of the provisions of the Treaty. This was made clear in the abovementioned judgment in Case C-155/73, in which it is stressed that the Treaty does not prevent Member States from removing television broadcasts from competition by granting one or more institutions the exclusive right to broadcast and that such a monopoly is not incompatible with Article 86.

10. As regards moreover the reference in that judgment, in connection with State television monopolies, to 'considerations of

1 — Case C-155/73 *Giuseppe Sacchi* [1974] ECR 409.

2 — Judgment in Case C-29-69 *Erich Stauder* v *Ville d'Ulm* [1969] ECR 419.

3 — Judgment in Case C-78/70 *Deutsche Grammophon Gesellschaft mbH* v *Metro-SB-Großmärkte GmbH & Co. KG* [1971] ECR 487.

the *public interest* no doubt it is possible to agree with the Commission that in the plaintiff's case that condition is fulfilled. In that respect the definition of the applicant's tasks in Article 2 of Law No 1730/1987 and in Article 15 of the Greek Constitution may be cited and also the fact that it is not a question of the protection of an activity of an economic character against competitors (since the plaintiff's activity is not, under Article 2 of Law No 1730/1987, of a profit-making nature).

11. If it is not desired to let those observations suffice with respect to the first question (and there is reason for this in view of the broad terms of the questions and the observations of the parties), then the following considerations may be borne in mind.

12. As you know, the Commission has put forward observations in relation to the principle of *freedom to provide services* which assume that for the works of authors from other Member States, contracts for licences can be concluded only with the television monopoly and that this may lead to a limitation of the corresponding demand. It did however rightly add that this does not in itself amount to a restriction for the purposes of the Treaty. That could be said only if *State measures* resulted in discrimination in favour of national works (nothing, however, was said about that); if there were on the other hand independent conduct by the television monopoly in that regard, it would fall to be judged only under Article 86 of the Treaty.

13. I can be just as brief with regard to the observations — also made by the Commission — in respect of the *right of establishment* which are to the effect that the existence of the television monopoly involves the exclusion of the establishment of other undertakings in the same field.

14. What matters here is that the restrictions affect domestic and foreign undertakings in the same way so that there can be no question of disregard of the principle of national treatment which is to be inferred from Article 52 of the Treaty.

15. On the other hand, another observation, also emanating from the Commission, deserves greater attention. It is based on the one hand on the fact that television broadcasts, according to the case-law (see the judgments in Cases C-155/73 and C-352/85 [4]), are to be regarded as services for the purposes of the Treaty. On the other hand, it is based on the assumption that the plaintiff in the main proceedings has, according to Law No 1730/1987, a monopoly as regards the retransmission of broadcasts from other Member States. (The national court must ultimately decide whether this is actually the case and, as you know, it was vigorously contested at the hearing. In any event, in view of what was said, one may well have the impression that in Greek case-law there are strong indications that the Commission's view is correct and that in consequence it may be accepted that the 1989 Law was concerned in that respect only to clarify the law by an unambiguous provision).

16. Assuming that programmes from other Member States none the less to a certain extent compete with national programmes (since any linguistic problems do not apply to the whole population or to every kind of

4 — Case C-352/85 *Bond van Adverteerders and Others* v *The Netherlands* [1988] ECR 2085

broadcast), the Commission thinks that the concentrations of the monopoly to broadcast its own programmes and of the monopoly to retransmit foreign programmes in the same hands must, from the point of view of Community law, appear just as questionable as the facts in Case C-59/75 [5] (as we know, that case was concerned with a tobacco monopoly which had its own production activity and an exclusive right to import; the Court held that the latter right constituted discrimination within the meaning of Article 37 of the Treaty) and should be abolished.

17. That in my opinion must be accepted. It is of no consequence that the case cited was concerned with Article 37, which comes under Chapter 2 of the Treaty relating to quantitative restrictions. The prohibition of discrimination — and discrimination is to be regarded as a restriction within the meaning of Article 59 — also applies to the provision of services (see Case C-352/85 [6]). It is, however, in fact easy to imagine the danger of discrimination against foreign broadcasts where a monopoly undertaking has its own production company and is entrusted (as is apparent from the preamble to Law No 1730/1987) with the special task of furthering and maintaining the national identity. It may moreover be accepted that the best means to 'ensure' (this expression is used in the judgment in Case C-59/75) that there is no such danger is to separate the areas covered by the monopoly, that is to say, to abolish the retransmission monopoly. It cannot therefore be accepted as sufficient that since October 1988 the plaintiff in the main proceedings has in fact retransmitted 10 European programmes broadcast via satellite, since that is obviously a mere practice which may be changed at any time and is not founded on requirements laid down by statute. It is likewise not sufficient to cite the obligation (laid down, moreover, only in the 1989 Law) to plan the plaintiff's programme in such a way as to ensure that one half of it is composed of European programmes, for this still leaves considerable room for choice, in the exercise of which serious competitors may easily be placed at a disadvantage, since the domestic production also comes within the European programmes section.

18. Whilst therefore there can be no denying that the organization of the plaintiff's television monopoly, at least under Law No 1730/1987, gives rise to serious reservations from the point of view of Community law, it is of no avail, and let me say this also, for the purpose of dispelling them, that the restrictions must be regarded as acceptable in this sphere on grounds of *public policy* (which is also mentioned in Article 56) or the *general interest*. Although it was mentioned in the judgment in Case C-52/79 [7] in relation to the broadcasting of *advertisements*, it must not be overlooked that in the main proceedings the issue is clearly not one of preventing advertisements (which, moreover, as the Commission rightly observed, could be achieved by less severe measures). Nor does there seem to be any attempt to avert dangers to public policy on other grounds which could arise from foreign television broadcasts. Finally, there is also no question of justification on technical grounds (avoidance of disturbances in view of a limited number of available channels). In that respect the

5 — Judgment in Case C-59/75 *Pubblico Ministero* v *Flavia Manghera and Others* [1976] ECR 91.

6 — *Ibid.*

7 — Case C-52/79 *Procureur du Roi* v *Marc J. V. C. Debauve and Others* [1980] ECR 833.

observation that the plaintiff was a long way from using all the 49 available channels (but, evidently, only five) was not challenged and in that regard it is certainly worthy of note that now, according to the 1989 Law, local transmitters can be authorized.

19. It could thus be held with regard to the first question that an organization of a television monopoly whereby the body holding the monopoly has both the exclusive right to broadcast domestic programmes and to retransmit foreign broadcasts is scarcely compatible with Community law.

20. To this it is certainly necessary to add that, in view of what we have heard, it seems highly questionable whether that finding is relevant to the case which is the subject of the main proceedings, since what is at issue is apparently only the broadcasting of *local* programmes which are produced by the defendants themselves. If that is in fact so (and this is something which ultimately the national judge must decide), the fact that the grant to the plaintiff of the retransmission monopoly must be regarded as unlawful (on the basis of the judgment in Case C-59/75) would scarcely be of assistance. It would then be a matter of purely internal nature for which Community law offers no basis for a solution.

21. It must, moreover, also be borne in mind that now (since the 1989 Law) there is a possibility of authorizing local television stations (of which the defendants have made use by lodging an application); if, however, after the necessary administrative structure has been set up, authorization is in fact granted, it is impossible to see how the applications in the main proceedings can succeed. [8]

22.3. *The second and third questions*, to which I shall now turn and which I shall deal with together since they are concerned with problems of the *free movement of goods*, relate firstly to the problem as to whether there is an infringement of Article 9 of the EEC Treaty (because technical material, films and other products which can be used for the broadcasting of television programmes can be intended only for the holder of the monopoly who is at liberty to choose domestic material); the second problem is whether the grant of an exclusive television franchise to an operator may be regarded as a measure having equivalent effect within the meaning of Article 30 of the EEC Treaty.

23.(a) I can again deal with the first part of those questions very briefly. The French Government rightly observes that Article 9, which relates to the customs union, has no bearing on quantitative restrictions on imports but, as the relevant case-law shows, concerns only obstacles to imports by means of *charges*. Since however there is nothing to show that the problems arising from the Greek television monopoly have anything to do with charges levied on imports it can certainly be said that arguments based on Article 9 of the Treaty have no relevance to the main proceedings.

8 — See paragraph 2 above.

24.(b) On the other hand, as far as concerns Article 30, it is necessary to point out, as the Commission has done, that the existence of a monopoly, as such, and the fact that it has a right of selection in acquiring the necessary material do not appear to be open to objection from the point of view of Article 30.

25. Objections would arise only if there were discrimination, that is if domestic products were unjustifiably favoured when the right of selection was exercised. In that respect reference may be made to the above mentioned judgment in Case C-155/73 which in paragraphs 7 and 8 describes such conduct as unlawful and also stresses that the exclusive right should not be used to favour, within the Community, particular trade channels or particular commercial operators in relation to others. Similarly, in the judgments in Cases C-271/81 [9] and C-30/87 [10] relating to monopolies in the provisions of services which may indirectly affect trade between Member States, it is held that such monopolies would infringe the principle of the free movement of goods if there were discrimination against imported products as compared with domestic products.

26. It must also be added, however, that Article 30 applies only if the discriminatory conduct may be attributed to the *State*; if, on the other hand, what is in point is an independent decision of the monopoly, this can at most be considered from the angle of Article 86 of the Treaty. The national judge must decide what the position in the present case is in that respect. It is also relevant in that regard whether products from other Member States are in fact not considered or whether in acquiring material an objective choice is ensured, because the plaintiff, as it has emphasized, has to adhere to the provisions of Directive 77/62 [11] and Decree No 105/89 of the President issued in relation to that directive.

27.4. The *fourth question* (which is concerned with whether a television monopoly may be justified under *Article 36* of the EEC Treaty) likewise calls for few observations.

28. In that respect it is important to note that exclusive television rights are not in principle incompatible with the Treaty and that, in any event, they are, as such, not covered by Article 30 (because they are concerned with the provision of services). This makes it clear that there can also be no question of justification under Article 36, which applies to the free movement of goods.

29. In so far, however, as an obstacle arises to the free movement of goods in the sense of the observations on the previous question (discriminatory conduct by the monopoly attributable to the State), it should be said in that respect (that is, in relation to a phenomenon to which the fourth question almost certainly does not refer) that justification under Article 36 can scarcely be imagined, since it is expressly stated in the last sentence thereof that any restrictions falling for consideration by virtue of Article 36 are not to constitute a means of arbitrary discrimination.

9 — Case C-271/81 *Société Coopérative d'Amélioration de l'Elevage et d'Insémination Artificielle du Béarn* v *Lucien Jean Marie Mialocq and Others* [1983] ECR 2057.

10 — Case C-30/87 *Corinne Bodson* v *Pompes Funèbres des Régions Libérées SA* [1988] ECR 2479.

11 — Council Directive of 21 December 1976 coordinating procedures for the award of public supply contracts (OJ 1977 L 13, p. 1).

30.5. The *next question* with which we must now deal relates to *Articles 3(f) and 85* of the EEC Treaty. That question requires it to be determined whether the grant of exclusive television rights by the State and their exercise are compatible with the said provisions on competition.

31. So far as *Article 3(f)* is concerned (it states that the activities of the Community shall include 'the institution of a system ensuring that competition in the common market is not distorted'), it is obvious that it is no more than the enunciation of a general principle which had to be given concrete form in other provisions of the Treaty. In itself it cannot therefore constitute a criterion for judging measures taken by undertakings and the State; it can at most do so only if recourse is had at the same time to the other provisions which give it concrete form.

32. In so far as the national court regards *Article 85* as such a provision, it is important to note that Article 85 presupposes agreements between undertakings, decisions by associations of undertakings and concerted practices. Since however nothing whatsoever of that nature was mentioned in the order making the reference (the reference at the hearing to the merger — by statute — of two former Greek television undertakings is obviously of no importance), there is no point, in my opinion, of expending more effort on the interpretation of that provision in the present case.

33. For that reason it is probably also superfluous to refer to the fact that according to our case-law (Case C-66/86) [12]Member States are required not to adopt measures which could deprive the competition rules of their 'effectiveness'. In connection with Article 85 that can at most mean that State measures may not, for example, encourage or bring about the conclusion of agreements between various undertakings.

34. To this it may furthermore be added (with reference to the sixth question which involves Article 90(2)) that, even assuming that the plaintiff is to be regarded as an undertaking entrusted, within the meaning of Article 90(2), with the operation of services of general economic interest, that provision, in conjunction with Articles 3(f) and 85, supplies nothing of relevance to the main proceedings because in the present case the latter provisions are of no significance.

35.6. I come then to *questions seven and eight* which apparently refer to *Article 86* of the EEC Treaty. They seek to ascertain whether an undertaking which has been granted a monopoly on television broadcasting of any kind throughout the national territory of a Member State holds a dominant position in a substantial part of the common market and whether in certain respects there may be said to be an abuse of that position (mention is made of the fixing by the undertaking of monopoly prices for television advertisements and of preferential prices and reference is made to activities which exclude competition because the broadcast of advertisements is possible only through the monopoly and only the monopoly can broadcast films and television programmes).

12 — Case C-66/86 *Ahmed Saeed Flugreisen and Others* v *Zentrale zur Bekämpfung unlauteren Wettbewerbs* [1989] ECR 803.

36. In that respect it is appropriate also to refer to a factor deriving from the sixth question (in which, as we know, mention is made of an undertaking entrusted with services of general economic interest within the meaning of Article 90). It is quite clear that the main proceedings are concerned not with any specific conduct of the plaintiff in the market (which moreover the national court would have to appraise — see paragraph 18 of the judgment in Case C-155/73) but with the question whether a monopoly, created by the State, of the kind held by the plaintiff is compatible with Community law.

37.(a) Assuming that the plaintiff is an undertaking within the meaning of Article 90 (I said at the outset that it was a public undertaking under State control), it follows from that provision that the Hellenic Republic may not adopt with respect to that undertaking any measures incompatible with Articles 85 to 94 (including Article 86, which is here particularly in point).

38. That does not mean that it is unlawful to create a monopoly and to establish a dominant position, which the plaintiff undoubtedly holds (not least because it alone has a network of television transmitters and is financed by fees). That emerges clearly from paragraph 17 of the judgment in Case C-311/84. [13]

39. The State however cannot create a structure which, if it were created by an undertaking holding a dominant position on the market, would be regarded as an abuse within the meaning of Article 86. In that respect reference should be made to the judgment in Case C-6/72 [14] in which it was held that Article 3(f) requires that competition should not be eliminated and that it is to be regarded as an abuse within Article 86 if an undertaking in a dominant position strengthens that position in such a way that competition is substantially fettered. It is also appropriate in that regard to recall to mind the judgment in Case C-311/84 in which it was held that it was an abuse within the meaning of Article 86 for an undertaking in a dominant position (or an undertaking belonging to the same group) to reserve for itself an ancillary task which could be carried out by a third undertaking.

40. In the light of that case-law one may in fact, as the Commission has done, express reservations regarding the fact that the applicant has been granted a comprehensive monopoly in areas with divergent interests (the broadcasting of its own programmes and the retransmission of foreign broadcasts). An undertaking in a dominant position could clearly not, in conformity with Article 86, itself create such a situation because, as I have already mentioned in another connection, inherent therein is the danger of discrimination against foreign products and because this — as it must be assumed that the undertaking favours its own products — must be regarded as a kind of limitation of production contrary to Article 86(b).

41. Since it must also be accepted that the other conditions specified in Article 86 are satisfied (where foreign products are placed at a disadvantage it is certain that trade between Member States is affected and it is likewise certain that Greece must be

13 — Case C-311/84 *CBEM* v *CLT and IBP* [1985] ECR 3261.

14 — Case C-6/72 *Europemballage Corporation and Continental Can Company* v *Commission of the European Communities* [1973] ECR 215.

regarded as a substantial part of the common market), it must therefore be concluded that in so far as the plaintiff has been granted a dual monopoly there is an abuse within the meaning of Article 86 which under Article 90(2) the Member State is prohibited from encouraging.

42. On the other hand, no more need now be said about the other possible abuses expressly mentioned in the order for reference (for example, in relation to the plaintiff's pricing practices), since there is no evidence to suggest that the State exerts any influence on these matters (which, as has already been said, it would be for the national court to determine).

43. Similarly, it is probably not necessary now to discuss further the abuse mentioned at the hearing, constituted by the plaintiff's refusal to allow local broadcasts. Even if the plaintiff had in that respect in fact a power of decision under the statute applicable in the present case (grant or refusal of authorization), the determining factor for the purposes of the present case would be that such conduct vis-à-vis the defendants does not fall under Article 86 because, as we also heard at the hearing, it is concerned only with the broadcasting of *local* programmes and so there can be no question of affecting trade between Member States.

44.(b) I must on the other hand still say a few words about an aspect referred to in the sixth question which is relevant in the present context, that is to say, about the problem of what is to be gleaned from *Article 90(2)* (which, with respect to undertakings entrusted with services of general economic interest, provides that the competition rules of the Treaty apply in so far as they do not obstruct the performance of the particular tasks assigned to such undertakings).

45. In my opinion it can at once be said that it seems wholly impossible to maintain that Article 86 is not at all applicable to the plaintiff by reason of Article 90(2). Article 90(2) must be strictly interpreted and that is why the criterion must be what is indispensable for the performance of the particular tasks assigned to such undertakings. It was however rightly pointed out that the particular tasks assigned to the plaintiff under the Greek Constitution were to be regarded above all in connection with its own productions and that on the other hand they are not of any consequence with respect to the retransmission of foreign broadcasts. It may also be noted on this point that the relaxation of the monopoly under the 1989 Law (according to which local transmitters can also be authorized) permits the conclusion that the performance of the tasks assigned to the plaintiff certainly does not depend on its having a dual monopoly. Should, however, there exist other objections with respect to the retransmission of foreign broadcasts (for example in the field of advertisements), it would be necessary to agree with the Commission that the aim could be achieved by less restrictive means than the grant to the plaintiff of a monopoly in the matter of retransmission.

46.7. All that now remains is to consider the problem, raised in *questions nine and ten*, as to whether the plaintiff's television monopoly is compatible with the objective (expressed in the *preamble* to the EEC Treaty and in *Article 2* thereof) of the

constant improvement of the living conditions of the peoples of Europe and with *Article 10 of the European Convention for the Protection of Human Rights.* ic

47.(a) On the first point, the Commission has, in my view rightly, contended that the abovementioned texts delineate only the aims of the EEC Treaty and the objectives pursued by the creation of the Community. At most they enunciate general obligations of the Member States and the Community institutions and their main function is thus to furnish criteria of interpretation which may be of use in applying specific provisions relating to concrete measures. Indeed it is scarcely conceivable that anything could be derived from those texts, and especially from the part of Article 2 which is expressly mentioned in question 9, which could serve as a criterion for judging a national television monopoly and would be capable of establishing precise obligations on the part of the Member States. If anything, it would be the reference not so much to the 'accelerated raising of their standard of living' that would fall for consideration as the reference to the elimination of 'the barriers which divide Europe' and the encouragement of 'closer relations between the States belonging' to the Community.

48.(b) On the other hand, as regards Article 10 of the Convention on Human Rights (there is mention in it inter alia of the freedom to receive information or ideas regardless of frontiers, albeit evidently subject to certain reservations), it is probably not necessary to consider further the plaintiff's view that the main function of that provision is to ensure unbiased information and that it says nothing about the lawfulness of television monopolies, which were in fact common when the Convention was signed.

49. The rules of the Convention are to be regarded as part of the Community legal order. In the 'television directive' [15] it is stated that Article 10(1) of the Convention for the Protection of Human Rights and Fundamental Freedoms which has been ratified by all the Member States is, as applied to the broadcasting and distribution of television services, a specific manifestation in Community law of a more general principle, namely freedom of expression. That right must therefore be respected by the Community institutions.

50. It is however also clear that it is not primarily the Court of Justice which is called upon to judge alleged or actual infringements by the Member States of the human rights protected by that Convention (that is a matter for the institutions designated by the Convention on Human Rights); in particular, it does not fall to the Court to examine the compatibility of the rules of the Member States with the Convention on Human Rights (this has been clearly established in the case-law; see the judgment in Joined Cases C-60 and C-61/84 [16]).

51. If, however, one adheres to the Court's statement in its judgment in Case C-4/73 [17] to the effect that the Convention on Human Rights can supply guidelines which should be followed within the framework of Community law, and if one is minded to apply this in respect of Article 90(2) — in connection with the assessment of the

15 — See the eighth recital in the preamble to Council Directive 89/552/EEC of 3 October 1989 (OJ 1989 L 298, p. 23).

16 — Joined Cases C-60 and C-61/84 *Cinéthèque SA* v *Fédération Nationale des Cinémas Français* [1985] ECR 2605.

17 — Case C-4/73 *Nold, Kohlen-und Baustoffgroßhandlung* v *Commission of the European Communities* [1974] ECR 491.

general interest which is relevant in regard to exclusive television rights — it still has to be acknowledged that, in the light of what we have learned from the practice of the Commission on Human Rights and the Court of Human Rights on the subject of Article 10 of the Convention with respect to television monopolies, it almost certainly yields nothing, for the purpose of judging television monopolies, which goes beyond what has already been said in connection with the principle of the freedom to provide services and with Article 90(1) in conjunction with Article 86.

C — Conclusion

52. In conclusion, my summary is as follows. In my view the questions from the Thessaloniki court should be answered as follows:

'(a) A Law authorizing a single television company to exercise a monopoly throughout the territory of a Member State and to transmit television broadcasts of all kinds calls for reservations in the light of Article 59 of the EEC Treaty (which requires the abolition of restrictions on the freedom to provide services), since the combination of a monopoly on domestic broadcasting and a monopoly for the retransmission of foreign broadcasts may give rise to discrimination against the latter.

(b) If the television industry is organized in that way, the provisions on the free movement of goods will be infringed only if the monopoly discriminates against foreign products and that result is attributable to the State which controls the monopoly. Such conduct cannot be justified on the basis of Article 36 of the Treaty.

(c) Article 90 of the Treaty does not prohibit the creation of a monopoly over television broadcasts. However, if one undertaking is vested with both exclusive broadcasting rights and retransmission rights, that must be regarded as an ostensibly illegal measure by virtue of the combined provisions of Articles 90 and 86, which cannot be justified by virtue of Article 90(2).

(d) The preamble to the Treaty and Article 2 thereof do not in themselves provide any criterion for the appraisal of national television monopolies.

(e) The right to freedom of expression applied to broadcasting and the distribution of television services, embodied in Article 10(1) of the Convention for the Protection of Human Rights and Fundamental Freedoms, also represents a specific manifestation, in Community law, of a more general principle, namely freedom of expression. For the purpose of appraising television monopolies, it is not possible to derive from that principle anything that goes beyond the foregoing conclusions.'