

C-52/10 Eleftheri tileorasi AE 'Alter Channel', judgment of 9 June 2011

Facts: Directive 89/552/EEC had prohibited surreptitious advertising which encompassed any representation in words or pictures of goods, services, or other in programmes when such representation was intended by the broadcaster to serve as advertising and might mislead the public as to its nature. The English version of the Directive stated that the representation would be considered to be intentional 'in particular' if it was performed for payment.

The applicant was a broadcaster in Greece who was fined for such advertising by the Greek National Council for Radio and Television. The Greek translation of the Directive did not include the words 'in particular', and so the applicant argued that as there was no payment or consideration, a fine for surreptitious advertising was incorrect.

Held: The spirit of the Directive was aimed at ensuring the interests of consumers as television viewers were not imperilled, and so the broader interpretation of the Directive should be insisted on. The Directive therefore established a mere presumption that the intention to advertise was established when payment occurred, and this was in no way definitive.