[BE] VT4 Access to the Flemish Cable Networks - Part 3

IRIS 1995-3:1/23

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The State Council, the high administrative Court in Belgium, has ruled in a judgment of 2 March 1995 (Case No 51.964) that VT4 is to be given access to the Flemish cable networks. By Ministerial Order of 16 January 1995 the Flemish Minister of Cultural Affairs refused to permit the Flemish cable networks to distribute the television programmes of VT4. A decision of 24 January 1995 by the President of the 4th Chamber of the State Council had already provisionally suspended the Ministerial Order. In its judgment of 2 March the State Council affirmed the suspension. The Ministerial Order is now suspended until the final judgment of the State Council within a period of six months.

The suspension of the Ministerial Order refusing VT4 access to the Flemish cable networks is essentially based on European Community law. The State Council refers to article 2 of the Television Directive of 3 October 1989, according to which a receiving state is not entitled to deny access to the national cable network if the foreign broadcaster is licensed in another EC Member State. The argument that the British authorities are not capable to control the VT4 programmes properly and hence the failure of the United Kingdom to fulfil its obligations under the Television Directive, is not relevant, according to the State Council. Eventually it is up to the European Court to decide on this question; the receiving states are not competent on this issue.

The denial of access to VT4 is also considered to be a breach of the provisions concerning the freedom of movement of services within the EC, as guaranteed by article 59 of the EC Treaty. It is argued by the State Council that the protection of the existing monopoly of the Flemish commercial broadcasting organisation VTM (Vlaamse Televisie Maatschappij) is not a legitimate argument to restrict the freedom of movement of services offered by foreign broadcasters. The appeal on article 90 par. 2 and article 128 of the EC Treaty to legitimise the protection of the VTM-monopoly and the denial of access of VT4 to the Flemish cable networks, is also dismissed by the Administrative Court.

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