[BE] Grey Area Between Telecommunications and Broadcasting

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In August 1997 the Council of Ministers (Federal Government) instigated proceedings to have the decree of the Flemish-speaking Community of 20 December 1996 on the authorisation of televised services annulled. According to the Council of Ministers the televised services which the Flemish-speaking Government (and in future the Flemish-speaking Media OfficeCommissariat voor de media) may authorise extend beyond the concept of broadcasting and television. According to the Council of Ministers the televised services which the http://services.obs.coe.int/en/index.htm Flemish-speaking Community is entitled to authorise are defined in such broad terms that they could also cover communication services, supplying items of information and other services in response to an individual request. Televised services could fall within the field of telecommunications, although the federal legislator has retained responsibility for this entire field with the exception of broadcasting and television. The Arbitration Court (Cour d'Arbitrage) nevertheless threw out the Federal Government's application and has decided that the Flemish-speaking Community has not overstepped its authority. Referring to Article 4.6 of the special law on institutional reforms, the Court stressed that the special legislator transferred full authority concerning broadcasting and television to the Communities. The Communities were therefore responsible for determining the status of broadcasting and television services and for laying down rules on programming and the broadcasting of programmes. The conditions for authorising televised services as provided for in the decree of the Flemish-speaking Community of 20 December 1996 did not overstep the Communities' authority. Consolidated decrees on broadcasting and television show that televised services in their capacity as broadcasting bodies may only "broadcast". As defined, the term "broadcasting" specifically excludes "communications services supplying, in response to an individual request, items of information or other services, such as faxing services, electronic data banks and other similar services". The Flemish-speaking Community has thus acted within its terms of reference as regards broadcasting and television.

Arret de la Cour d'Arbitrage du 24 juin 1998, nr. 76/98.

Decision of the Court of Arbitration on 24 June 1998, no.76/98.

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