[DE] Ruling by the Federal Constitutional Court on 22 March 1995 on EEC

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With its ruling on 22 March 1995, the second senate of the Federal Constitutional Court (Bundesverfassungsgericht) settled the dispute between the German Länder (federal states) and the Federation over the EEC Directive on "Television without frontiers" (89/552/EEC).

Eigth German federal Länder have added their support to a lawsuit brought by the government of the Land of Bavaria and which has been pending since 1989.

The proceedings dealt essentially with the question whether, by endorsing the EEC Directive, the Federal government had infringed the jurisdiction concerning broadcasting matters which is exclusively assigned to the federal Länder by Art. 30 and Art. 70 of the Basic Law (the Constitution).

The Federal Constitutional Court stated that the decision by the government to endorse the EEC television Directive could not be contested under constitutional law.

However the Federal Constitutional Court reproved the way in which the Federation had ensured Federal Germany's participation in drawing up quota regulations in the EEC television Directive. It was considered that the Federation may have infringed the rights of the Free State of Bavaria and also those of the federal Länder which had added their support to the lawsuit. These rights are set out in Art. 70 paragraph 1 and Art. 24 paragraph 1 of the Basic Law and also constitute one of the basic principles of federation-positive behaviour.

The Federal Constitutional Court stated inter alia that:

- broadcasting was also a cultural phenomenon. Since the television Directive also sets a framework for broadcasting the exclusive legislative powers of the individual Länder had been affected;

- for as long as the existence and scope of legal authority remains a point of contention between the Federation and the Länder, the federal government can deviate from the legal position of the Federal Council because it based its decision on the established interpretation of the Court of Justice of the European Communities. On this basis it can be considered that television programme

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distribution services and the legal authority of the Community to regulate the right of reply, advertising, sponsoring and the protection of minors have been respected in law.

- Concerning the EEC's wish to harmonise services offered (as set out in Art 59 EEC), the federal government was able to rely essentially on the principle of limited individual authority. This principle, which underlies the entire Community treaty, should appease the fears of the federal Länder since all cross-border remunerated services can now be classified under the group heading of "free movement of services".

- The Council of Europe's Convention on Transfrontier Television cannot replace the Directive because the Council of Europe is not equipped with facilities comparable to those at the Court of Justice of the European Communities for the enforcement of such rules.

- In addition, the federal government has not sufficiently backed up its position, which it developed in conjunction with the federal Länder, that the Community would not have the legal authority to decide quota regulations. It is the joint opinion of the Federation and the Länder that quota regulations set requirements for the composition of programmes and consequently set regulations for the content of broadcasts, essentially in its role in cultural and community matters. As the representative of the interests of the federal Länder, the government should have clearly defended this legal position by pursuing the scrapping of quota regulations rather than giving declarations of protocol on the non-bindingness of the quota regulations which is questionable and possibly created a legal precedent which will be difficult to refute in the future.

Urteil des Zweiten Senates des BVerfG vom 22. März 1995, 2 BvG 1/89, 57 S.

Ruling by the 2nd Senate of the Federal Constitutional Court (Bundesverfassungsgericht) on 22 March 1995, 2 BvG 1/89, p. 57.

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