[DE] No Protection for Private Broadcasters under the Südwestrundfunk State Agreement

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In a decision of 27 April 1999, the Baden-Württemberg Higher Administrative Court (VerwaltungsgerichtshofVGH) dismissed an appeal by a private broadcaster against the decision by the Stuttgart Administrative Court (Verwaltungsgericht) of 28 October 1998, file no.1 K 4787/98.

The private broadcaster hoped, by applying for a temporary order, to oblige the supervisory authority, the Land of Baden-Württemberg, to prohibit the public broadcasting corporation Südwestrundfunk (SWR) from broadcasting the programme " SWR 3 Metro ".

SWR 3 Metro was broadcast on two Stuttgart frequencies at particular times as part of the standard SWR 3 programme. At the same time, the regular SWR 3 programme could also be received in certain parts of the region.

SWR also broadcast the radio stations SWR 1, SWR 2 and SWR 4 . In the plaintiff's opinion, SWR 3 Metro constituted a fifth station, which was forbidden under §3.1 of the SWR State agreement (SWR-Staatsvertrag).

The Court's main task was to decide whether the regulations set out in the SWR State agreement were sufficient to establish individual rights for competing private broadcasters. In the Court's view, the provisions of §37 of the agreement alone, which gives alternating supervisory responsibility to the Rheinland-Pfalz and Baden-Württemberg Länder , did not entitle any third party to appeal to the supervisory authority to take action. Furthermore, according to the Senate, the overall framework of the State agreement did not provide for any third-party protection for private broadcasting companies because the number and type of programmes broadcast laid down in §3 of the SWR State agreement merely reflected the status quo at the time when the agreement was concluded. The fact that the broadcasting of further programmes was subject to a proviso under §3.3 of the State agreement was irrelevant, especially since authorisation to broadcast such programmes could only be granted because of the guarantee to maintain and develop public broadcasting. Complaints from private competitors could therefore not be taken into consideration. In conclusion, the Court recognised that even if the proviso in §3.3 of the SWR State agreement were relevant, private competitors could not in any case appeal on the basis of the rule.

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The Federal Administrative Court (Bundesverwaltungsgericht - BVerwG) had previously ruled on 21 October 1998, in a dispute over the interpretation of the State agreement on the broadcasting corporation Mitteldeutscher Rundfunk (MDR) , that §3.1 of the agreement did not limit once and for all the number of programmes which may be broadcast, but rather that §3.4 of the agreement made provision for comparable development possibilities in the fields of broadcasting technology and the programming of public broadcasting corporations, which also covered the number of programmes they could broadcast.

Beschluß des VGH Baden-Württemberg vom 27. April 1999, Az. 1 S 165/99, Urteil des BVerwG, Az. BVerwG 6 A 1.97.

Decision of the Baden-Württemberg Higher Administrative Court, 27 April 1999, file no. 1 S 165/99; Judgement of the Federal Administrative Court, file no. BverwG 6 A 1.97.

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