[BE] TVI Ordered to Pay Provisional Sums to the SABAM

IRIS 1999-8:1/8

Peter Marx
Marx, Van Ranst, Vermeersch & Partners

By an order delivered on 17 June 1999, the presiding judge at the Court of First Instance in Brussels, sitting in urgent matters, ordered TVI, the private television channel of the French-speaking Community to pay SABAM, the company which manages royalties, the provisional sum of Belgian franc (BEF) 100 million per annum for the years 1997, 1998 and 1999, less the amounts actually paid in respect of these three years. There has been a dispute since 1997 concerning the annual licence fees to be paid by TVI for authorisation to use all the works in the SABAM repertoire for television broadcasting purposes.

As the dispute was dragging on, the SABAM instigated proceedings to achieve provisional payment in an urgent matter on 15 March.

In the judgment, the presiding judge at the court of first instance affirmed the principle that the conditions for making use of proceedings to achieve provisional payment in an urgent matter, namely the urgency and uncontested nature of the debt, needed to be considered most carefully in order to avoid a tendency for the judge in urgent matters to deal with matters normally only dealt with by an ordinary judge on the merits of the case.

TVI contested the urgency of the matter on the grounds that the parties had been negotiating for more than two years and that throughout this time it had paid substantial provisional sums to SABAM.

The presiding judge found that, while it was true that TVI had paid provisional amounts, it was apparent nonetheless that the amount of these payments had decreased since 1997. The court also noted that it was not known how long the negotiations might continue, or how long the proceedings on the merits of the case which SABAM had instigated might take. The court considered that the value of the amounts involved and the possible consequences of the situation remaining unresolved constituted an urgent matter; according to the judge, it would be wrong to deprive originators over a relatively long period of the remuneration due to them as a result of the broadcasting of their works.

As for the debt, TVI did not contest the actual principle of the debt to SABAM, merely the amount involved. TVI held that the amount claimed was fixed unilaterally by SABAM without any objective justification. The presiding judge indicated furthermore that, while it was true that no price scale as such was fixed

© European Audiovisual Observatory (Council of Europe) 2026

and that the parties had therefore, for each year from 1991 to 1996, come to an agreement as regards the licence fee due from TVI, it appeared nevertheless that the parties had been influenced by the recommendation of the CISAC (Confédération internationale des sociétés d'auteurs - International Confederation of Societies of Authors and Composers), since TVI paid for these years amounts which corresponded closely to the recommendation, and had agreed to these amounts. According to the CISAC recommendation, where 50% of the repertoire is used - which is the case for most general broadcasters - the rate of remuneration should be 5% of total resources (advertising revenue, state subsidies, etc), less a fixed maximum amount for agency fees and production room costs.

Since TVI's programme schedules had not been changed to any great extent, the court held that the amounts payable by TVI should not be reduced by half, as TVI claimed.

In determining the provisional amounts to be paid to SABAM, the court considered the average amounts paid by TVI in the years 1995, 1996 and 1997, which corresponded to the sum of BEF 100 526 200, rounded down to BEF 100 million.

The presiding judge of the court considered that the payment of these amounts, without prejudice to the cogency of the parties' positions, would appear to allow if not the resumption of negotiations then at least the continuation of broadcasting, pending a decision on the merits of the case, without either of the parties having to suffer serious prejudice, and would preserve the right of the originators to receive remuneration.

Président du tribunal de première instance de Bruxelles, 17 juin 1999, Sabam contre la SA TVI.

Presiding judge of the court of first instance in Brussels, 17 June 1999; SABAM v. SA TVI.

© European Audiovisual Observatory (Council of Europe) 2026

© European Audiovisual Observatory (Council of Europe) 2026