

[BE] Monopoly on National Radio Frequencies for Public Broadcasting Complies with National and International Law

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On 2 February 2000 the Court of Arbitration delivered a judgment in a case on broadcasting law in Belgium. The Arbitration Court is a federal high Court with a competence similar to a constitutional court. The case concerns the current broadcasting legislation in the Flemish Community according to which radio frequencies for private broadcasters are only available for local and metropolitan radio stations, while all radio frequencies for regional or national broadcasting are exclusively available for the public broadcasting organisation VRT and its radio networks. Regional or national private radio can be broadcast only by means of cable distribution and not over the air. Radio Flandria, a broadcasting organisation operating with a Luxembourg licence, claimed that the Flemish broadcasting legislation breaches several provisions of national and international law and requested that the Arbitration Court annul the differentiation between private and public broadcasting regarding the allotment of national or regional frequencies for radio broadcasting. Radio Flandria argued that this different treatment of public and private broadcasting is discriminatory, breaches the EC rules on fair competition and on freedom of trade and services and infringes on Article 10 of the European Convention on Human Rights, referring inter alia to the judgment of the European Court in the case *Informationsverein Lentia vs. Austria* (24 November 1993).

The Court of Arbitration, however, considered the application by the Luxembourg commercial radio station to be unfounded. According to the Court, there is no discrimination because the difference in treatment is legitimised by an objective and pertinent criterion, which is the specific task of safeguarding the general interests of public broadcasting. The Court is of the opinion that the restrictions for private broadcasters are also legitimate under EC-Law: the Court finds no breach of Articles 49, 82 and 86 of the EC-Treaty. Finally, concerning Article 10 of the European Convention on Human Rights the Arbitration Court decides that this interference with the freedom of expression and information is to be regarded as necessary in a democratic society. According to the Court the exclusive use of radio frequencies for national and regional programmes by the public broadcasting organisation and for local programmes by private radio stations guarantees quality and diversity and responds to a pressing social need in a democratic society. The Court also underlines that a monopoly in favour of the

VRT does not exist: local and metropolitan radio stations may offer private radio broadcasting. In addition, private radio stations can transmit national and regional programs though only by means of cable transmission.

The Flemish Government and its media minister have announced recently that in the near future, however, regional and national private broadcasters will be allocated frequencies for radio broadcasting. But this is a political project; not one requested by the judgment of the Arbitration Court.

Cour d'arbitrage, 2 février 2000, 13/2000, Radio Flandria, Belgisch Staatsblad/Moniteur belge, 11 mars 2000.

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