[DK] Conflict between British and Danish TV Ruling on Access to Important Football Match

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On Friday 13 November 1999, a national football game between Denmark and Israel took place. In Denmark, it was considered an important sport event followed by a majority of the Danish population. However, the game was broadcast by channel TV3 exclusively. This broadcaster company is a pay channel accessible by only 71% of the population.

Article 3a of the "Television without Frontiers" (Directive 89/552/EEC as amended by Directive 97/36/EC) provides for free access for the public to TV broadcasting of events important to society. A substantial proportion of the public in a Member State may not be deprived of the possibility of following such events as are regarded by that Member State as being of major importance to society. This rule has been implemented into Danish legislation by Bekendtgørelse af lov om radio- og fjernsynsvirksomhed (the Broadcasting Act) no. 138 of 19 February 1998 Art. 75 and the Executive Order Bekendtgørelse om udnyttelse af tv-rettigheder til begivenheder af væsentlig samfundsmæssig interesse (the Executive Order on the exploitation of TV rights to events of major interest to the public) no. 808 of 19 November 1998.

Before the match, TV3 offered the game to the Danish public service broadcaster DR (Danmarks Radio) for 4.5 million DKK. The Danish Competition Authority, finding the price unfair, reduced the payment to a suggested price of 2.6 million DKK for a joint broadcast between TV3 and DR, and 3.7 million DKK for exclusive broadcasting rights for DR. But TV3 would not accept these prices. TV3 is established in the United Kingdom and as such it is subject to English law whereas its broadcasts are directed at Denmark. On 11 November 1999, the Danish Minister of Culture, Ms. Elsebeth Gerner Nielsen, intervened by asking the British Minister of Culture, Media and Sport to enforce the provisions of Art. 3a of Directive 97/36/EC. However, as the Directive was not yet implemented into British law and no national rules could be invoked against TV3, the British Minister could not be of any help. The British Minister, Mr. Chris Smith, apologised personally to the Danish Minister that the United Kingdom was unable to solve the legal problem and emphasized that the rules implementing the Directive would quite soon enter into force. The Danish Minister noted the attitude of the United Kingdom and has refrained from further measures of intervention.

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According to information by phone from the Danish Ministry of Culture the United Kingdom has on 14 January 2000, implemented Art. 3a paragraph 3 of Directive 97/36/EC. The implementation entered into force on 19 January 2000. Hereby, the United Kingdom has undertaken the obligation to respect the national lists of other EU Member States concerning sport events considered to be of major interest to the public. Thus, the problem facing the Danish Minister of Culture has been solved.

Nyhedsbrev nr. 19/99.

http://www.kum.dk/dk/con-31_STD_1136.htm

Newsletter nr. 19/99.

Broadcasting Act no. 138 of 19 February 1998.

http://www.kum.dk/uk/con-3_STD_706.htm

Broadcasting Act no. 208 of 6 April 1999.

Executive Order on the exploitation of TV rights to events of major interest to the public no. 808 of 19 November 1998.

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