[DE] Stuttgart Appeal Court Ends Gross/Net Dispute

IRIS 2000-9:1/12

Alexander Scheuer
Institute of European Media Law (EMR), Saarbrücken/Brussels

On 5 September 2000 the Oberlandesgericht Stuttgart (Stuttgart Appeal Court - OLG) ended the lawsuit between the ARD (Union of German Public Service Broadcasters) and ProSieben Media AG without reaching a verdict (see IRIS 1998-3: 6).

The European Court of Justice preliminary ruling, made at the OLG's request, led both parties to declare that their dispute was over (see IRIS 1999-7: 6 and IRIS 1999-10: 5). The Court, which therefore only had to decide what costs were due, concluded that the costs cancelled each other out, since it was not clear which side would have won the case if it had been allowed to continue.

Even the Court of Justice's verdict that, according to Article 3 of the "Television without Frontiers" Directive, Member States are free to impose stricter regulations than that provided by the Directive (which is the socalled "gross principle"), did not necessarily mean that the "net principle" was applicable under the Rundfunkstaatsvertrag (Agreement between Federal States on Broadcasting).

This conclusion was based on the fact that, if the legislator had intended to transpose the Directive by imposing the more restrictive "net principle", it had not made this sufficiently clear. If this had been the intention, the possibility of imposing tighter rules provided by Article 3 of the Directive had not been exercised properly. As a consequence, the direct applicability of Article 11.3 of the "Television Without Frontiers" Directive would have been decisive with the result that it could not be established that the accused private television broadcaster had acted illegally.

Otherwise, it may be concluded that, if the Directive were correctly transposed, the broadcaster would have broken the law if it had applied the "gross principle".

However, irrespective of this, the question had been raised as to whether the defendant should have trusted the responsible Land media authority to inform it that it could continue to apply the "gross principle".

Therefore, since the likelihood of the complaint being upheld was uncertain, the Court was entitled to decide that the costs of each party cancelled one another out.

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Oberlandesgericht Stuttgart, Beschluss vom 5. September 2000, Gz. 4 U 116/00

Decision of the Stuttgart Appeal Court, 5 September 2000, case no. 4 U 116/00

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