[BE] New Council for Guaranteeing the Protection of Minors Is Not in Breach with Article 10 ECHR

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By its Decree of 30 March 1999, the Flemish Parliament has decided to establish a new council to guarantee the protection of minors in application of Article 22 of the "Television without Frontiers" Directive. This new Council, the Vlaamse Kijk- en Luisterraad (Flemish Viewing and Listening Council for Radio and Television"the Council") will be composed of 2 judges and 7 experts inter alia in the field of child psychology and pedagogy. The Council will be empowered to take decisions on its own initiative or subsequent to a complaint. A conviction by the Council can lead to a warning and a request to stop the infringement or to an administrative fine of 5.000.000 FRF (approx. 125.000 Euro). Under certain conditions, the Council can also propose to the Flemish Government the suspension of the distribution of a program (see IRIS 1999-4: 8).

Shortly after the integration of these new articles into the decreten betreffende de radio-omroep en de televisie (Flemish Broadcasting Act, Art. 116 nonies decies), the Flemish commercial broadcasting organisation, VTM, applied to the Belgian Court of Arbitration and requested the annulment of these provisions. According to the VTM, the competences of the Council are to be considered as a discriminatory restriction on the freedom of expression as guaranteed by Article 10 of the European Convention of Human Rights (ECHR).

In its judgement of 29 November 2000, the Arbitration Court was of the opinion that the restrictions on the protection of minors as formulated in Article 78 § 1 of the Flemish Broadcasting Decree, together with the provisions on the Council, are in accordance with Article 10 ECHR. The Arbitration Court underlined that the aim of these provisions is the specific protection of minors against the harmful effects of a certain category of television programmes. The vulnerability of minors, as well as the composition of the new Council and the gradual nature of the sanctions that can be applied are sufficient guarantees that the new provisions do not infringe the freedom of expression in a discriminatory or disproportionate way. According to the Belgian Arbitration Court, the aim of the new provisions is to protect minors as a vulnerable group in society, which can be qualified as a legitimate and necessary aim in a democratic society.

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