[CH] Commercial Breaks Need Not Be Europe-Compatible

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In a ruling of 13 February 2001, the Swiss Bundesgericht (Federal Court) refused to apply a more liberal interpretation of the current Swiss regulations on TV advertising and thus follow the less restrictive provisions of the European Convention on Transfrontier Television. The private TV broadcaster TV3, which had interrupted its hour-long programme Leisten after around 30 minutes with a trailer and a block of advertising, had asked the Court to adopt a more liberal interpretation.

Section 18.2 of the Swiss RTVG (Radio and Television Act) provides that "single programmes" lasting less then 90 minutes may not be interrupted by advertising. The Federal Court based its decision on the fact that this regulation does not differentiate according to programme content. "The admissibility of commercial breaks is regulated by law and cannot depend on the suspected tendency of wiewers to change channels. If the needs of broadcasters and the public have changed, this must be taken into account through a change in the law, which should be the result of a democratic process based on a general overview of media law". In its ruling, the Court also pointed out that every call for greater flexibility in Swiss TV advertising regulations, particularly for them to be brought into line with the European Convention on Transfrontier Television, had been deliberately rejected by Parliament at the consultation stage in order to avoid a situation like that in the USA.

Switzerland is not obliged under international law to regulate TV advertising in the same way or more liberally than is provided for in the European Convention on Transfrontier Television. Article 14 of the Convention contains minimum provisions which must be complied with in transfrontier television transmissions. The Convention does not, however, prevent contracting parties from adopting stricter or more detailed provisions for programmes broadcast by rightsholders or using technical facilities on their own sovereign territory.

Bundesgerichtsentscheid vom 13. Februar 2001; 2A. 377/2000

Federal Court decision, 13 February 2001; 2A. 377/2000

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