[DK] Conflict with the UK on Broadcasting of Football Matches

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In September 2000, a decision of the High Court in London allowed the commercial TV station TVDanmark1 to broadcast an important football match between Denmark and Iceland to the Danish public even though the broadcaster is accessible to only 55% - 60% of the Danish population on a subscription basis. The Court decided that TVDanmark1 has no obligation to offer access to football matches to the national Danish public service broadcasters. The limited access offered to the Danish public by TVDanmark1 would thus seem to be contrary to the Directive 89/552/EEC as amended by Directive 97/36/EC. Article 3a of the amended TV Directive provides that a substantial proportion of the public in a Member State may not be deprived of access to the TV broadcasting of events deemed to be of major importance to society.

Article 3a is implemented in Denmark by Bekendtgørelse om udnyttelse af tv-rettigheder til begivenheder af væsentlig samfundsmæssig interesse (the Danish Executive Order on the exploitation of TV rights to events of major interest to the public) no. 809 of 19 November 1998 (see IRIS 1999-2: 13). Article 4(1) of the Order provides for 90% of the population to be able to follow important events for a maximum price of DKK 25 per month. However, as TVDanmark1 is established in the UK as an English company, this broadcaster is subject to English law. The Danish authorities cannot prevent the limitation of its broadcasts in Denmark (see IRIS 2000-8: 7).

International football matches played by Denmark against Malta and the Czech Republic on 24 and 28 March 2001 respectively could not be broadcast in accordance with the TV Directive because of the continuing legal conflict between the broadcasters TVDanmark1 and Danmarks Radio (DR). Crucially, for the purposes of this conflict, TVDanmark1 had purchased the rights to broadcast the matches. According to a Danish Ministry of Culture press release of 26 March 2001, the London High Court decision on the application of Article 3a of the amended TV Directive, as implemented in the UK, is being appealed to the House of Lords. The case will be heard on 3 July 2001.

The press release states that TVDanmark1 offered DR the opportunity to purchase broadcasting rights for deferred coverage so that matches could be broadcast 45 minutes after they had actually been played. However, according to the English

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High Court decision, TVDanmark1 is not under any obligation to offer access to broadcast the matches. The Danish Order no. 809 of 1998 on the broadcasting of important events recognises the right, but does not impose the obligation, to broadcast important events live. However, DR refused the offer, arguing that the broadcast of a deferred programme is contrary to the Danish Order.

According to Article 5(1) of the Order, broadcasters with exclusive rights to broadcast events of importance to society but who are not able to reach a substantial part of the population, are obliged to ensure - by agreement or otherwise - access for the population to follow the event through the live or deferred broadcast of a programme. Article 5(2) lays down that there is no such obligation when no broadcaster capable of reaching a substantial part of the population wants to purchase the broadcasting rights for the important event.

According to Article 6 of the Danish Order, important events may be broadcast by way of deferred coverage only for clear and objective reasons: when the live programme is broadcast during the night; when competing events are going on at the same time, or when it is required to show other events of societal importance.

Against this background, DR has taken the view that it would be illegal to broadcast matches 45 minutes later than the live broadcast. This interpretation has proved controversial. The question may be raised whether the Danish Order has accurately implemented Article 3a of the amended TV Directive as the main purpose of the TV Directive rule is to give access for a substantial part of the population to watch the important society events.

For the present, no solution for the live broadcast of matches seems possible. The Danish broadcasters DR and TV2 cannot accept the offer of deferred broadcasting coverage because of the risk of illegality according to Danish law. The English High Court decision protects TVDanmark1 from being forced to offer broadcasting rights to Danish broadcasters. The Danish Minister of Culture, Elsebeth Gerner Nielsen, has announced her intention to await the decision of the House of Lords. The Folketing (Danish Parliament) is in agreement with her approach.

Press Release of the Ministry of Culture of 26 March 2001

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