[DE] TV Pornography Ban Explained

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In a ruling of 20 February, the Bundesverwaltungsgericht (Federal Administrative Court - BVerwG) offered an explanation of the ban on the TV broadcasting of pornography set out in para. 3 of the original Rundfunkstaatsvertrag (Inter-State Agreement on Broadcasting - RStV a.F.).

The aforementioned paragraph states that TV programmes are unlawful "if they are pornographic (see Penal Code Section 184)". This reference to the Strafgesetzbuch (Penal Code - StGB) formed the background of a legal dispute between a private broadcaster who had shown a series of films on pay-TV and the relevant supervisory authority, which had considered the films to be pornographic and therefore unlawful. The court of first instance, the Verwaltungsgericht Hamburg (Hamburg Administrative Court - VG), had upheld the authority's complaint (see IRIS 2001-4: 5).

The BVerwG explained that the admissibility of the broadcasts depended largely on whether they had breached an objective provision of the ban on pornography, which in principle should be judged from a criminal law point of view. In this context, material was considered pornographic if, regardless of other human references, sexual activity was portrayed in a particularly overpowering or attention-grabbing manner, either exclusively or predominantly for the purposes of sexual arousal. However, other criteria also had to be met if the broadcasts were to be deemed illegal. In particular, it was important to ascertain whether the broadcasts had been accessible to children or young people.

Access to the programmes, broadcast in 1997, was only restricted via the basic encryption system used by the pay-TV provider. No additional devices were used to block the analogue signals. One question to be considered, therefore, is whether the use of further conditional access systems would have provided sufficient protection for young people. These might have included a numerical code needed to access programmes which were only available on payment of an additional one-off subscription for each individual film (Pay-per-view).

Since such a judgment could not be made on the basis of the findings of the court of first instance, the dispute had to be referred back to the VG.

Bundesverwaltungsgericht, Urteil vom 20. Februar 2002, Az.: 6 C 13.01

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Federal Administrative Court, ruling of 20 February 2002, case no. 6 C 13.01

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