[DE] ARD Exempted From Digital Broadcasting By Cologne Administrative Court

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In a judgment of 4 June 2002, the Verwaltungsgericht (VG) Köln (Cologne Administrative Court) refused to issue a temporary order against broadcaster ARD, under which the latter would have been obliged to broadcast the football World Cup digitally via satellite.

The Kirch Group had sold some of the broadcasting rights for the 2002 football World Cup in Germany to public service broadcasters ARD and ZDF. According to the contract, these rights only covered digital satellite broadcasting if it did not breach the exclusive broadcasting rights of licence-holders in other countries. However, satellite broadcasts could also be received in other European countries (see IRIS 2002-4: 6). The Kirch Group subsequently offered to purchase the digital satellite broadcasting rights and transfer them to the broadcasters concerned. However, it demanded immunity from any compensation claims made by foreign licence-holders. ARD and ZDF refused to take on such a risk, so in the end the 2002 World Cup was broadcast via satellite in analogue format only and not digitally. Viewers with a digital satellite set-top box could not watch the World Cup.

By means of a temporary order issued under the terms of Art. 123.1.2 of the Verwaltungsgerichtsordnung (Rules of the Administrative Court - VwGO), one such viewer hoped to force ARD to broadcast the World Cup digitally. The Court began by considering whether a right to view broadcasts of certain sports events could be claimed under the right to freedom of information protected by Article 5 of the Basic Law. However, it thought this was irrelevant, since ARD had neither acquired the digital satellite broadcasting rights, nor had it been obliged to do so. Rather, as a public service broadcaster, it had to make do with revenue from licence fees. It had therefore been under no obligation to grant the Kirch Group immunity from paying compensation claims by foreign licence-holders. This was particularly true because the number of households with digital satellite receivers was small in relation to the overall number of households with television.

The Court also ruled that the principle of equality set out in Art. 3.1 of the Basic Law did not give individuals the right to receive broadcasts of particular sports events. From a constitutional point of view, it did not matter if households with digital satellite receivers were treated differently from those with analogue receivers or cable connections.

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Verwaltungsgericht Köln, Beschluss vom 4. Juni 2002, Az. 6 L 1308/02.

Cologne Administrative Court, judgment of 4 June 2002, case no. 6 L 1308/02

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