[NL] Dutch Regulator Cannot Claim Jurisdiction over RTL4 and RTL5

IRIS 2003-8:1/24

Wilfred Steenbruggen
Institute for Information Law (IViR), University of Amsterdam

On 6 August 2003, the Afdeling Bestuursrechtspraak Raad van State (Dutch Supreme Court in administrative proceedings ABRvS) overruled the judgment of the Rechtbank Amsterdam (the Court of Amsterdam) of 20 June 2002, and annulled the decision of the Commissariaat voor de Media (Media Authority CvdM) of 5 February 2002, in which it claimed jurisdiction over the television channels RTL4 and RTL5.

Since the beginning of the 1990s, RTL4 and RTL5 have been broadcast by a daughter company of the Luxembourg broadcasting organisation CLT under the latter's broadcasting licence. In 1995, the aforementioned daughter company started a joint venture with the former Dutch public broadcasting company Veronica. The Holland Media Groep (Holland Media Group HMG), as this joint venture was called, broadcast three channels: RTL4, RTL5 and Veronica. Although the official seat of HMG was in Luxembourg, the editorial policy decisions of the board of directors concerning the channels were taken in Luxembourg, and RTL4 and RTL5 were being broadcast under the CLT-Ufa licence, in 1997 the Dutch Media Authority decided that it had jurisdiction over the channels RTL4 and RTL5, on the basis of Article 2 of the Television without Frontiers Directive ("the Directive"). According to the Media Authority, HMG was the broadcasting organisation responsible for the broadcasting of the channels. Because HMG had its centre of activities in the Netherlands the actual editorial decisions were taken in the Netherlands and most of the HMG personnel involved in the pursuit of television activities were based in the Netherlands, according to the Media Authority the provisions of the Dutch Media Act would apply to RTL4 and RTL5 (see IRIS 1998-1: 13).

CLT-Ufa and HMG disagreed with the Media Authority on the identity of the broadcasting organisation responsible and the meaning and scope of Article 2 of the Directive. Because the programmes were being broadcast under a Luxembourg licence, this claim of jurisdiction would bring about a situation of double jurisdiction, which did not seem to agree with the provisions of the Directive.

HMG and CLT raised objections to the aforementioned decision. In appeal, the Court of Amsterdam confirmed the Media Authority's decision (see IRIS 2000-9: 11

© European Audiovisual Observatory (Council of Europe) 2026

and IRIS 2001-1: 10). On 10 April 2001, the Supreme Court, however, overruled the Media Authority's decision, on the grounds that it had not made a sufficient effort to avoid the possibility of double jurisdiction. In its judgment, the Supreme Court concluded that in principle the Media Authority had rightly assumed its competence on the basis of the Directive, but that it should have taken action to prevent double jurisdiction, such as raising the topic in the Contact Committee established under Article 23bis of the Directive.

On 5 February 2002, the Media Authority, after having discussed the topic in the Contact Committee, made a new decision, in which it again claimed jurisdiction on virtually the same grounds as before. HMG and CLT-Ufa started administrative proceedings. Since the first decision in 1997, there had been a few important developments. Luxembourg had made clear that it did not intend to give up its jurisdiction, a position that was supported by the European Commission. Also, several major changes in the organisational structure of HMG and CLT-Ufa had taken place. According to HMG and CLT-Ufa, because of these developments the Media Authority could not claim jurisdiction, even if its interpretation of the jurisdiction clauses in the Directive should prove to be correct.

On 20 June 2002, the Court of Amsterdam upheld the Media Authority's decision. The case was brought before the Supreme Court once again. HMG and CLT-Ufa requested the Supreme Court to refer questions to the European Court of Justice for a preliminary ruling, because of the differing views of the Netherlands and Luxembourg (the latter supported by the European Commission) on the meaning and scope of Article 2 of the Directive.

On 6 August 2003, the Supreme Court delivered its judgment. Although the Court materially agreed with the Media Authority's interpretation of the Directive, it annulled its decision. According to the Supreme Court the decision would bring into being a situation that would most certainly be a violation of the goals, system and aim of the Directive and therefore would be a violation of Article 10 EC. The Supreme Court does not judge it necessary to refer questions for a preliminary ruling, because it does not find itself confronted with questions concerning validity or interpretation of Community law, which would have to be answered before a decision in this case could be made.

Uitspraak Zaaknummer: 200203476/1 Publicatie datum: woensdag 6 augustus 2003 Tegen: het Commissariaat voor de Media Proceduresoort: Hoger beroep Rechtsgebied: Kamer 3 - Hoger Beroep - Overige

Dutch Supreme Court in administrative proceedings, Judgment of 6 August 2003, Case No 200203476/1

http://www.raadvanstate.nl/verdicts/verdict_details.asp?verdict_id=4477

© European Audiovisual Observatory (Council of Europe) 2026

© European Audiovisual Observatory (Council of Europe) 2026