[DE] Decision on the Transmission of Musical Pieces

IRIS 2004-2:1/15

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In a decision of 7 October 2003 the Cologne Oberverwaltungsgericht (Administrative Court of Appeal) dismissed a complaint concerning the transmission of pieces of music by public radio broadcasters.

The Court found that artists do not have any basic right to have musical pieces interpreted, composed or arranged by them broadcast on the radio.

The plaintiff, who plays light music, had already sent the broadcasting company, Westdeutscher Rundfunk (WDR), several long-playing records and compact discs for their review, but none of her music had yet been broadcast. She took legal proceedings against WDR on this ground, claiming that, as a public broadcasting company, WDR had a duty to have a balanced programme schedule and it should not just consider "major" production companies. Consequently, WDR should play her music and make the requisite broadcasting time available.

Section 5, paragraph 4, no. 1 of the Law on Westdeutscher Rundfunk -Cologne provides that the diversity of existing opinions and ideological, political, scientific and artistic trends must find the broadest and fullest possible expression in the full range of the company's programmes. The Court could not find, however, that this provision gave individual artists such as the plaintiff a subjective right to the transmission of their music or to a flawless decision on the part of the WDR. The freedom of broadcasting guaranteed by Article 5, paragraph 1, second sentence of the Basic Law required that broadcasting companies should be controlled just as little as the State by individual industrial groups and that they should record and convey the diversity of issues and opinions which played a role in society as a whole. This meant that broadcasting companies had a responsibility towards the general public and that was precisely why its programming principles should not favour any particular group of people. Accordingly, the right to have particular works played could not be derived from the law.

Equally, the fundamental right to artistic freedom enshrined in Article 5, paragraph 3 of the Basic Law did not give the plaintiff the right to demand that WDR broadcast her music or take flawless decisions. While artistic freedom does cover the dissemination of works of art to third parties as well as their creation, that does not imply a right to demand or even to cause the State or private media companies to disseminate such works. Distribution activities are covered by

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artistic freedom in the sense that such activities may not be prevented. Neither can any other conclusion be drawn from the plaintiff's argument that, as a public broadcaster, the defendant is a state authority. As the legal person entitled to exercise the fundamental rights guaranteed by Article 5, paragraph 1, second sentence of the Basic Law, the broadcasting company stands in the opposite camp to the State.

The court did not believe that the plaintiff could rely on her objection that as a result of its widespread impact as a mass medium, radio was by far the most important sphere of influence for the activities of artists who made music. The plaintiff's artistic communication rights were not unattainable. The fact that she had no right to force the WDR to broadcast her music did not mean that it was entirely out of the question that it might be played on its programmes. There were also many other public broadcasters and private media available to her.

Oberverwaltungsgericht Köln, Entscheidung vom 7. Oktober 2003

Cologne Administrative Court of Appeal, decision of 7 October 2003

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