[DE] No Right to Music Broadcasts

IRIS 2004-4:1/17

Yvonne Wildschütz
Institute of European Media Law (EMR), Saarbrücken/Brussels

On 15 December 2003, the Bundesverfassungsgericht (Federal Constitutional Court) dismissed a complaint concerning the transmission of music by public service broadcasters.

The plaintiff, a musician, had already failed in proceedings before the Verwaltungsgericht Köln (Cologne Administrative Court) and Oberverwaltungsgericht Köln (Cologne Administrative Court of Appeal) in her request that a public service broadcaster should be obliged to play her music (see IRIS 20042: 8). The plaintiff had, on her own initiative, sent the broadcaster pieces of music which she had recorded and now wanted to force the defendant to broadcast her music 100 times a year on the radio. The Constitutional Court dismissed the appeals against the earlier rejections under the terms of Art. 93a para. 2 of the Gesetz über das Bundesverfassungsgericht (Federal Constitutional Court Act). Art. 93a para. 2 of the Federal Constitutional Court Act defines the Court's obligation to rule on complaints regarding infringements of the Constitution. The complaint had no fundamental relevance under constitutional law. In the Court's opinion, it did not raise any questions that could not already be answered by reference to the Grundgesetz (Basic Law - GG) or the case-law of the Constitutional Court. This particularly applied to the right to artistic freedom enshrined in Art. 5.3.1 GG. Therefore, the Court held that the complaint of a breach of the right to artistic freedom, which protected not only artistic activity, but also the exhibition and dissemination of art, was unfounded.

All persons and organisations involved in art had a general right not to be excluded from state supportive measures. However, this did not mean that every single supportive measure should apply equally to all areas of artistic creativity. Instead, the state had extensive freedom in providing such measures. The contested decisions taken by the defendant and its selection procedures described therein fulfilled these conditions. On the one hand, as a public service broadcaster with legal capacity, the defendant was bound by basic rights, since it was indirectly controlled by the state administration and could therefore, in principle, be the recipient of a claim by the plaintiff under Art. 5.3.1 GG to access to its programmes. On the other hand, however, the broadcaster itself enjoyed the basic right to freedom of broadcasting, particularly freedom of programming. In the Court's opinion, further legal examination would therefore have dealt with a possible breach of freedom of programming. The Constitutional Court also confirmed that the lower instance courts would have been wrong to rule that,

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under the broadcaster's selection procedures, the plaintiff had been treated in an arbitrary manner.

Entscheidung des Bundesverfassungsgerichts vom 15. Dezember 2003, Aktenzeichen 1 BvR 2378/03

Judgment of the Federal Constitutional Court, 15 December 2003, case no. 1 BvR 2378/03

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