[DE] TV Programme Did Not Breach Legal Advice Act

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In a decision of 15 January 2004, the Bundesverfassungsgericht (Federal Constitutional Court) quashed the rulings of the lower instance courts condemning private TV broadcaster RTL for giving unauthorised legal advice.

The case concerned a dispute involving RTL plus Deutschland Fernsehen GmbH & Co. KG and the transmission of several episodes of the programme " Wie bitte ". In one report, an argument between a haulage firm and the firm M. was discussed, concerning, inter alia, invoices for a telephone connection and the use of a so-called Twincard. RTL's production company wrote to firm M., asking for further information on the use of the Twincard. In another episode, the programme acted on behalf of a family that had been delivered a faulty chest of drawers. The character known in the programme as " Mahnman " visited the furniture company and explained the facts of the case through a megaphone outside its headquarters. A member of the firm's staff later promised that a replacement item in perfect condition would be delivered immediately.

The plaintiff in the original proceedings, a lawyer, claimed that these reports breached an undertaking made by RTL that it would not get involved in legal matters on behalf of third parties in the sense of the Rechtsberatungsgesetz (Legal Advice Act). He claimed DEM 40,000 (approx. EUR 20,000) from the broadcaster. The lower courts upheld the complaint. RTL's complaint that these decisions infringed the Constitution was upheld. The protection offered by Art. 5.1.2 of the Grundgesetz (Basic Law) covered programmes such as the one in question. By the aforementioned undertaking, RTL had not relinquished any of its basic rights. There was no reason why it should not broadcast programmes unless it had got involved in legal matters on behalf of third parties in the sense of the Rechtsberatungsgesetz. Although on the one hand there was no reason to complain about a breach of the Rechtsberatungsgesetz at the general abstract level, on the other hand the courts had not taken sufficiently into consideration the scope of the freedom of broadcasting enshrined in Art. 5.1.2 of the Basic Law. It was true that a letter sent for the purposes of journalistic research and an invitation from the media to stop breaking the law represented involvement in legal matters on behalf of third parties in the sense of the Rechtsberatungsgesetz. However, under the terms of Art. 5.1.2 of the Grundgesetz, it was necessary to determine the main purpose of these actions. It was therefore necessary to clarify whether enforcement of the law was the main priority, particularly whether RTL had been directly involved in legal matters, or whether the primary emphasis was

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the journalistic coverage of a case for broadcast on television. However, the Oberlandesgericht Köln (Cologne Court of Appeal) had not adequately considered this question. Its ruling was therefore quashed and the case was referred back.

Beschluss des Bundesverfassungsgerichts vom 15. Januar 2004, Az. 1 BvR 1807/98

Decision of the Federal Constitutional Court, 15 January 2004, case no. 1 BvR 1807/98

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