[ES] Constitutional Court ruling on Local Cable Distribution

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In Spain cable is not regulated. Therefore many private cable networks exist which are being used by their owners to distribute their own video compilations of different television programmes. This practice has lead to a chaotic situation and therefore, the Spanish administration decided to subject cable networks to a licensing system.

Cable operators argued that this policy was in breach of their freedom of expression and continued their activities without a licence. This resulted in the sanctioning of a cable operator who was active in different local communities, and in the seizure of his equipment. The cable operator filed a complaint against the State on the basis of interference with his right to freedom of expression and dissemination of thoughts and opinions by means of any medium. This fundamental right is guaranteed in Article 20 par. 1 under a. of the Spanish Constitution (Constitución Española).

On 17 October 1994, the Constitutional Court decided that the administration cannot impede the activities of cable operators by simply announcing that a licence is required. According to the Court it is, in principle, possible to restrict the freedom of expression as laid down in the Spanish Constitution in favour of other rights. But, the legislator cannot impede the activities of a cable operator making use of his fundamental right by broadcasting a local television programme, without a reasonable delay and without giving sufficient reasons which make the interference necessary.

In the absence of a licensing system, the authorities must accept full use of the freedom right and cannot imply a rgime of prior authorization, since this would imply a total misappreciation or the abolition of the fundamental right guaranteed by Article 20 par. 1 under a.

Information on law-related policy developments which may have legal consequences but of which no documents or other texts are available yet.

Tribunal Constitucional, Sentencia 281/1994 de 17 de Octubre de 1994, BOE núm. 279 Suplemento de 22 de Noviembre de 1994.

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