[DE] MTV "Freak Show" Harmful to Minors

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In a ruling of 4 November 2004, the Bayerische Verwaltungsgericht München (Bavarian Administrative Court, Munich - BayVG) annulled most of the provisions of a decision of the Bayerische Landeszentrale für Neue Medien (Bavarian New Media Office - BLM) banning the repeat transmission of six episodes of MTV's "Freak Show". On 28 June 2002, the BLM had banned MTV from showing repeats of these programmes, which had already been broadcast, and declared the decision immediately enforceable. MTV's request to the BayVG to delay the enforceability of the decision was granted because the Court did not believe that the programmes were obviously capable of seriously endangering minors in the sense of Article 3.1.3 of the Rundfunkstaatsvertrag (Inter-State Broadcasting Agreement - RStV) (see IRIS 2002-9: 8). In the most recent decision, the Court ruled that only one of the six disputed programmes was obviously capable of seriously endangering minors. The BayVG based its ruling on the law that was in force at the time of the hearing, ie the Jugendmedienschutz-Staatvertrag (Inter-State Agreement on Protection of Youth in the Media - JMStV), on the grounds that the ban was an administrative act with permanent effect. According to Article 4.2.3 JMStV, programmes are unlawful if they are obviously capable of seriously endangering the development of children and teenagers or their upbringing as responsible members of the community, taking into account how they are disseminated. In evaluating the likelihood of children imitating individual scenes, the Court took into account whether the depicted situation corresponded to children's everyday life and whether young people could tell that it was not real. If either of these conditions were not met, the Court ruled that the scene was not obviously capable of seriously endangering minors. It decided that there was no danger of imitation if, for example, it thought minors were incapable of copying the scene (eg felling of a tree) or if the sequence involved objects that were generally inaccessible to minors. The dramatic content of individual scenes was also considered; if they were either dragged out in a long-winded way or if they were short, the BayVG assumed that they would not leave any lasting impression on young people and therefore were not obviously capable of causing them serious harm. The Court ruled that, in general, the programmes' potential influence on minors was limited because they were of moderate technical and creative quality. Further aspects of the evaluation process included whether the "victims" voluntarily subjected themselves to the tests and physical injuries, whether they acted under group pressure or whether third parties were used, and whether the negative consequences of the actions shown were depicted.

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Urteil des Bayerischen Verwaltungsgerichts München, AZ.: M 17 K 02.5297

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