[DE] Bavarian Constitutional Court makes provisional order in H.O.T. case

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The lawfulness of the H.O.T. teleshopping channel has already been disputed several times in the German courts (see IRIS 1995-9:13, IRIS 1996-1:5). H.O.T. was initially authorised to broadcast on cable in Bavaria, and was later able to reach a national audience via satellite. RTL plus Fernsehen GmbH & Co KG (the applicant) tried to stop the programme from being shown on cable in Bavaria by seeking a provisional injunction from the Bavarian Administative Court, ordering the licensing authority (BLM) to prohibit provisionally the teleshopping programmes being fed into the Munich and Nuremberg cable networks - but was unsuccessful in the initial proceedings. The court considered that dissemination of the teleshopping channel was unlawful, but decided that the applicant was not entitled to bring an application (IRIS 1996-1:5). This decision was reversed on appeal, and dissemination of the teleshopping channel was prohibited by order of the Bavarian Administrative Court.

H.O.T. and the BLM brought a constitutional appeal against this decision, and also applied for a provisional order suspending its enforcement until the appeal had been decided. This application was granted by the Bavarian Constitutonal Court. Since it did not consider the constitutional appeal either manifestly founded or unfounded, its decision was based solely on the possible effects of making or not making the order. On the one hand, the consequences of refusing to make the order, even if the constitutional appeal was later upheld, had to be considered. On the other, the consequences of making the order, even if the appeal was later dismissed, also had to be considered. When it reviewed the possibilities, the court decided that the advantages of making a provisional order outweighed the disadvantages. It argued that, if no order were made, H.O.T.'s programme would have to be withdrawn immediately. If the constitutional appeal was finally successful, H.O.T.s' broadcasting freedom might well have been irreparably violated in the meantime. It would also have sustained financial losses, which could scarcely be made good either. On the other hand, RTL plus Deutschland Fernsehen GmbH & Co KG, as the applicant in the initial proceedings, would suffer no serious damage if H.O.T. continued broadcasting until the constitutional appeal was finally decided. (Volker Kreutzer, Institut für Europäisches Medienrecht - EMR)

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Beschluß des Bayerischen Verfassungsgerichtshofs vom 22. Dezember 1995, Vf. 123-VI-95, Vf. 124-VI-95

Decision of the Bavarian Constitutional Court of 22 December 1995, Vf. 123-VI-95, Vf. 124-VI-95.

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