

[CH] No payment of licence fee required for optional and unused public service

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The communities of Val d'Anniviers in Switzerland had established an association under public law with the objective of retransmitting foreign television programmes for reception by their inhabitants. To finance the retransmission of foreign programmes, one of the communities decided to impose an annual television tax upon all owners and all potential users of television sets.

The applicant opposed to this taxation arguing that he did not own a television set and consequently did not use the service offered by the association.

On 28 June 1995, the Second Court of Public Law explained that the retransmission should be regarded as a public service offered by the community as is the case with garbage collection. The difference between these, according to the Court, is that the use of the first type of public service is optional and the use of the second type of public service is obligatory.

The Court decided that for the obligatory use of a public service, everybody who is under a legal obligation to use the service, can be taxed. In the case of an optional use of a public service offered, only those who effectively use the service or who effectively obtain the advantages of the service offered, can be taxed.

In this case, the public service offered of retransmitting foreign programmes was considered to be an optional public service. Given the fact that the applicant did not have a television set, he could make no effective use of the service. Therefore, as the Court decided, he could not be taxed for the service. A second argument with which the Swiss authorities attempted to justify the general taxation was that the unencoded signal of the retransmitted programmes could be received by anyone in the community, that it is difficult to check who holds and who does not hold a television set, and that there would be a risk of fraud if those anyone were only those who actually wanted to receive the signal, and that monitoring compliance with the rules would be difficult. In addition, it would be very expensive to encode the signals, since all those who would want to receive the retransmitted signals would have to be equipped with a decoder.

The Court rejected these arguments by saying that potential difficulties in checking who holds a television set and the expectation of a certain level of tax fraud do not justify the systematic taxation of all owners of residences in the

community regardless of whether or not they hold a television set. "Such a regulation clashes in a shocking manner with the feeling of justice and equality."
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