[BE] Request for a preliminary ruling of the EC Court of Justice in the VT4-case - Part 4

IRIS 1996-3:1/11

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In the VT4-case, the State Council has formulated a request for a preliminary ruling to the Court of Justice of the European Communities (Art. 177 EC Treaty). As we indicated earlier, the State Council on 2 March 1995 suspended a Ministerial Order of the Flemish Minister of Cultural Affairs stopping the Flemish cable networks from distributing the television programmes of VT4, a commercial TV broadcaster licensed by the United Kingdom. The denial of access was considered by the State Council to be a breach of European Community law, especially of Art. 2 of the TV Directive and Art. 59 EC Treaty concerning the freedom of movement of services. According to the Flemish Government however, VT4 is to be considered as a Flemish broadcaster, operating without a legal licence, so that its programmas cannot be broadcast or transmitted in the Flemish Community. According to the Flemish Government, the litigious Ministerial Order is not infringing EC law.

In its judgment of 14 February 1996 (No 58.124) the State Council is of the opinion that it is not clear what criterion is to be used in order to determine the State under which competence a broadcasting organisation is to be situated, referring inter alia to the proposal of the European Commission amending Directive 89/552 "TV without frontiers" and the Common Position of the Council of Ministers of 20 November 1995. Reference especially is made to the paragraph in which it is stipulated that the broadcasters under the jurisdiction of a Member State are those established in the territory of that Member State, in which they must have permanent premises and pursue a genuine economic activity. The State Council invites the Court of Justice to determine how to interpret Art. 2 of the TV Directive.

Meanwhile, VT4 is transmitted on the Flemish cable networks since February 1995, due to the fact that the Ministerial Order in the meantime is suspended, until there is a final judgment of the State Council (see also: IRIS 1995-1: 14, IRIS 1995-2: 6 and IRIS 1995-3: 11).

Judgement No 58.124 of the State Council of 14 February 1996.

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