[DE] *Land* Media Authority Not Subject to *Land* Government Directives

IRIS 2007-2:1/14

Nicola Weißenborn
Institute of European Media Law (EMR), Saarbrücken/Brussels

In a judgment of 9 January 2007, the *Bayerische Verwaltungsgerichtshof* (Bavarian Administrative Court - VGH) decided that the *Bayerische Staatsministerium für Wissenschaft, Forschung und Kunst* (Bavarian Ministry for Science, Research and Art) could not, as part of its official monitoring activities, instruct the *Land* media authority, the *Bayerische Landeszentrale für neue Medien* (Bavarian State Central Office for New Media - BLM) to prohibit the broadcasting of unlawful advertising on the channels for which it was responsible.

The case concerned the dispute over the admissibility of advertising for private sports betting companies (see IRIS 2006-6: 8 and IRIS 2006-7: 10). As the body responsible for monitoring the *Land* media authority, the Ministry had asked the BLM in May 2006 to ban television advertising for a private sports betting company. However, since the legal status of private sports betting services was unclear, the BLM's *Medienrat* (Media Council), in a decision of 30 June 2006, had expressed support for a common approach among all the *Land* media authorities and decided not to take unilateral action. The Ministry then stated that it would take action in accordance with Art. 19 para. 2 sentence 2 of the *Bayerische Landesmediengesetz* (Bavarian Media Act - BayMG), under which the monitoring body may carry out an order instead of the *Land* media authority if the latter fails to follow an instruction within the prescribed deadline.

In a ruling of 18 August 2006 (case no.: M 16 S 06.2945), the *Verwaltungsgericht München* (Munich Administrative Court), with which the BLM had instigated an urgent procedure, decided that, under Art. 19 para. 2 sentence 3 of the Bavarian Media Act, such interference in programming matters, which included advertising, was only permitted if the BLM's monitoring bodies were totally inactive .

The VGH has now rejected the Ministry's complaint against this decision and confirmed the interpretation of the court of lower instance.

It explained that its decision was based on Art. 19 para. 2 sentence 3 of the BayMG, which prevents the monitoring body from interfering in "programming matters". According to the court, commercial advertising shown by broadcasters formed part of the programme - a concept that should be interpreted broadly - and therefore was also included under so-called "programming matters". The

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legislator had not distinguished between news reporting, which was afforded greater protection under the Basic Law, and programme components such as advertising, which were not subject to such a high degree of protection.

The court based its ruling on the legal situation at the time of issue of the monitoring body's instruction; the revised Art. 19, which increases the monitoring body's powers to intervene and came into force on 1 January 2007, was therefore irrelevant.

Pressemitteilung des VGH vom 11. Januar 2007

http://www.vgh.bayern.de/BayVGH/20070111.htm

VGH press release of 11 January 2007

Beschluss des VGH vom 9. Januar 2007 (Az.: 7 CS 06.2495)

http://www.vgh.bayern.de/BayVGH/presse/06a02495b.pdf

VGH ruling of 9 January 2007 (case no.: 7 CS 06.2495)

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