[SE] Administrative Court of Appeals Rules on Obligation to Pay Fee for Unlawful Broadcast of Advertising

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On 13 December 2007, *Kammarrätten i Stockholm* (The Stockholm Administrative Court of Appeals) delivered judgment in a case regarding unlawful broadcasting of advertising. The case concerned the application of provisions in *Radio- och TV-lagen* (The Radio and TV Act - RTL). The Radio and TV Act is based on Directive 89/552/EEC as amended by Directive 97/36/EC.

On 31 August 2004, the Swedish nationwide television channel TV 4 broadcast " *Den starkare* " (our translation for the purposes of this article: "The stronger one") which is a play written by the famous Swedish author August Strindberg. The broadcast had a scheduled screen time of thirty-five minutes. An approximately five-minute-long break was introduced in the broadcast during which advertising and a trailer were shown. In the Radio and TV Act there are provisions regulating the circumstances under which advertising may be broadcast. These provisions state, *inter alia* , that advertising in feature films and films made for television may be broadcast if the aggregate screen time of the programme exceeds forty-five minutes. This provision does, however, not include TV-series, light entertainment or documentaries.

If the provisions mentioned above are violated the court may impose a special fine. This sanction is, according to the preparatory works to the Radio and TV Act, aimed at ensuring the provisions sanctioned by the fine are respected. Financially motivated violations of these provisions are meant to be rendered unprofitable.

The first question of interest is whether or not *Den starkare* is to be regarded as a film made for television. The Stockholm Administrative Court of Appeals argued that the production in question differs from the play regarding both the cast and the environment which is portrayed. The roles are played by actors hired specifically for the production. The Court states that the production is a film, and that the relatively short screen time does not give rise to any other conclusion. The production was made for TV 4 according to a cooperation agreement between TV 4 and a production company and in collaboration with the two actors playing the two main roles. The production is hence made for television. Thus TV 4 committed a breach of the Radio and TV Act by broadcasting advertising during a break in *Den starkare* .

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The second question is whether or not a special fine should be imposed. According to the preparatory works to the Radio and TV Act no such fee should be imposed if neither the provisions nor the case law from *Granskningsnämnden för radio och TV* (the Swedish Broadcasting Commission) on the matter are sufficiently clear or well-established. According to the Court there was in the case at hand no such uncertainty and TV 4 was imposed a special fine amounting to SEK 50,000 (app. EUR 5,320).

One of the judges held a dissenting opinion and argued that the different programme types have not been clarified either in the Television Without Frontiers Directive or the Radio and TV Act (including its preparatory works) and that there is no common definition of the word “film”. The dissenting judge found, based on this consideration and on the fact that the violation appeared to be an isolated event, that no special fine should be imposed.

Kammarrätten i Stockholm, mål nr 7993-06 (Az. 7993-06)

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