[DE] ARD lodges complaint against private television broadcaster PRO SIEBEN on contravention of regulations on advertising time

IRIS 1996-6:1/25

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The regional broadcasting corporations grouped together in ARD have jointly lodged a complaint against the private television broadcaster PRO SIEBEN with the Regional Court in Stuttgart because the broadcaster regularly contravenes the regulation on advertising time contained in paragraph 4 of the Agreement between the Federal States on broadcasting in united Germany (RfStV) when broadcasting films. Under this provision, films and television films other than series, light entertainment and documentaries, and lasting more than 45 minutes may only be interrupted once in any one complete 45-minute period. The supplementary advertising guidelines agreed by the conference of directors of the regional media corporations on 26.01.1993 provide that films lasting more than 45 minutes may be interrupted twice for a 90-minute programme and three times for one longer than 110 minutes.

According to ARD the broadcaster PRO SIEBEN contravenes the net principle stipulated in the Agreement between the Federal States on broadcasting in united Germany, according to which advertising breaks should not be taken into account in calculating the length of a film. The public-sector broadcaster finds itself disadvantaged as regards competition as a result.

PRO SIEBEN invokes Article 11, paragraph 3 of the EC Directive on "Television without Frontiers" which uses the gross principle, ie including advertising breaks in the total broadcasting time. The broadcaster refers in its defence to a judgment of the Upper Administrative Court in Coblence sitting in urgent matters (case of the Rhineland-Palatinate central office for private broadcasting v. SAT 1; judgment of 3 March 1994), in which the Court of the preliminary proceedings held that the legal position was unclear and that in view of the relevant regulation contained in the EC Directive on "Television without Frontiers" the case would probably have to be settled by the European Court of Justice (ECJ).

ARD lodged a complaint against this, claiming that in the ECJ judgment in the case between Leclerc and Siplac on 9.02.1995 it was held that the EC Directive on "Television without Frontiers" conceded the possibility of allowing stricter national conditions for purely domestic circumstances. Thus it was established that Article 26, paragraph 4 of the RfStV did not contravene the higher-ranking Community legislation.

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