[DE] Advertising Income may be Confiscated by Media Watchdog under Land Media Act

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On 23 May 2012, the Bundesverwaltungsgericht (Federal Administrative Court - BVerwG), in a judgment that has not yet been published in full, ruled that the Bundesländer may, in their media legislation, empower the Landesmedienanstalten (Land media authorities - LMA) to confiscate advertising income received by private TV broadcasters in connection with programmes judged to be illegal.

The case concerned clips shown in the “Bimmel-Bingo” section of the programme “TV total” broadcast by the TV company ProSieben, in which a camera crew had rung the doorbells of single-family houses unannounced at night in order to wake up the occupants and persuade them to enter a competition. In these clips, the doorbell label, including the family’s surname, was regularly shown and the occupants were addressed by name. The reaction of several householders (slamming the door, threatening to call the police) clearly showed that they were unhappy to have been woken up and filmed.

On 2 December 2010, the Oberverwaltungsgericht Berlin-Brandenburg (Berlin-Brandenburg Higher Administrative Court) had confirmed two rulings of the Berlin-Brandenburg LMA (mabb) and rejected the broadcaster’s appeal against them. The mabb had complained that the clips had infringed the general personality rights of the people filmed, as well as their right to their own image. After the broadcaster had ignored a request from the mabb to declare how much advertising income it had received in connection with the programmes concerned, the mabb demanded payment of the estimated income of EUR 75,000. The broadcaster appealed against this claim.

The BVerwG ruled that the relevant provision of the Medienstaatsvertrag Berlin-Brandenburg (Berlin-Brandenburg Media Agreement - MStV) was compatible with federal law (particularly the Grundgesetz - Basic Law). The Länder had the power to adopt such a rule, which did not form part of criminal law. Complaining about a programme and confiscating the advertising income were media supervision measures used, not to punish criminal offences, but to effectively ensure that broadcasting law obligations were fulfilled by private broadcasters.

In the BVerwG’s view, the rule did not, therefore, infringe the principle of equal treatment, for example, because for public broadcasters there was no provision

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for complaints to result in the confiscation of advertising income. Under the dual broadcasting system, private and public broadcasters were subject to different supervisory bodies, each with its own responsibilities and rules, which was why the means available to their respective watchdogs did not have to be identical.

Pressemitteilung des BVerwG zum Urteil vom 23. Mai 2012 (Az. 6 C 22.11)

http://bverwg.de/enid/9df8547b188c67288d2a2cc1ebffc08f,d2ec9d7365617263685f646973706c6179436f6e7461696e6572092d093134323133093a095f7472636964092d0931393535/Pressemitteilungen/Pressemitteilung_9d.html

BVerwG press release on the decision of 23 May 2012 (case no. 6 C 22.11)

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