[DE] BayVGH Overturns KJM’s Teletext Ban

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In a ruling of 19 September 2013 (case no. 7 B 12.2358), the Bayerische Verwaltungsgerichtshof (Bavarian Administrative Court - BayVGH) overturned a decision of the Bayerische Landeszentrale für Medien (Bavarian New Media Authority - BLM), prohibiting a media company from operating its (entire) erotic teletext service on pages 600-900 between the hours of 6 a.m. and 10 p.m.

The ban had been imposed following an examination of the service by an inspection team appointed by the Kommission für Jugendmedienschutz (Commission for the protection of young people in the media - KJM). The inspection team, which drafted the actual decision, had concluded that the service was harmful to the development of minors in the sense of Article 5(1) in conjunction with Article 5(3) and (4) of the Jugendmedienschutz-Staatsvertrag (Inter-State Agreement on the protection of young people in the media - JMStV).

According to the minutes of their meeting, the KJM experts responsible for determining the admissibility of services under Article 14 JMStV examined the inspection team’s evaluation of the content of the teletext service and decided to impose the ban “after a discussion”.

The BayVGH ruled that this process infringed the obligation to explain the reasons for a ban, enshrined in Article 17(1)(2) and (3) JMStV. The mere reference to a discussion of the results of the preliminary examination did not provide the factual and legal grounds for the decision.

Similarly, no distinction had been made between the different examinations of the service. Although there was no reason why the KJM experts should not adopt the inspection team’s recommendations or draft decision as their own, they should do so clearly and unambiguously, which they had failed to do in the present case. This was necessary for legal protection reasons. Otherwise, the parties concerned would not know the reasons for the decision, and would therefore not be able to contest it before a court.

Regardless of this, however, the ban was also disproportionate because it did not represent the slightest possible intrusion, as required under Article 20(4) JMStV in conjunction with Article 59(3) of the Rundfunkstaatsvertrag (Inter-State Broadcasting Agreement - RStV). Finally, it was unclear why it had not been possible to ban only the 136 objectionable pages rather than all 300. The teletext

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service in question was not a single, self-contained whole and did not need to be treated and evaluated as such.

Urteil des Bayerische Verwaltungsgerichtshofs vom 19. September 2013 (Az. 7 B 12.2358)

http://www.gesetze-bayern.de/jportal/portal/page/bsbayprod.psml?doc.id=MWRE130003225&st=ent&showdoccase=1&paramfromHL=true#focuspoint

Ruling of the Bavarian Administrative Court, 19 September 2013 (case no. 7 B 12.2358)

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