[DE] Licence extension for window programmes declared lawful

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In a judgment of 1 March 2016 (Case 5 K 977/14.NW), the Verwaltungsgericht (Administrative Court) in Neustadt an der Weinstrasse declared lawful the extension granted by the Rhineland-Palatinate Landeszentrale für Media und Kommunikation (Regional Media and Communication Authority - LMK) to the licence for the regional window programme “17:30 Sat.1 live”, which is made by the TV production company TV IIIa GmbH & Co. KG (TV IIIa) and forms part of the schedule of the commercial broadcaster Sat.1.

Under section 25(4) of the Rundfunkstaatsvertrag (Inter-State Broadcasting Agreement), in order to foster regional diversity the two general-interest TV channels with the widest national coverage are obliged to include regional windows in their schedule to show political, economic, social and cultural events. In response to an application by TV IIIa, in May 2014 the LMK granted a ten-year extension to its licence dating from 2004 to organise and distribute the regional window programme in the Sat.1 schedule. This half-hour regional programme for the two Länder Rhineland-Palatinate and Hessen is broadcast every weekday under the title “17:30 Sat.1 live”. The company Sat.1 SatellitenFernsehen GmbH is legally obliged to ensure it is properly funded, and the financial arrangements have been governed since 1997 by a service agreement subject to private law between TV IIIa and Sat.1 SatellitenFernsehen GmbH.

Both Sat.1 SatellitenFernsehen GmbH and ProSiebenSat.1 TV Deutschland GmbH had brought an action challenging the licensing of the regional window programme. ProSiebenSat.1 TV Deutschland GmbH is to organise the general-interest channel in future, but its licence depends on the outcome of court proceedings in Schleswig-Holstein. Both plaintiffs argued that the licence should only have been extended after a tendering procedure, which had not been held. In addition, they claimed, the decision to award the licence should not have based the financing arrangements on the excessively high rates specified in the service agreement and should therefore not have imposed them. The obligation to provide the financing, they pointed out, imposed an unlawful special levy on Sat.1 as one of the two general-interest commercial TV channels with the widest national coverage (the other being RTL). They claimed that the legal basis relied on, section 25(4) of the Inter-State Broadcasting Agreement, was unconstitutional.

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However, the Administrative Court judges rejected these arguments and dismissed the action against the decision to award the licence. It pointed out that although the LMK had initially made procedural errors, they had been corrected when the decision had been reviewed. In particular, the licence could have been extended without previously holding a tendering procedure. Separate procedural rules contained in the Inter-State Broadcasting Agreement for the award of nationwide transmission time to third parties, were, it said, not applicable to regional TV programmes. Moreover, the interests of the plaintiffs, which had to be considered, had not made it necessary to hold a tendering procedure before awarding the licence. Furthermore, the LMK had not specified any financing rules of its own in its award decision. In their examination of whether it could be assumed that the financing of the programme was assured, the media watchdogs had only taken as their basis for their decision the existing service agreement based on private law. The court was not required to consider the actual extent of the financial obligation that resulted from that agreement. Nor was the decision to award the licence based on unconstitutional rules. The provisions relevant here, contained in section 25(4), first and seventh sentences, of the Inter-State Broadcasting Agreement and the corresponding rules in section 22(3) of the Rhineland-Palatinate Landesmediengesetz (Regional Media Act) are, in the judges' view, compatible with the equal treatment requirement enshrined in Article 3(1) of the Grundgesetz (Basic Law) and the plaintiffs' broadcasting freedom.

An application for leave to appeal can made to the Rhineland-Palatinate Oberverwaltungsgericht (Higher Administrative Court) within one month of the judgment being served.

Urteil des Verwaltungsgerichts Neustadt an der Weinstraße vom 01. März 2016 (Az: 5 K 977/14.NW)

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Judgment of the Neustadt an der Weinstrasse Administrative Court of 1 March 2016 (Case 5 K 977/14.NW)

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