Court of Justice of the European Communities: TNT & Cartoon Network - Belgium not Authorized to Establish a Second Level of Control

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On 29 May 1997, the Court of Justice of the European Communities gave its judgement on the interpretation of certain provisions in the Television without Frontiers Directive following questions submitted by a Belgian court in proceedings related to the distribution on the cable network (in the U.S. referred to as `cable system') of Coditel in the bi-lingual region of Brussels of the television channel TNT & Cartoon Network.

As is the case for VT4 (see next article), the TNT & Cartoon Network is operated by a company established in the United Kingdom, under a non-domestic satellite license granted by the UK authorities. Owing to that establishment ratione personae in the United Kingdom, the Court considered that it was also the latter State which was competent to govern the activities of the television channel. For this reason, it is upon that State to verify whether or not the programme concerned is in conformity with the harmonized rules set out in the `Television without Frontiers' Directive (in particular, those on the respect of the quotas for the transmission and promotion of European works). Thus, the Court confirmed that the Belgian authorities could not exercise a second level of control on the activities of the television broadcaster as they had done by attempting to prevent Coditel from distributing the TNT-channel over its cable network owing to the alleged non-compliance of the latter's programme with the rules of the Directive. The Court in fact confirmed that such a second level of control can only be exercised in very limited circumstances described in Article 2.2 of the Directive and that the fact of non-compliance with the quota rules does not fall within those circumstances. The Court confirmed also that if the Belgian State was not satisfied with the control exercised, under the harmonized rules set out in the Directive, by the UK authorities, it could always start an action against that State following the appropriate procedural rules, but that it could not adopt unilateral measures to redress that situation and that it needed to accept the free movement of the broadcasts concerned even if the host State control had been defective.

The judgement of the Court will most probably bring to a final stage legal proceedings which have been pending for quite some time in Belgium against the transmission of the TNT & Cartoon Network on the cable network. Belgian authorities will have to accept the more lenient system of control exercised in the

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United Kingdom on the Euopean content of TNT's broadcasts or it will have to take up the matter directly with the UK authorities.

Judgement of the Court of Justice of the European Communities of 29th May 1997, Case C-14/96, Paul Denuit

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