

Court of Justice of the European Communities: VT4 Comes under the Jurisdiction of the United Kingdom

IRIS 1997-7:1/7

*Dirk Van Liedekerke
COUDERT Attorneys at Law, Brussels*

On 5 June 1997, the Court of Justice of the European Communities confirmed its case law on the interpretation of the jurisdictional criteria and rules on free movement of services contained in the 'Television without Frontiers' Directive. The judgement followed questions referred to the Court by the Belgian Council of State in proceedings brought by VT4, a private commercial television station targetting the Flemish audience but using the United Kingdom as its home basis, against a decision of the Flemish Minister for Culture and Brussels Affairs refusing VT4 access for its television programmes to the cable distribution network (in the U.S. referred to as cable system) in the Flemish Community.

VT4 had in fact been compelled, owing to the impossibility to obtain the necessary authorizations in Belgium, to establish its home basis outside of Belgium in order to circumvent the monopoly rights which had been granted, pursuant to the Flemish media legislation, to VTM to operate commercial television and television advertising in the Flemish Community (see see IRIS 1997-7: 13). Thus, VT4 operated under a non-domestic satellite license granted by the United Kingdom authorities. It was established in the United Kingdom but had certain subsidiary activities, such as news gathering and contacts with advertisers, in Belgium. Its programmes are aimed at the Flemish public. However, the Flemish Minister adopted a decision refusing VT4 access to the Flemish cable since he could not accept that the Flemish media legislation and, in particular, VTM's monopoly rights would be circumvented by the foreign construction set up by VT4.

The Court of Justice now confirmed that VT4 falls within the jurisdiction *ratione personae*, of the United Kingdom since it is established in that country and that, in order to benefit from the rules on the freedom of movement, VT4 does not necessarily need to have activities in the United Kingdom, its host State. It added that if a television broadcaster is established in more than one Member State, the Member State having jurisdiction over it is the one in whose territory the broadcaster has the centre of its activities, in particular where decisions concerning programme policy are taken and the programmes to be broadcast are finally put together.

On the basis of the Court's Judgement, VT4 will most probably be allowed to stay on the Flemish cable and the contrary decision by the Flemish authorities, which

had been suspended awaiting the Judgement, annulled. The decision provides a clarification of the rules set out in the 'Television without Frontiers' Directive and, in particular, of the provisions concerning the competence of Member States to govern the activities of broadcasters; rules which also have been clarified in the amended version of that Directive (see IRIS 1997-7: 6).

Judgement of the the Court of Justice of the European Communities of 5 June 1997, case C-56/96, VT4 v. Flemish Community

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:61996CJ0056:EN:PDF>

