[DE] Court prohibits arbitrary changes to pay-TV programme package

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In a recently published judgment of 17 January 2019 (Case no. 12 O 1982/2018), the Landgericht München (Munich district court) decided that customers were unreasonably disadvantaged by a unilateral, groundless change to programme packages sold by pay-TV provider Sky Deutschland.

In its terms of business, the pay-TV provider had reserved the right to change or limit programme packages and services as long as their 'overall character' was not affected. The terms of business also stated that the programme content of sports channels was seasonal and could vary depending on the availability of broadcasting rights. Sky therefore referred to its terms of business in order to prevent customers cancelling their subscriptions on the grounds of a change to their programme package.

The Bundesverband der Verbraucherzentralen und Verbraucherverbände - Verbraucherzentrale Bundesverband e.V. (Federation of German Consumer Organisations -VZBV), had complained about this practice. It had claimed, for example, that customers who had subscribed to a Sky sports package because of a previously advertised broadcast of Formula 1 racing had been prevented from cancelling their subscription when the event had been removed from their package in 2018. The vzbv criticised the fact that customers could be unreasonably disadvantaged if Sky Deutschland was allowed to change its services unilaterally. For most of its customers, minimum contracts are either 12 or 24 months long and are automatically renewed.

The court largely upheld the vzbv's complaint and declared the relevant clauses invalid under Article 308(4) of the Civil Code (BGB). It held that the clause enabled Sky to change its programme package for no reason in a way that could not be foreseen or predicted by customers, in particular since there were no limits to the scope of such restrictions and changes. The rule was therefore unreasonable. Under German law, terms of business that unreasonably disadvantage consumers are invalid.

However, another clause in the broadcaster's terms of business, entitling Sky to change its programme packages for licensing or technical reasons, was deemed admissible. The vzbv's request that customers be allowed to object to such changes was rejected. The court held that the broadcaster had a justified interest

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in maintaining this rule because continuing a contract in such circumstances would be impossible. Furthermore, Sky had already given its customers a special right to cancel their subscriptions in such cases. The vzbv has already lodged an appeal against this part of the decision with the Oberlandesgericht München (Munich district appeal court).

Urteil des LG München vom 17. Januar 2019 (Az. 12 O 1982/2018)

https://www.vzbv.de/sites/default/files/downloads/2019/03/06/sky_deutschland_fernsehen_lg_muenchen_i_a_8608-22.pdf

Decision of Munich district court, 17 January 2019 (case no. 12 O 1982/2018)

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