[DE] Administrative Court suspends KJM decision on 'JusProg' youth protection system in summary proceedings

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In a decision taken in summary proceedings on 28 August 2019, the Verwaltungsgericht Berlin (Berlin Administrative Court) temporarily removed the immediate enforceability of a decision taken by the Kommission für Jugendmedienschutz (Commission for the Protection of Minors in the Media – KJM) denying the suitability of the 'JusProg' youth protection system. The court ruled that the KJM's decision that the Freiwillige Selbstkontrolle Multimedia-Dienstleister e.V. (FSM) had exceeded its scope of discretionary power by declaring the system suitable was unlawful.

On 2 February 2019, the FSM, a recognised German self-regulatory body, had been asked to assess the suitability of the 'JusProg' youth protection system, created by JusProg e.V.. Such systems enable content providers to assign age ratings to their content, which can be read by the relevant software. Children and teenagers whose Internet access is controlled by such a system can no longer access content that is inappropriate for their age group.

The FSM had originally classified the software as suitable. In May 2019, however, the KJM, Germany's central supervisory body for the protection of minors in private broadcasting and telemedia, had decided that 'JusProg' was unsuitable. According to the KJM's decision, which was implemented by the responsible media authority, the Medienanstalt Berlin-Brandenburg, the FSM had exceeded its scope of discretionary power in its assessment of the suitability of 'JusProg' under Article 11(1)(2) of the Jugendmedienschutz-Staatsvertrag (Inter-State Agreement on the protection of minors in the media - JMStV). The KJM's main criticism was that 'JusProg' did not cover a significant proportion of children's media consumption because it only worked on Windows PCs using the Chrome browser. At the same time, providers were strongly favoured by the approval system since they could distribute their age-rated content without any additional safeguards, even though the mobile devices and operating systems used by most children and young people were unable to read the age ratings.

The court disagreed. The FSM had not exceeded its scope of discretionary power and the JMStV in particular did not require youth protection systems to work across all platforms and devices. A youth protection system was deemed suitable

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under Article 11 JMStV if it provided age-group differentiated access to telemedia and state-of-the-art identification performance. It should also be user-friendly and allow for autonomous use by consumers. The wording of the JMStV did not suggest that it should work on more than one operating system.

The court's decision in summary proceedings initially only applies to the immediate enforceability of the KJM's decision. A decision in the main proceedings has yet to be issued.

Pressemitteilung der Kommission für Jugendmedienschutz (KJM) vom 28. August 2019

https://www.kjm-online.de/service/pressemitteilungen/meldung/news/kjm-bedauert-entscheidung-des-vg-berlin-im-eilverfahren-zu-jusprog/

Press release of the Commission for the Protection of Minors in the Media (KJM) of 28 August 2019

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