Federal Administrative Court rules on youth protection authorities' discretionary powers

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Jan Henrich
Institute of European Media Law (EMR), Saarbrücken/Brussels

In a ruling of 30 October 2019, the German Bundesverwaltungsgericht (Federal Administrative Court) confirmed the rating of Bushido's rap album 'Sonny Black' as harmful to minors. The Berlin rapper's album glorified violence and contained highly discriminatory lyrics, according to the court. The decision examined the discretionary powers of the German Bundesprüfstelle für jugendgefährdende Medien (Federal Examination Office for Media Harmful to Minors – BPjM), the regulatory body responsible for classifying data media and telemedia with content harmful to minors on the basis of the Jugendschutzgesetz (Youth Protection Act – JuSchG).

In 2015, the BPjM had decided that the album should no longer be sold to children and teenagers because it glorified a criminal lifestyle and defamed women and homosexuals. The rapper's appeal against this decision was granted in the second instance by the Oberverwaltungsgericht Münster (Münster Higher Administrative Court), which referred to formal errors in the hearing that formed part of the classification procedure.

The BPjM successfully appealed this decision before the Bundesverwaltungsgericht, which ruled that the original classification had been lawful. The Federal Examination Office's findings had shown that the album was harmful to minors. Media were harmful to minors if they were likely to harm the development of children and teenagers or their upbringing as independent, socially capable members of society. The court therefore confirmed the BPjM's view that the interests of youth protection in the current case outweighed those of artistic freedom because, although the album had entertainment value, it lacked enhanced artistic importance.

The decision is significant because, in its judgment, the court set out new principles for the classification of media that are harmful to minors. Previously, authorities such as the BPjM, whose decision-making organs comprise representatives of art, culture, education and youth work, had their own discretionary powers, which were only subject to limited judicial review. However, the court distanced itself from this principle and ruled that, under the guarantee of legal protection enshrined in the Constitution, classification decisions should be subject to judicial review. The BPjM's decision, applying youth protection criteria

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set out in legislation, was therefore open to such a review.

Pressemitteilung des Bundesverwaltungsgerichts zum Urteil vom 30. Oktober 2019 - BVerwG 6 C 18.18

https://www.bverwg.de/pm/2019/77

Press release of the Federal Administrative Court on the judgment of 30 October 2019, BVerwG 6 C 18.18

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