[DE] Administrative Court Holds Telekom Responsible for Determining Frequencies Available for Cable

IRIS 1997-9:1/11

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In its decision on 12 August 1997 the Administrative Court in Berlin has upheld the suspensive effect of a complaint by Telekom against a decision of the Berlin-Brandenburg media authority (MABB). In its decision, made enforceable Telekom forthwith, the MABB had stated that two channels kept free by for broadcasting digital programmes on broad-band cable were available for the retransmission of analogue television programmes and informed a number of providers of this (see IRIS 1997-3: 14).

After its summary investigation ordered as part of the urgent proceedings, the Court has now ruled in favour of the complainant and issued its opinion that the defendant media authority has no legal grounds for making such a decision. It was not entitled to use sovereign regulations to oblige Telekom to provide specific cable capacities for the transmission of analogue broadcasting against its will.

The Court centred its comments on the altered legal position of the complainant. As part of the changes in the Basic Law (Grundgesetz) (Articles 87.f, par. 2(1), and 143.b of the GG) resulting from the structural reform of the postal service in connection with the regulations contained in the Amended Postal Services Act of 14.09.1994, Telekom was privatised and it was determined that it would carry out its functions in the form of private-law services. A constitutional interpretation of the meaning of Section 26, par.1 of the Agreement on broadcasting between the Federal States in United Germany, referred to by the MABB, and according to which "the media authority .... shall determine the status of .... broadcasting possibilities available now or in the future" would mean that this entailed no more than a declaration, with the agreement of the owner of the cable network installation still being required. The division between the responsibilities of the Länder concerning broadcasting as set out in the Basic Law and responsibility at a national level for means of broadcasting and telecommunications, which until now had involved a legal requirement that frequency planning be "broadcasting-friendly", makes it clear that national responsibility for broadcasting and telecommunications cannot be transferred to the Länder even under existing law. Thus even according to the law as it stood before the postal service reform the Länder had no authority to use sovereign powers to implement the law. According to the new legal position the situation is only different in that, according to the "privatisation of organisation and tasks" carried out (Art. 87.f, par.2(1) of the GG) in respect of Telekom , this no longer falls within the responsibilities of the

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national administration. The denationalised complainant could therefore no longer be held to the reciprocal duty of loyalty to the constitution; Telekom could not be obliged to meet the requirements of the service function of telecommunication this involved or the requirement of "broadcasting-friendly behaviour".

Verwaltungsgericht Berlin, Beschluß vom 12. August 1997 -- Gesch.-Z.: 27 A 272/97

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