[DE] Federal Administrative Court ends longstanding dispute over SAT.1 licence switch

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In a ruling of 15 July 2020 (Case no. BVerwG 6 C 25.19), the German *Bundesverwaltungsgericht* (Federal Administrative Court – BVerwG) ended a longstanding dispute over a change of licence for German TV broadcaster SAT.1 by rejecting a complaint by two German regulators against another German regulator as inadmissible. It ruled that a regional media authority did not have legal standing to revoke a licence granted by another regional media authority to a private broadcaster for a national television channel. The licence granted to Sat.1 was therefore lawful.

Private broadcasters in Germany are monitored by whichever of the 14 German media authorities, which act as regulatory bodies for the *Bundesländer*, they apply to for a licence. In 2008, the licence to broadcast national television channel SAT.1 was awarded by the *Landeszentrale für Medien und Kommunikation Rheinland-Pfalz* (Rhineland-Palatinate media and communication authority – LMK). On weekdays, regional window programmes for the *Länder* of Rhineland-Palatinate and Hessen are also broadcast on the main SAT.1 channel, as required under the German *Rundfunkstaatsvertrag* (Inter-State Broadcasting Agreement). To this end, the LMK and the *Hessische Landesanstalt für privaten Rundfunk und neue Medien* (Hessian commercial broadcasting and new media authority - LPR Hessen) also granted a licence to a regional window programme provider. In 2012, while the licence granted by the LMK was still valid, the broadcaster SAT.1 applied to the *Medienanstalt Hamburg/Schleswig-Holstein* (Hamburg/Schleswig-Holstein media authority – MA HSH) for another licence to broadcast its full window programme, SAT.1. In accordance with a decision by the *Kommission für Zulassung und Aufsicht* (Media Licensing and Monitoring Commission – ZAK) – the joint licensing body of the 14 German regulatory authorities which deals with the licensing and monitoring of commercial channels that are broadcast throughout the country – the MA HSH granted the licence. However, the licence was only valid if regional window programmes existed or were organised. The LMK and LPR Hessen had disputed this decision by the MA HSH, but their appeal was dismissed by the competent administrative court and administrative appeal court (IRIS 2019-2:1/5). The BVerwG, which is the country's highest administrative court, has now finally rejected the complaint as inadmissible.

The BVerwG ruled that the LMK and the LPR Hessen did not have the legal standing required under German law to bring proceedings under Article 42(2) of

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the *Verwaltungsgerichtsordnung* (Code of Administrative Court Procedure). Such standing could not be derived either from the fundamental right to broadcasting freedom (Article 5(1)(2) of the *Grundgesetz* (Basic Law)) or from the notion that they were ultimately responsible for the legality of channels broadcast in their transmission area. Since the entry into force of the revised Rundfunkstaatsvertrag in 2008, the ZAK has had sole responsibility for taking final decisions relating to the licensing of commercial channels that are broadcast throughout the country. The role of the relevant regional media authority has therefore been limited to carrying out the ZAK's decisions. The fact that the ZAK now bore ultimate responsibility did not threaten broadcasting freedom because the ZAK's decisions were based on the majority principle, it acted independently and it had a duty of confidentiality. The fact that this meant that the regional media authorities' pluralistically structured decision-making bodies were considerably less important than before was compatible with the *Grundgesetz* because the ZAK's independence from the state and its limited scope for decision-making took sufficient account of fundamental rights. It was irrelevant that the LMK and LPR Hessen remained responsible for monitoring the regional windows.

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https://www.bverwg.de/pm/2020/44

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