

CJEU Advocate General finds regional advertising ban compatible with EU law

IRIS 2021-1:1/11

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

In his opinion of 15 October 2020 in Case C-555/19 (Fussl Modestraße Mayr), Maciej Szpunar, Advocate General at the Court of Justice of the European Union (CJEU), discussed whether the German law prohibiting the regional transmission of advertising on television programmes authorised for the entire country was compatible with EU law. He concluded that, although European law did not prevent such a restriction in principle, it was necessary to examine, in view of the freedom to provide services, whether there were any less restrictive measures that the German legislator could introduce in order to protect diversity of opinion at regional and local level.

The case, referred by the Landgericht Stuttgart (Stuttgart regional court), concerned the Austrian firm Fussl Modestraße Mayr GmbH, which operates a chain of fashion stores in Austria and Bavaria.

In May 2018, Fussl signed a contract with the German company SevenOne Media GmbH, the marketing company for the German ProSiebenSat.1 group, concerning the broadcasting of television advertising via the Bavarian cable network of Vodafone Kabel Deutschland GmbH, which only served the state of Bavaria, as part of ProSieben's national television programme.

SevenOne Media refused to honour this contract on the grounds that it was prohibited from broadcasting regional television advertising as part of a national programme under Article 7(11) of the *Rundfunkstaatsvertrag* (state broadcasting treaty – RStV), which has now been replaced by the identical Article 8(11) of the *Medienstaatsvertrag* (state media treaty – MStV). According to the treaty, the *Bundesländer* can authorise regional advertising on national television channels, although the state of Bavaria has never made use of this possibility. Fussl lodged a complaint with the Landgericht Stuttgart and demanded that SevenOne Media be required to meet its contractual obligations. The regional court then submitted questions to the CJEU regarding the compatibility of the provision with EU law.

In his opinion, Advocate General Szpunar pointed out that the provision in question was designed to ensure that the regional advertising market was reserved for regional and local TV broadcasters and that it guaranteed them a source of income. He thought the division of the advertising market between

national and regional broadcasters and, therefore, the law concerned here did not fall under the scope of the AVMSD. Furthermore, the equal treatment principle did not prevent a ban on regional advertising on national television channels. However, although such a ban restricted the freedom to provide services, this could be justified by overriding cultural policy interests.

The German legislator should therefore have been allowed to assume that the entry of national television broadcasters into the regional advertising market could jeopardise the financing of regional and local television companies and thereby threaten diversity of opinion at regional and local level. The disputed national law provision therefore seemed an appropriate means of protecting such diversity. However, the referring court needed to decide whether the rule was proportionate and, in particular, whether media pluralism could be protected through less restrictive measures.

Schlussanträge des Generalanwalts in der Rechtssache C-555/19

<http://curia.europa.eu/juris/document/document.jsf?jsessionid=820EC51083E167448BE04FC5501B8A36?text=&docid=232472&pageIndex=0&doclang=de&mode=lst&dir=&occ=first&part=1&cid=15535754>

Advocate General's opinion in Case C-555/19

