[DE] VG Berlin confirms mabb's RT DE broadcast ban in interim proceedings

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In a ruling of 17 March 2022, the *Verwaltungsgericht Berlin* (Berlin Administrative Court – VG Berlin) provisionally upheld the decision taken by the *Medienanstalt Berlin-Brandenburg* (mabb) in early February, banning the organisation and distribution of the television channel RT DE, which was broadcast throughout Germany (see IRIS 2022-3/23). The decision had been based on the fact that the channel's Berlin-based operator, RT DE Productions GmbH, did not hold the licence it required under the German *Medienstaatsvertrag* (state media treaty) to broadcast at national level. The VG Berlin thought that the public interest in the immediate enforcement of the ban (which had been imposed in accordance with the law) outweighed the interests claimed by RT DE, and that the application in the main proceedings had no more than "an open chance of success".

In its ruling, the VG Berlin concluded that the mabb's decision to object to and ban the channel – in accordance with the summary examination conducted in the interim proceedings – was consistent with the legislative provisions of Article 109(1) in conjunction with Articles 52 *et seq*. of the *Medienstaatsvertrag* (state media treaty – MStV). The main point in dispute was whether RT DE Productions GmbH was the organiser of the channel and therefore required a licence under Article 52(1) MStV. The crucial factor when determining the status of organiser was (ultimate) responsibility for the broadcast programme, which the VG Berlin decided was held by RT DE, since the latter had not submitted any well-founded evidence to the contrary. The court rejected RT DE's claim that it should be considered a production service provider, rather than an organiser of a broadcasting service, because its entry in the trade register only mentioned the former activity: its status as an organiser was demonstrated by the activity it actually carried out. The fact that the word "Productions" appeared in its name, and its claims concerning its ownership structure and the technical role played by its grandparent company (which it considered to be the organiser) were dismissed as irrelevant. In this connection, the court also rejected RT DE's submissions that it lacked the technical capacity to broadcast via satellite and did not own the Internet domain linked to the channel, since they did not affect its status as organiser. The argument put forward by RT DE Productions GmbH that, under its service agreements with its grandparent company, it only organised a small fraction of the channel's programming and had no influence on or decision-making powers concerning the channel as a whole, was also ruled invalid. On this

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matter, the court noted, for example, that these agreements, signed under Russian law, were only effective *inter partes* and could not form the decisive basis for an assessment under the MStV. Complaints from RT DE about erroneous assumptions made by the mabb when calculating the number of its employees were also rejected. As a result, the VG Berlin agreed with the mabb's conclusion that the way in which RT DE Productions GmbH portrayed itself to the public (e.g. in job advertisements and the company information displayed on its website) suggested that it was an organiser. The resulting obligation to hold a licence still applied despite the fact that the grandparent company allegedly held a Serbian licence (although no evidence of this had been submitted) and a licensing procedure was still under way in Luxembourg.

On the basis of these legal findings, the VG Berlin decided there was no reason to suspend the immediate enforcement of the decision. However, it concluded that, even though there was an open chance of success in the main proceedings, and a further weighing of the conflicting interests was necessary, including an assessment of the decision's consequences, the public interest in the immediate enforcement of the decision outweighed the interest in delaying its enforcement. The need to protect the integrity of the licensing system for private broadcasters that applied under the current law could not be overridden by the primarily commercial interests that had been asserted in this case. The VG Berlin decided that aspects linked to freedom of expression and media freedom, which were in RT DE's favour, were not decisive because the ban only concerned the distribution of broadcast content and not other methods of content distribution.

Beschluss des VG Berlin vom 17. März 2022 (VG 27 L 43/22)

https://openjur.de/u/2391607.html

Berlin Administrative Court decision of 17 March 2022 (VG 27 L 43/22)

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