[DE] Berlin-Brandenburg court rules on obligation to explain broadcast time restrictions

IRIS 2022-9:1/19

Sebastian Klein
Institute of European Media Law

In a decision of 8 August 2022 (case no. OVG 11 N 64.18), the Berlin-Brandenburg *Oberverwaltungsgericht* (Higher Administrative Court – OVG) ruled that reasons must be provided for a decision restricting the time a programme could be broadcast on account of youth protection infringements. The dispute followed an objection by the *Medienanstalt Berlin-Brandenburg* (Berlin-Brandenburg media authority – mabb) against the television broadcaster ProSieben. ProSieben appealed to the courts against the objection and won. In the latest decision, the *OVG Berlin-Brandenburg* upheld the first-instance ruling issued in ProSieben's favour by the *VG Berlin* (Berlin Administrative Court – VG 27 K 7.15).

The case concerned an objection lodged by the mabb against ProSieben concerning the film review programme *"Steven liebt Kino"*, which had been broadcast in the morning between 2011 and 2015. In one episode, in which the new *"Lego Movie"* had been the main focus, other new releases had also been introduced. In particular, excerpts from the films *"Devil's Due"* and *"Sabotage"* had been shown. These had contained images of horror unsuitable for children. Various complaints had been received by the mabb, which had responded by filing an objection against ProSieben. It had also restricted the times at which the programme *"Steven liebt Kino"* could be broadcast, limiting it to the period between 8pm and 6am.

In the first instance, the *VG Berlin* ruled that the obligation to state reasons under Article 17(1) sentences 3 and 4 of the *Jugendmedienschutz-Staatsvertrag* (State Treaty on the Protection of Minors in the Media – JMStV) had been violated. It emphasised that the obligation to provide reasons was not merely a desirable procedure and an unnecessary formality, but also served to protect the fundamental rights of the affected broadcasters and telemedia providers. According to Article 17 JMStV, the *Kommission für Jugendmedienschutz* (Commission for the Protection of Minors in the Media – KJM) was obliged to provide reasons for its decisions, including the main factual and legal arguments. However, in the *VG Berlin's* opinion, such reasons had not been given in this case, since the KJM, acting as an organ of the mabb, had merely referred to the mabb's own assessment. It had not explained which parts of the programme had been the basis for its decision. If, as in this case, such a statement of reasons did not meet the legal requirements, this affected the legality of the state media

© European Audiovisual Observatory (Council of Europe) 2026

authority’s decision and was a procedural error. The existence of a statement of reasons originating from the decision-making body was “essential” for the validity of a supervisory measure issued by the respective state media authority under the JMStV.

The *OVG Berlin-Brandenburg* rejected the mabb's application for leave to appeal, making the decision of the *VG Berlin* legally binding. It left the factual and legal findings of the *VG Berlin* unchallenged. The KJM had failed to analyse the content of the films itself and the reasons it had given had been contradictory in several places. The OVG emphasised that KJM decisions were also binding for the other bodies of the state media authority and must be used as a basis for their decisions. The state media authority’s decision was therefore dependent on the KJM’s decision and the reasons behind it.

Pressemitteilung einer beteiligten Partei zu dem Beschluss des OVG Berlin-Brandenburg

https://www.dlapiper.com/de/austria/news/2022/09/dla-piper-represents-prosieben-before-the-higher-administrative-court-of-berlin-brandenburg/

Press release of a party concerning the decision of the Berlin-Brandenburg Higher Administrative Court

© European Audiovisual Observatory (Council of Europe) 2026

© European Audiovisual Observatory (Council of Europe) 2026