[DE] Administrative Court confirms state media authority ban on Cypriot pornographic websites

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In a press release published on 26 April 2023, the *Verwaltungsgericht Düsseldorf* (Düsseldorf Administrative Court – VG) announced its decisions in the dispute over a ban imposed on three pornography platforms for breaches of rules on the protection of minors in the media. The VG ruled that the objection lodged and the subsequent ban imposed on the websites by the *Landesanstalt für Medien Nordrhein-Westfalen* (North-Rhine Westphalia media authority – LfM NRW), due to inadequate age verification mechanisms, were lawful. As a result, the decisions taken in the corresponding interim proceedings were confirmed by the first-instance court in the main proceedings.

In June 2020, the LfM NRW had asked two Cyprus-based website providers to take immediate effective measures to protect children and young people on three pornographic websites that they operated (Pornhub, Youporn and Mydirtyhobby). The *Kommission für Jugendmedienschutz* (Commission for the Protection of Minors in the Media – KJM), a joint organ of the German state media authorities, had been involved in the proceedings and had already taken appropriate measures after deciding that provisions of the *Jugendmedienschutz-Staatsvertrag* (State Treaty on the Protection of Minors in the Media – JMStV) had been breached. Under Article 4(2) of the JMStV, pornographic content – which was indisputably available in video form on the platforms concerned – is only lawful in telemedia services if the provider has ensured that it is only accessible to adults. Effective age verification mechanisms are required to create such a closed user group. However, the disputed websites only feature a pop-up window inviting visitors to the site to confirm they are aged 18 or over with a simple click. German regulators do not consider this an effective age verification mechanism. Since the providers did not comply with the request to implement effective mechanisms, the websites concerned were banned in Germany by the LfM NRW. The Cypriot providers' applications for interim measures against the ban were rejected in 2022 (see IRIS 2022-9/20).

The VG Düsseldorf has now also confirmed the decision in the main proceedings. It rejected the providers' principal argument that the ban imposed by German media regulators violated the country-of-origin principle. Even if a website was operated from outside the EU, the provisions of German law on protecting young people in the media still applied. The country-of-origin principle could be ignored

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and the application of German law, which had been stricter at the time relevant to the decision, could be justified because children and young people in Germany were seriously endangered by the freely accessible content of the websites concerned. Studies had shown that around half of the children and young people questioned in Germany had watched freely accessible pornography on the Internet, while only around one in four parents had used special devices or software to block such content. In the VG Düsseldorf's opinion, it is therefore the provider's responsibility to ensure that only adults can access such content, such as by using an effective age verification system. The court deemed it irrelevant that the legal situation had since changed in Germany and Cyprus, since the situation relevant to the decision was that of 2020.

However, the providers' application was partially upheld to the extent that the LfM NRW had also based its decision on the fact that, as well as pornography, the websites contained other content that posed a threat to the development of young people and that (breaching an obligation under German law) no youth protection officer had been appointed. In these cases, the VG held that a deviation from the country-of-origin principle was not justified because these types of offences did not seriously endanger children and young people in Germany.

Since the VG Düsseldorf ruled that its decisions could be appealed, further court proceedings may follow.

Pressemitteilung des VG Düsseldorf vom 26. April 2023

https://www.vg-duesseldorf.nrw.de/behoerde/presse/pressemitteilungen/2023/07_23/index.php

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