[DE] ZAK bans broadcast of Auf1 content by “schwarz rot gold tv” due to unlawful thematic placement

IRIS 2024-1:1/21

Katharina Kollmann
Institute of European Media Law

The *Kommission für Zulassung und Aufsicht* (Commission on Licensing and Supervision – ZAK) of the *Landesmedienanstalten* (state media authorities) has ruled that schwarz rot gold tv GmbH breached the ban on thematic placement enshrined in the *Medienstaatsvertrag* (state media treaty - MStV). The infringement occurred when six hours of editorial content from Media in res Medien GmbH (Auf1) were broadcast each day on the schwarz rot gold tv (SRGT) channel in return for a fee. As a result, schwarz rot gold tv GmbH has been banned from distributing such content for payment.

The ZAK is the central organ of the 14 German state media authorities whose main task is to grant licences to and monitor national private broadcasters. Under Article 105(1) of the MStV, it is also responsible, *inter alia*, for monitoring telemedia and regulating media intermediaries, media platforms and user interfaces.

In 2021, the *Landesanstalt für Kommunikation in Baden-Württemberg* (Baden-Württemberg communication authority – LFK) granted schwarz rot gold tv GmbH a licence to organise and distribute the national television channel schwarz rot gold tv (SRGT), which has been transmitted via satellite since 1 September 2023. Also starting on 1 September 2023, schwarz rot gold tv GmbH allowed Austrian company Media in res Medien GmbH, the producer of Auf1, to broadcast its programmes on SRGT for six hours per day in return for a fee. News bulletins, topical magazine programmes, chat shows and interviews, as well as service and satirical programmes from the Auf1 portfolio were therefore broadcast between 6am and 7.45am and from 6pm until 10pm every day. The editor-in-chief of Auf1, Stephan Magnet, is part of Austria’s right-wing extremist scene.

According to the ZAK’s findings, the arrangement effectively involved airtime being sold. This gave Media in res Medien GmbH influence over SRGT programming, which was classified as thematic placement. This is prohibited under Article 8(7) sentence 1 of the MStV. Thematic placement is defined in Article 3(13) of the state media authorities’ *Satzung zur Durchführung der Werbevorschriften des Medienstaatsvertrags* (Statute on the implementation of the advertising rules of the state media treaty – *Werbesatzung*) as “the treatment of themes in editorial content in the interests or at the instigation of third parties,

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in particular if the provider receives or is promised remuneration or similar reward for doing so." It is prohibited because it influences programme content in a way that is detrimental to the provider's editorial responsibility and independence. Product placement on the other hand, i.e. the deliberate placement of a product in a broadcast, is allowed in principle, except in news programmes and programmes intended for political information or if it prejudices editorial responsibility and independence concerning content and placement in the programme schedule (see Article 8(7) sentence 3 No. 1 MStV).

The broadcaster must immediately implement the LFK's decision, which was taken in application of the ZAK's ruling.

Pressemitteilung von „die medienanstalten"

https://www.die-medienanstalten.de/service/pressemitteilungen/meldung/zak-untersagt-die-ausstrahlung-von-redaktionellen-inhalten-von-auf1-im-programm-schwarz-rot-gold-tv-wegen-unzulaessiger-programm-einflussnahme

Press release of the state media authorities

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