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M. Fabio GUGLIELMI

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Dear Mr Guglielmi,

Thank you for your e-mail of 17 April regarding your fight to get the right to install a satellite dish for your apartment in Luxembourg.

From all the documents you sent with your e-mail, I see that you are well aware of the legal implications regarding the installation of satellite dishes, and among them the freedom of expression, i.e. the freedom to receive and impart information (Article 10 of the European Convention on Human Rights, as interpreted by the European Court of Human Rights in Strasbourg, see the Autronic judgment of 22 May 1990) and the principle of the free movement of services, also entailing the freedom to receive radio and television broadcasts in the European Community (Article 56 of the Treaty on the Functioning of the European Union).

According to these principles, the European Commission specifically set out the idea of the individual's "right to use a satellite dish" in its communication of 27 June 2001 on satellite dishes (COM(2001)351 final), available on our website:

http://ec.europa.eu/internal_market/media/satdish/index_en.htm.

Notably, at European level, the Court of Justice itself stated in a decision against Belgian city regulations, that the free provision of services prevents the application of a tax on satellite dishes, as such a tax is liable to dissuade the recipients of the television broadcasting services seeking access to television programmes broadcast from other Member States, since the reception of such programmes is subject to a charge which does not apply to the reception of programmes coming from broadcasters established in Belgium (decision De Coster of 29 November 2001, case C-17/00):

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:62000J0017:EN:HTML>

However, I have to specify that the right to use a satellite dish may have to meet proportionate limitations, either because of overriding reasons relating to the general interest or the protection of other fundamental rights, such as, in your case, the right to property. In such cases, a balance must be sought in order to take account of all interested parties.

Nevertheless, the exercise of this right may not be obstructed by rules for installation and use which are too onerous and which would restrict the ability of an individual to receive all the broadcasts of his or her choice, let alone by a general ban, an unjustified refusal, or a refusal on aesthetic grounds.

It should be emphasised that a general and total ban would not be acceptable under the aforementioned provisions in that it would completely impede the fundamental right to freedom expression and the free reception of information and services. It is certainly possible for rules to be imposed to lessen the impact on buildings, but the right to use a satellite dish must be protected without the imposition of conditions which are too onerous for the interested party.

I would also like to inform you that the settled case law of the Court of Justice of the European Communities on the free movement of services (within the meaning of Article 49 of the EC Treaty) does not distinguish between the origin of the obstacles to be removed and, on the contrary, specifies that the prohibition on restrictions to this fundamental freedom applies not only to the action of public authorities but also extends to rules of any other nature aimed at regulating in a collective manner the provision of services. It has also stated that the removal of obstacles to the free movement of services, which is a fundamental objective of the European Community, would be compromised without the removal, not only of State barriers, but also of barriers resulting from the exercise of their legal autonomy by associations or organisations not governed by public law (see, *inter alia*, the following judgments: Walrave of 12 December 1974, case 36/74; van Ameyde of 9 June 1977, case 90/76; Donà of 14 July 1976, case 13/76; Bosman of 15 December 1995, case C-415/93; Lehtonen of 13 April 2000, case C-176/96, etc.).

Furthermore, in its communication on satellite dishes referred to at the beginning of this letter, the Commission stated that any obstacles to freedom of choice, discrimination between the alternative means of receiving services, or indirect restrictions on the right to use a satellite dish are unacceptable. It would therefore be unacceptable for individuals to be required to receive television broadcasts by cable rather than by satellite dish.

This being said, I have to acknowledge that the legal application of these principles requires a detailed examination of the facts of the case, which cannot be done at Commission level. However, I hope that this legal statement may be of use in the procedure currently pending on your case.

Yours sincerely,



Jean BERGEVIN

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