

*This translated ruling is provided for information purposes only. Only the Swedish-language versions are the official rulings.*

---

In case no. 3600-19, **TV4 AB** (Appellant) v. the **Swedish Broadcasting Commission** (Respondent), the Supreme Administrative Court delivered the following judgment on 12 May 2020.

---

## **RULING OF THE SUPREME ADMINISTRATIVE COURT**

The Supreme Administrative Court rejects the appeal.

### **BACKGROUND**

1. Programmes in TV broadcasts which primarily involve news or commentary on news may not be sponsored. Sponsoring means contributions which an outside party provides to a media service provider in order to finance, *inter alia*, programmes for the purpose of promoting the contributor's name, trademark, reputation, business, product or interests.
2. The Swedish Broadcasting Commission, by carrying out an ex-post review, monitors whether programmes broadcast on TV comply with the regulation and may apply to the Administrative Court in Stockholm for an order that a media service provider which is in violation of, for example, the prohibition against sponsorship is to pay an administrative charge.
3. The Swedish Broadcasting Commission applied to the administrative court to order TV4 AB to pay an administrative charge of SEK 50,000 for violating the prohibition against sponsorship. As a basis for the application, the following was stated. The broadcasts of the programme *Sporten* were sponsored on two occasions on a specific day. The programme has characteristics of news and may

therefore principally be regarded as involving news. Accordingly, it was not permissible to sponsor the broadcasts.

4. The administrative court granted the application. According to the administrative court, the arrangement and visual components of the programme were similar in several respects to those which may normally be associated with a news broadcast. The content, which involved brief and informative reports regarding current sports-related events, suggested that the programme is covered by the term news. Taking into account specifically the fact that the programme had been broadcast on a nationwide channel and was widely disseminated amongst the public and that TV4 had previously been found guilty of having violated the prohibition against sponsoring, the administrative charge was deemed to be reasonable.
5. The Administrative Court of Appeal in Stockholm rejected the company's appeal to that court.

#### **CLAIMS, ETC.**

6. *TV4 AB* claims that the judgments of the lower courts are to be set aside and that the application by the Swedish Broadcasting Commission is to be rejected and states the following. It cannot have been the legislators' intention that brief programmes, with the aim of providing updates within any area whatsoever, are deemed to be news of the type referred to in the legislation.
7. *The Swedish Broadcasting Commission* is of the opinion that the appeal is to be rejected and states that the relevant broadcasts are arranged as news broadcasts and that they therefore meet the criteria for programmes which may not be sponsored.

## **REASONS FOR THE RULING**

### **The question in the case**

8. The question in the case is whether a programme in a TV broadcast which only contains sports news constitutes a programme which primarily involves news or contains commentary on news.

### **Legislation, etc.**

9. Pursuant to Chapter 7, section 1 of the Radio and Television Act (2010:696), programmes in television broadcasts, teletext or in on-demand TV that mainly concern news or contain commentary on news may not be sponsored. According to Chapter 3, section 1 (14), sponsorship means any contribution that a party who is not engaged in supplying or producing radio, TV broadcasts, on-demand TV or teletext makes in order to finance these media services or programmes with the intent of promoting the contributor's name, trademark, reputation, business, product or interests.
10. Chapter 17, section 5, first paragraph (6) and Chapter 19, section 4, first paragraph provide that the Administrative Court in Stockholm, on application from the Swedish Broadcasting Commission, may order a person who does not comply with the provisions on sponsoring in Chapter 7, section 1 to pay an administrative charge. Pursuant to Chapter 17, section 5, second paragraph, the court shall, during its review, particularly take into account the nature, duration and scope of the violation.
11. The Radio and Television Act implements parts of Directive 2010/13/EU regarding audio-visual media services (the AV Directive). The character of the AV Directive as a *de minimis* directive means that the Member States may

prescribe more stringent and more far-reaching requirements within the areas coordinated through the Directive, provided that the rules comply with EU law.

### **The Court's assessment**

12. The relevant broadcasts consisted of brief programmes. The reports in the programmes dealt with news related to sports and reporting on sporting events.
13. Chapter 7, section 1 of the Radio and Television Act does not have a definition for programmes that primarily concern news or contain commentary on news. The AV Directive contains no definition of a comparable term as used therein. It cannot be understood from the wording of the statute that the area of application of the provision is limited to a specific type of news programme.
14. When a programme is sponsored, there is a risk that someone other than the media service provider will exercise editorial influence on the contents of the programme. The thought behind the prohibition against sponsoring of news programmes is to counteract such influence (*cf.* Government Bill 2009/10:115, p. 148 and recital 93 of the AV Directive). A programme of the kind that is at issue may contain extracts from broadcasts from events of general public interest and also reporting tied to the sporting world or to various sporting events as well as other matters of concern to the general public. The interest which the sponsoring prohibition intends to protect is not less relevant solely for the reason that the programme reports are related to sports and athletics.
15. The conclusion that a programme which contains only sports news constitutes a news programme is also supported by the statements in the preparatory works for Chapter 5, section 48 a of the Copyright to Literary and Artistic Works Act which was enacted in conjunction with the adoption of the Radio and Television Act. The section, which implements Article 15 (previously Article 3(k)) of the AV

Directive, contains provisions regarding the right for television companies within the EES to reproduce extracts from broadcasts from events of major public interest in general news programmes. The preparatory works state that the term news programme, within the meaning of the AV Directive, also covers such programmes that contain, for example, sports news (Government Bill 2009/10:115, pp. 173 and 327).

16. In light of this, the Supreme Administrative Court is of the opinion that a programme which contains only sports news constitutes a news programme within the meaning referred to in Chapter 7, section 1 of the Radio and Television Act. Thus, TV4 has violated the prohibition against sponsoring and, accordingly, there is reason to impose an administrative charge on the company. With regard to the amount of the charge, the Supreme Administrative Court makes no other assessment than that of the lower courts. Accordingly, the appeal shall be rejected.

---

Justices Margit Knutsson, Svante O. Johansson, Mahmut Baran, Leif Gäverth and Helena Rosén Andersson have participated in the ruling.

Judge Referee: Maria Rydell.