[DE] ARD and ZDF lodge constitutional complaint regarding licence fee increase

IRIS 2025-1:1/23

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On 19 November 2024, the *Arbeitsgemeinschaft der öffentlich-rechtlichen Rundfunkanstalten der Bundesrepublik Deutschland* (German Association of Public Service Broadcasters – ARD), which comprises the nine German regional state broadcasting authorities, and *Zweites Deutsches Fernsehen* (ZDF) lodged a constitutional complaint with the *Bundesverfassungsgericht* (Federal Constitutional Court – BVerfG). The action was designed to ensure that an increase in the broadcasting licence fee, which had been recommended through an independent procedure but was currently blocked due to the opposition of several *Länder* (federal states), was implemented.

In the first part of the three-stage process employed to fix the public broadcasting fee in Germany, the ARD, ZDF, *Deutschlandradio* and ARTE submit the funding requirements associated with fulfilment of their legal remit to the independent *Kommission zur Ermittlung des Finanzbedarfs der Rundfunkanstalten* (Commission for Determining the Financial Requirements of Broadcasters – KEF). The KEF then examines these requirements and recommends that the *Länder* either maintain or amend the fee, which is paid by private households in Germany. Finally, the 16 German *Länder*, which hold legislative power in the broadcasting sector, set the fee in a new state treaty. In February 2024, the KEF, after examining the broadcasters' requirements, had recommended a monthly fee increase of EUR 0.58 (from EUR 18.36 to EUR 18.94) from 1 January 2025. However, since some *Länder* governments opposed the proposed increase, largely on account of a lack of public support and understanding, the *Länder* have yet to agree to the change. A state treaty that covers all the broadcasting authorities can only be passed if all the *Länder* agree. The Conference of Minister-Presidents held at the end of October 2024, which gave them a final chance to adopt the increase before the start of 2025, failed to produce a unanimous decision.

By submitting a complaint to the BVerfG, the ARD and ZDF hope to obtain a court order to ensure that the fee increase is implemented. They argue that the KEF stated in its report that, if its recommended increase was not fully adopted, the funding they needed to fulfil their current remit would be jeopardised. The *Länder* should take this into account. In particular, media policy objectives should not play a role in the setting of the licence fee, which was determined by an

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independent body in order to ensure the independence of funding. This is not the first legal dispute concerning the extent to which the *Länder* are bound by the KEF's recommendations when setting the licence fee. In 2005, for example, the ARD, ZDF and *Deutschlandradio* appealed against a decision to set the fee EUR 0.28 below the figure recommended by the KEF. The BVerfG (judgment of 11 September 2007 – 1 BvR 2270/05) ruled in their favour and found that the freedom of broadcasting, protected under the German Constitution, had been infringed because the grounds given for deviating from the KEF recommendation were either invalid, insufficiently convincing or based on false assumptions. In 2020, the broadcasters filed another complaint, this time after one *Land* (Saxony-Anhalt) had failed to approve the KEF's recommended fee increase, to which all the other *Länder* had agreed. The BVerfG (ruling of 20 July 2021 – 1 BvR 2756/20, 1 BvR 2777/20, 1 BvR 2775/20) again found in the public broadcasters' favour, ruling that Saxony-Anhalt's rejection of the proposal had been unlawful. It was true that the three-stage cooperative process for setting the broadcasting fee did not exclude the possibility of deviating from the KEF's recommendation. However, it should not be affected by programming-related and media policy objectives.

The BVerfG must therefore now issue another ruling. The constitutional complaint was lodged shortly after the Conference of Minister-Presidents held at the end of October 2024 had adopted a comprehensive reform of public service broadcasting that is expected to be ratified through an amended state media treaty in the next year. The reforms mainly comprise cost-cutting measures, although these will not have any immediate effect. Meanwhile, the heads of government of the *Länder* have also announced that they intend to propose a new model for setting the broadcasting fee in the near future. They want to introduce a staggered opposition model in which a change to the fee would no longer require the approval of all 16 *Länder*. Instead, a certain proportion of the *Länder*, depending on the proposed percentage increase, would have to actively oppose the increase for it not to be effective.

Pressemitteilung des ZDF

https://presseportal.zdf.de/pressemitteilung/zdf-legt-verfassungsbeschwerde-ein

ZDF press release

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