[DE] Federal Constitutional Court on Position of Private Broadcasters in Bavaria

IRIS 1998-4:1/8

Wolfram Schnur
Institute of European Media Law (EMR), Saarbrücken/Brussels

In a decision on 20 Febraury 1998 the Federal Constitutional Court (Bundesverfassungsgericht - BVerfG) allowed the constitutional appeal made by a private Bavarian broadcaster against a judgment delivered by the Bavarian Constitutional Court of Appeal (Bayerischen Verfassungsgerichtshofes) and upheld the basic right to the freedom to broadcast in accordance with Article 5, para.1, sentence 2 of the Basic Law (Grundgesetz - GG) in respect of other private Bavarian broadcasters.

On the basis of Article 111a of the Bavarian Constitution (Bayerischen Verfassung - BV), broadcasting in Bavaria is a service rendered exclusively by public-sector carriers. Private offerers conclude contracts with media service companies for their broadcasting activities; these contracts have to be approved by the Bavarian Regional Office for the New Media (Bayerische Landeszentrale für neue Medien - BLM). If there is no agreement, the BLM makes arrangements for the inclusion of the private broadcasting station if the statutory requirements are met. Thus from a legal point of view the BLM is the sole broadcaster.

The Bavarian Constitutional Court of Appeal (Bayerische Verfassungsgerichtshof) had set aside an interim order of the Bavarian Administrative Court of Appeal which ensured the continuation of the complainant's broadcasting service temporarily. The case was taken to the administrative court of appeal because the BLM refused to make arrangements for the inclusion of the complainant's station.

The Bavarian Constitutional Court of Appeal set aside the interim order of the Administrative Court of Appeal on the grounds that the basic right to the freedom to broadcast which the BLM was meant to ensure had not been sufficiently taken into account. The Constitutional Court of Appeal held that the rule the BLM should apply in exercising its discretion in allowing access for private offerers was simply the rule of equality, thereby preventing any arbitrary decisions.

The BVerfG countered in its decision that the term "broadcaster" referred not only to carriers as far as the freedom to broadcast was concerned, but to anyone who actually decided on the structure of programmes, planned a programme schedule, put broadcasts together and offered them to the public under a single identity. According to the BVerfG's decision, even applicants for a broadcasting

© European Audiovisual Observatory (Council of Europe) 2026

licence could claim the basic right to the freedom to broadcast and thereby maintain the constitutionally ordered rules on choice and authorisation. The BVerfG concluded that, in its decisions on authorisation, the BLM must observe not only the principle of equal treatment but also the basic right of private broadcasters on the grounds of Article 5, para.1, sentence 2 of the GG; the decision of the Bavarian Constitutional Court of Appeal was thus founded on an assumption which was incompatible with the Basic Law.

Beschluß des BVerfG vom 20. Februar 1998, Az. 1 BvR 661/94

Decision of the Federal Constitutional Court of 20 Febraury 1998, ref. No 1 BvR 661/94

© European Audiovisual Observatory (Council of Europe) 2026

© European Audiovisual Observatory (Council of Europe) 2026