[DE] Constitutional complaint against new rbb state treaty rejected

IRIS 2025-9:1/19

Dr. Jörg Ukrow
Institute of European Media Law (EMR), Saarbrücken/Brussels

In its decision of 23 July 2025, which was published on 21 August 2025, the First Senate of the *Bundesverfassungsgericht* (Federal Constitutional Court) rejected a constitutional complaint filed by Rundfunk Berlin-Brandenburg (rbb) concerning the reformed *rbb-Staatsvertrag* (rbb state treaty).

The challenged provisions of the treaty concern the regionality and organisation of rbb as a multi-state broadcaster under federal responsibility.

rbb is a public broadcaster jointly established by the federal states of Berlin and Brandenburg. It complained to the Federal Constitutional Court that its freedom of broadcasting under Article 5(1) sentence 2 of the *Grundgesetz* (Basic Law - GG) had been infringed by various provisions of the state treaty establishing rbb, which had been amended in 2023. The aim of the new state treaty was to learn lessons from the failures at rbb that had come to light in 2022 and to counteract structural deficits through an effective compliance system and maximum transparency. It also aimed to strengthen rbb's regional presence through appropriate distribution of resources and locations.

In particular, rbb challenged provisions under which:

1. in addition to the directorate, which was already responsible for managing rbb, a board of directors was appointed as a second management body. This board of directors consisted of the directorate and two directors. Its responsibilities, defined with reference to the overall responsibility of the directorate, included matters of considerable importance and the resolution of disagreements affecting multiple parts of the business. The independent management of the different parts of the business by the directors was described with reference to the overall responsibility of the directorate and the deliberations of the board of directors;

2. rbb was obliged to establish regional studios and regional offices in cities in Brandenburg;

3. rbb was obliged to present each of the two states separately in the state television programming for Berlin and Brandenburg by means of a regional split of total daily airtime lasting at least 60 minutes, and to provide an additional management level for state programming that reported directly to the director of

© European Audiovisual Observatory (Council of Europe) 2025

programming.

The *Bundesverfassungsgericht* did not consider these provisions to be an infringement of broadcasting freedom. It held that the legislature was not constitutionally prescribed a specific structural model for organising the management of public broadcasters. Rather, it was granted freedom of organisation as long as the functionality of broadcasting was not jeopardised. The organisation of rbb’s management, with its overlapping responsibilities, did not jeopardise its ability to function and fulfil its tasks. The distribution of responsibilities between the bodies appointed to manage rbb enabled mutual control that ensured the fulfilment of its tasks. The weakening of a directorate acting alone by reducing its powers, which was criticised by rbb, did not necessarily restrict its ability to function, but initially just resulted in a different decision-making structure. In principle, the broadcasting legislature was free to establish co-operative decision-making processes, which provided the opportunity to balance any opposing points of view, and mutual control. The directorate’s right to object to the decisions of the board of directors served to prevent decisions that it considered unacceptable in light of its overall responsibility.

According to the court, the establishment of a limited minimum number of locations for regional organisational units also did not raise any constitutional concerns related to the implementation of broadcasting freedom guarantees. It ensured rbb would have a nationwide presence, promoted regional diversity of programming and was appropriate to rbb’s status as a multi-state broadcaster. The production of regional programmes took into account the recipients’ resulting special identification and information needs. The protection of media pluralism at regional level was also an objective expressly recognised in Article 11(2) of the EU Charter of Fundamental Rights.

The establishment of an additional management level for the state television channels in Berlin and Brandenburg also did not violate rbb's broadcasting freedom. There was no evidence that this would impede management and thus jeopardise rbb’s ability to function, nor that it would result in state influence on employees who organised and designed its programmes.

Finally, the requirement that at least 60 minutes of total daily airtime should comprise separate programmes for each state did not infringe rbb’s broadcasting freedom. Although broadcasters’ freedom of programming did entitle them to determine the required time and scope of their programmes, the minimum duration stipulated in the state treaty was compatible with freedom of programming as the core of broadcasting freedom. The minimum time that must be devoted to state-specific topics was rather limited in relation to overall airtime, while journalistic freedom of content was maintained. This rule gave rbb ample scope to devote more time to such programmes. State influence was limited to ensuring a minimum quota of regional programmes, which was a basic principle

© European Audiovisual Observatory (Council of Europe) 2025

and thus a legitimate legislative concern within the framework of the federal cooperative community of responsibility.

Pressemitteilung des Bundesverfassungsgerichts

https://www.bundesverfassungsgericht.de/SharedDocs/Pressemitteilungen/DE/2025/bvg25-075.html

Press release of the Federal Constitutional Court

https://www.bundesverfassungsgericht.de/SharedDocs/Pressemitteilungen/DE/2025/bvg25-075.html

Beschluss - 1 BvR 2578/24 -

https://www.bundesverfassungsgericht.de/SharedDocs/Entscheidungen/DE/2025/07/rs20250723_1bvr257824.html?nn=68080

Decision 1 BvR 2578/24 -

https://www.bundesverfassungsgericht.de/SharedDocs/Entscheidungen/DE/2025/07/rs20250723_1bvr257824.html?nn=68080

© European Audiovisual Observatory (Council of Europe) 2025

© European Audiovisual Observatory (Council of Europe) 2025