

## [DE] Berlin-Brandenburg court rules that all media outlets are entitled to non-discriminatory access to public sector advertising space

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*Christina Meese  
Institute of European Media Law*

On 21 September 2026 (case no. OVG 1 S 63.26), the Higher Administrative Court of Berlin-Brandenburg (*Oberverwaltungsgericht Berlin-Brandenburg* – OVG) ruled in summary proceedings that the Berlin Public Transport Authority (*Berliner Verkehrsbetriebe* – BVG) must continue the advertising campaign for a controversial media portal because previously allocated, unobjectionable advertising space could not be withdrawn solely on the grounds of potential protests or political controversy. Security risks should be managed through police measures rather than by unilaterally terminating contracts with "unwelcome" media outlets. Furthermore, the OVG prohibited BVG from classifying certain statements made by the portal's editor-in-chief in this context as "manifestly unlawful", as state-owned undertakings had no right to launch a political "counter-attack" that went beyond simple rectification.

In April 2026, the media portal NIUS had booked exterior advertising on a double-decker bus and interior advertising in the underground train network with BVG. The advertising had been reviewed and approved by BVG which, as a public-law body, permits advertising on and inside its vehicles provided it has been authorised in advance in accordance with its guidelines. NIUS is a German online media portal and news platform launched in summer 2023, which is largely shaped and led by a former editor-in-chief of the *Bild* newspaper. It primarily distributes expensively produced video content via its own website and on YouTube. The portal sees itself as a "counter-voice" to established media and public service broadcasters. Its reporting focuses heavily on polarising topics such as migration, asylum policy, security issues, energy policy, gender debates, and criticism of the federal government and established media structures. Critics and media scholars regularly accuse it of adopting a highly opinionated, polarising and often sensationalised style of presentation, which is why it is viewed as controversial in media discourse. Consequently, the portal's advertising campaign in Berlin had attracted public opposition, including calls on social media by third parties to damage BVG facilities and disrupt operations. A double-decker bus bearing NIUS advertising was followed for several hours by a billboard van displaying counter-slogans. In response, the NIUS editor-in-chief posted on X an AI-generated image of a supposed advertising motif on Berlin public transport, accompanied by the slogan "We are becoming increasingly popular with both

genders.” Following this post, which in BVG’s view crossed the boundaries of freedom of expression and freedom of advertising, and in light of the protests and calls for violence, BVG decided to unilaterally terminate the advertising campaign. NIUS challenged this decision in court.

The Berlin Administrative Court (*Verwaltungsgericht Berlin*), as the court of first instance, had already largely upheld the urgent application filed against the early termination of the advertising campaign. The OVG upheld its decision. NIUS was entitled to equal and non-discriminatory access to BVG advertising space once BVG had reviewed and approved the content of the advert. This right to participation stemmed from the freedom of expression and freedom of the press under Article 5(1) of the Basic Law (*Grundgesetz* – GG), as well as the principle of equal treatment under Article 3 GG. The mere fact that third parties might, as a result of the advertising campaign, commit acts of violence against BVG facilities and disrupt its operations did not justify excluding the media portal from using the advertising space. Rather, the court told BVG that it should respond to unlawful threats on social media, as well as any harassment of its vehicles or damage to its property, with appropriate police and criminal law measures. It was BVG's responsibility to report such behaviour by third parties, but this did not justify terminating agreements with contractual partners. Security concerns could only justify the loss of access rights if public safety and order could not be maintained even with police intervention. However, in the OVG’s view, there were no grounds for this in the present case (not least because the police had not been called in).

Another aspect of the proceedings concerned statements made by BVG in its press releases on the matter. In these, it had described the aforementioned post by the NIUS editor-in-chief as “manifestly unlawful”. According to the court, an injunction could be sought against this. Under the case law of the Federal Constitutional Court (*Bundesverfassungsgericht*), BVG was only entitled to a “right of reply” in the form of a request for the correction of the fake advertising motif.

### ***Pressemitteilung des OVG***

<https://www.berlin.de/gerichte/oberverwaltungsgericht/presse/pressemitteilungen/2026/pressemitteilung.1716742.php>

*Press release of the Higher Administrative Court*

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