[DE] Federal Constitutional Court Rejects Radio Bremen Appeal

IRIS 1999-3:1/8

Alexander Scheuer
Institute of European Media Law (EMR), Saarbrücken/Brussels

In January this year, the Federal Constitutional Court (Bundesverfassungsgericht - BVerfG) dismissed a complaint by the public broadcasting company " Radio Bremen" concerning an alleged infringement of the Constitution.

The appellant had opposed temporary provisions set out in the Act amending the Radio Bremen Act of 27 October 1998, under which the Board of Directors was to be dismissed. The Board of Directors, of which the Executive Director (Intendant) was a member under the previous law, was to be dismissed as soon as the Amendment Act came into force.

Radio Bremen's complaint was partly based on the fact that the Executive Director was being dismissed under the Amendment Act after a previous vote, taken by the appropriate body, the Broadcasting Rundfunkrat), had resulted in his dismissal, contrary to political expectations. Council (

The Constitutional Court recognised in principle that organisational changes resulting in terms of office being cut short were, to some extent, open to the suspicion that hidden influences might be affecting the broadcasting company's personnel policy. Improper behaviour could be ruled out, however, if there was an important practical reason for the change, which should have a strong impact on the way the company was run. Moreover, the practical reform should be so urgent that it would be jeopardised if it were not carried out before the term of office had come to an end. The Court held that these conditions had been fulfilled in this case.

The Court stated that the organisational reform being called for had far-reaching implications for the company. By moving away from the model of a board of directors and introducing a new executive body (also known as the Intendant), the legislator hoped to find a way of averting an emerging threat to the company's very existence. Not only was the media policy debate on structural reform of the German public service broadcasting union (Arbeitsgemeinschaft der öffentlich-rechtlichen Rundfunkanstalten der Bundesrepublik Deutschlands - ARD) suggesting that Radio Bremen be closed down, but calls to abolish or change the way the ARD's funding was distributed were having the same effect.

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Under the new statutory provisions, the Board of Directors would be subordinate to the new executive body and would have to be aware of the latter's overall responsibility. From now on, the Broadcasting Council responsible for electing the Board of Directors would depend on the new executive body's nominations. In the Constitutional Court's opinion, there was therefore no continuity of duties, which was why the decision to end current terms of office and hold the forthcoming election of new bodies seemed necessary. In this respect, the legislator was not obliged to wait until the terms of office had been completed; rather, considering the urgency of the organisational changes in view of the current threat to the company's existence, swift reforms were perfectly justified.

Bundesverfassungsgericht, Beschluß vom 15. Januar 1999, 1 BvR 1946/98.

Judgement by the Federal Constitutional Court, 15 January 1999, no. 1BvR 1946/98.

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