[DE] Decision on the Conflict of Basic Rights between Private Broadcasters and the State Central Office for New Media

IRIS 1999-9:1/14

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

In its judgement of the 16th June 1999 the Bundesverwaltungsgericht (Federal Administrative CourtBVerwG) dismissed the appeal by the Bayerische Landeszentrale für neue Medien (Bavarian State Central Office for New Media - BLM) against the ruling of the Bayerischer Verwaltungsgerichtshof (Bavarian Administrative Court - VGH) The VGH had found that the BLM had made the wrong decision concerning the application of the appellant, a local radio broadcaster, to be allowed to continue to broadcast under a frequency splitting arrangement or on its own frequency.

Initially, with a view to improving the economic conditions for local broadcasters, the BLM attempted to arrange an agreement between the appellant and other radio stations involved in frequency splitting, aimed at organising a joint programme. The BLM's Media Council accordingly drew up some minimum cooperation requirements, which did not meet with the approval of the appellant, with the result that no agreement was reached. In the light of its refusal to cooperate, the appellant's application to continue its broadcasting activity was rejected. The BVerwG saw nothing in the decision of the VGH that constituted a particular violation of basic broadcasting rights set out in Article 5, paragraph 1, sentence 2 of the Grundgesetz (Basic Law - GG). The BVerwG proceeded on the assumption, as did the Bundesverfassungsgericht (Federal Constitutional Court) before it, that the BLM in its decisions had to take into account the fact that private broadcasters were also entitled to the basic right of broadcasting freedom set out in article 5, paragraph 1, sentence 2 GG (see IRIS 1998-4: 7). The Court left open the question whether and to what extent the BLM could rely on the basic right of broadcasting freedom in licencing issues and saw, even in the event of a positive reply, no violation of broadcasting freedom in the ruling of VGH. In a conflict of basic rights, a solution should be found through practical arrangements, which would require both parties to accept compromises which in respect of the preservation of diversity of opinion, were appropriate, necessary and balanced. The senate held, in applying this principle to the instant case, that the abstract argument that the termination of frequency splitting and the joint organisation of broadcasting by hitherto independent broadcasters was necessary from an economic viewpoint did not adequately take into account the basic right of the appellant. This in any event holds true, if frequency splitting was successfully practised beforehand and it had not been demonstrated that there

© European Audiovisual Observatory (Council of Europe) 2026

was any threat to the programming and minimum economic requirements of the local broadcaster individually. The VGH had given this due consideration, while attaching no fundamental importance to the optimisation of economic conditions, but took the view that BLM had to give priority to considerations of balance and diversity of opinion.

Urteil des Bundesverwaltungsgerichts vom 16. Juni 1999, Az. BVerwG 6 C 19.98.

Judgement of the Federal Administrative Court dated 16 June 1999, Az. BVerwG 6 C 19.98.

© European Audiovisual Observatory (Council of Europe) 2026

© European Audiovisual Observatory (Council of Europe) 2026