[DE] Constitutional Court Ruling on Property Owners' Obligation Under Telecommunications Law

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In a decision announced on 26 August 2002, the Bundesverfassungsgericht (Federal Constitutional Court - BVerfG) upheld a decision of the Bundesgerichtshof (Federal Supreme Court - BGH) regarding the obligation set out in Article 57.1.1 of the Telekommunikationsgesetz (Telecommunications Act - TKG). According to that provision, the owner of a property cannot prohibit the setting up of telecommunications lines if a line or installation which is secured by a right already exists and if the property is not affected or is only insignificantly affected by such use. According to the TKG, "telecommunications lines" are cable systems which encompass not only the cables themselves, but also additional installations such as cable duct conduits and cable chambers. The appeal to the Constitutional Court concerned a dispute in which the plaintiff had sought an injunction to prevent the defendant from installing, and require it to remove, several cable chambers which were meant to be used for telecommunications purposes. The defendant was an energy supplier which, on the basis of a restricted easement agreement (which concerns the use of a property by a person authorised to use it for a particular purpose), was authorised to set up and operate a natural gas pipe.

In its decision, the BGH had ruled in the defendant's favour, stating that the property owner could not prohibit the setting up of telecommunications installations using existing facilities originally intended for another purpose. Neither could he prevent new telecommunications lines from being installed on property that was subject to a restricted easement. The appeal to the Constitutional Court disputed this ruling and the BGH's interpretation of Article 57.1.1 of the TKG.

Having examined the facts of the case, the BVerfG ruled that Article 57.1.1 of the TKG, which laid down the conditions for the obligation on property owners, conformed fully with the Constitution. Furthermore, the BGH's interpretation of the obligation had not infringed the Constitution. This obligation on property owners formed part of their duty to act in the interests of the common good where use of their property was concerned, in accordance with Article 14.1 of the Grundgesetz (Basic Law - GG). The Basic Law itself pointed out that the telecommunications sector was important for the national economy, particularly in providing the infrastructure on which media dissemination depended. The legislature needed to take this into account when revising telecommunications regulations. In weighing up the conflicting interests, the Constitutional Court

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concluded that the legislature had, through Article 57.1.1 of the TKG, only imposed a slightly greater obligation on property owners, which was also justified under the Constitution.

Beschluss des Bundesverfassungsgerichtes vom 26. August 2002, Az.: 1 BvR 142/02

http://www.bverfg.de/entscheidungen/frames/rk20020826_1bvr014202

Decision of the Bundesverfassungsgericht (Federal Constitutional Court), 26 August 2002, case no. 1 BvR 142/02

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