[DE] Is the Confiscation of Advertising Revenue Unconstitutional?

IRIS 2004-2:1/14

Jan Peter Müßig
Solicitor, Düsseldorf

In an interlocutory judgment of 13 November 2003 the Berlin Verwaltungsgericht (Administrative Court) held, in proceedings concerning the confiscation of advertising revenue derived from impugned television programmes, that section 63, paragraph 3 of the Medienstaatsvertrag Berlin-Brandenburg (the Berlin-Brandenburg Agreement on the Media MstV) was unconstitutional.

The subject of the statement of facts on which the decision was based was a television broadcaster's contributions to a programme in which unannounced visitors rang on people's doorbells at night. The occupiers of the house were addressed by name and filmed as they opened their door. In a decision of 27 June 2003, the director of the relevant regulatory body, the Landesmedienanstalt Berlin-Brandenburg (the Berlin-Brandenburg Regional Media Authority MABB), prohibited certain transmissions on grounds of violations of personality rights and asked the broadcaster to provide the necessary information for the transfer of the advertising revenue obtained through the programme. In its complaint, the broadcaster objected, among other things, to the request for information.

Under section 63, paragraph 3, first sentence of the MStV, broadcasters can be instructed to transfer fees obtained through advertising in connection with the impugned programme to the Regional Media Authority. According to the second sentence of this section, the broadcaster is required to provide the regulatory body with the necessary details for this purpose. The Court held that section 63, paragraph 3 of the MStV was unconstitutional because it breached the provisions on concurrent legislation in Article 74, paragraph 1.1 and Article 72, paragraph 1 of the Basic Law. By dealing with the confiscation of property in the relevant federal laws, the federation had made exclusive use of its concurrent right to legislate in this area, with the result that there was no scope for any further-reaching provision at Land level such as that of section 63, paragraph 3 of the MstV. In the case both of section 63, paragraph 3 of the MstV and of the federal regulations, what was at issue was the confiscation of items obtained by means of illegal conduct. In both cases, these were measures which could be situated in the criminal law field. As to the question whether section 63, paragraph 3 was in conformity with the Basic Law, that would depend on the final ruling, as the disputed decisions of the MABB were lawful in all other respects. Consequently, in its interlocutory judgment, the Court stated its intention to stay the proceedings and refer the matter to the Bundesverfassungsgericht (Federal Constitutional

© European Audiovisual Observatory (Council of Europe) 2026

Court).

VG Berlin, Urteil vom 13. November 2003, Az VG 27 A 9.03

Judgment of the Berlin Administrative Court of 13 November 2003, Case no. VG 27 A 9.03

© European Audiovisual Observatory (Council of Europe) 2026

© European Audiovisual Observatory (Council of Europe) 2026