[DE] Decision of the Administrative Court in Berlin on Payments Made by Public Authorities for Journalists to Travel

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The Administrative Court in Berlin has ruled that a public authority which funds travel for journalists directly or indirectly is subsidising the press in an unlawful manner. The decision concerned a visit to Beijing by the Mayor of Berlin. On this occasion, a limited number of airline tickets were made available to journalists from various daily newspapers. Since there were more applicants than tickets, a selection was made, and some, at least, of the journalists had their travel and accommodation paid for.

The case was brought by a daily paper whose journalists were not included and which objected to this manner of proceeding. It argued that it was not lawful for public authorities to pay the travel and subsistence expenses of media representatives or to select media representatives whose expenses would then be paid by others. The court agreed. Although not required to give an actual judgment in the special circumstances of this case, it was obliged to consider, in its decision, what the probable judgment would have been. It decided that public authorities which paid for journalists to travel were in fact breaking the law, since this violated both their obligation of impartiality and their obligation to respect the principle of equal treatment in connection with journalistic competition. It based these conclusions on the fundamental right to freedom of the press. The obligation of impartiality had been violated by the fact that paying these travel expenses was a way of subsidising the newspapers concerned. The only possible basis for this would have been a law which defined the conditions for such aid so closely that the authority would have had no discretion of its own in granting it. Clearly, however, no such law existed. The principle of equal treatment was violated by the fact that - at least in the case of journeys that invited press coverage - the expenses of all the interested papers could not be covered. This created a situation in which there might well be unequal access to information sources. Some papers would be able to have reporters on the spot, while others would have to rely on secondary sources. This was rendered even more unacceptable by the fact that there seemed absolutely no need to assist the press in this way. The public authorities fulfilled their duty to the press by providing it with information on official journeys through a press officer. After that, it was up to every press concern to do its job itself.

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Beschluß des Verwaltungsgerichts Berlin vom 28. September 1995, VG 27 A 72.95.

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