[DE] ARD Appeals Against Broadcasting Licence Fee

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In November 2005, the Landesrundfunkanstalten (Regional Broadcasting Authorities) of the ARD lodged a complaint with the Bundesverfassungsgericht (Federal Constitutional Court - BVerfG) against the fixing of the broadcasting licence fee in the 8. Rundfunkänderungsstaatsvertrag (8th Amendment to the Inter-State Broadcasting Agreement - RÄndStV). They claim that the latest procedure for fixing the licence fee breaches their freedom to broadcast as described in Art. 5.2.1 of the Basic Law. A EUR 0.88 fee increase was laid down by the regional parliaments and included in the 8. RÄndStV, EUR 0.21 less than the increase recommended by the Kommission zur Ermittlung des Finanzbedarfs der Rundfunkanstalten (Committee for the Establishment of the Financial Needs of the Broadcasting Authorities - KEF). The reasons given for this discrepancy were the "extremely tight financial situation" and the inappropriateness of the KEF's recommendation in view of the additional burden on licence fee payers. Potential savings referred to in the 14th KEF report had also been taken into account. The broadcasting authorities considered this decision to be a breach of their broadcasting freedom, since the provisions of the BVerfG's so-called 8th broadcasting ruling of 1994 had been disregarded. In this ruling, the court had laid down the principles under which licence fees should be set in consultation with the KEF, as well as the conditions in which a deviation from the KEF's recommendation was permissible. According to the BVerfG, the only verifiable grounds for such a deviation were linked essentially to "aspects of access to information and the appropriate burden on viewers/listeners". In the ARD's opinion, these conditions were not met in the grounds given in the 8. RÄndStV. The ARD's decision to ask the country's highest court to clarify the issue has caused controversy. ZDF, which is equally affected by the fixing of the licence fee, has so far resisted taking the matter to the Karlsruhe-based court and is hoping a political solution will be found in consultation with the Bundesländer. ZDF has also sent to the Minister-Presidents a proposal for a new procedure for fixing the licence fee, which retains the essential elements of the KEF procedure, but does not involve the regional parliaments once the KEF's investigation is complete. Rather, identical decrees would be issued by the regional governments, which would be bound to adopt the fee recommended by the KEF. According to this proposal, the parliaments would only have to deal with the official remit of the public service broadcasters.

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Begründung zum 8. RändStV

http://www.lfk.de/gesetzeundrichtlinien/rundfunkstaatsvertrag/download/RStV8-Begruendung.pdf

Explanatory memorandum for the 8. RändStV

Vorschlag des ZDF

http://www.zdf.de/ZDFde/inhalt/20/0,1872,2389556,00.html

ZDF proposal

Entscheidung des Bundesverfassungsgerichts vom 22. Februar 1994, Az.: 1 BvL 30/88 (BVerfGE 90, 60)

http://www.oefre.unibe.ch/law/dfr/bv090060.html

Decision of the Federal Constitutional Court of 22 February 1994, case no.: 1 BvL 30/88 (BVerfGE 90, 60)

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