[DE] Cable Fee Under Bavarian Media Act Unconstitutional

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On 26 October 2005, the Bundesverfassungsgericht (Federal Constitutional Court) decided that the rules contained in the Bayerisches Mediengesetz (Bavarian Media Act) concerning a cable service charge were unconstitutional.

Under these rules, the Bayerische Landeszentrale für neue Medien (Bavarian New Media Office) charges a fee to owners of cable connection points, which is due in addition to subscription costs payable to cable network operators for the use of cable connection points and the licence fees that are mainly used to fund public service broadcasting. The income generated from the charge is used to fund measures to promote the economic viability of local and regional TV providers and to make the availability of local and regional television as equal as possible. The rules state that the fee should be gradually reduced (it is currently EUR 0.45 per household per month). They will expire on 31 December 2008, after which the subscription fee will no longer be charged.

In the view of the Constitutional Court, the disputed provisions represent an unconstitutional restriction of the freedom of action of the fee-payers.

The Court ruled that, in principle, the charge was legal. However, when drawing up the actual rules, the Bavarian legislature had failed to ensure that the benefiting channels would offer a sufficiently balanced diversity of content. If the legislature wanted to fulfil its duty to ensure a diverse broadcasting landscape, enshrined in Art. 5.1 of the Grundgesetz (Basic Law), not just by funding public service broadcasters but also via state-assisted private broadcasters, it was obliged to ensure that, in principle, the range of channels served the communication interests of all fee-payers. Bavarian law did not include any binding provisions designed to guarantee the required level of diversity. The mere fact that the Bavarian Landesmedienanstalt (regional media authority) aimed to ensure diverse programming was not sufficient.

According to the Court's decision, in view of the limited period for which the disputed provisions will remain in force and the small amount of the fee, the rules concerning the fee may still be enforced, even though they are unconstitutional.

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Beschluss des Bundesverfassungsgerichts vom 26. Oktober 2005, Aktenzeichen: 1 BvR 369/98

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Ruling of the Federal Constitutional Court of 26 October 2005, case no.: 1 BvR 369/98

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