[DE] Federal Constitutional Court Rules on the Involvement of Political Parties in Private Broadcasting

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In a ruling of 12 March 2008, the *Bundesverfassungsgericht* (Federal Constitutional Court - BVerfG) explained its position concerning whether, and to what extent, political parties may own shares in private broadcasting companies. As part of judicial review proceedings instigated at the request of 232 members of the Bundestag, the court declared a provision of the Hessian *Privatrundfunkgesetz* (Private Broadcasting Act - HPRG) to be unconstitutional. The provision states that broadcasting licences may not be granted to political parties or voter groups, nor to companies and organisations in which political parties or voter groups own shares (see Art. 6 para. 2 no. 4 HPRG).

In support of their decision, the judges explained that the legislator, which was obliged under Art. 5 para. 1 sentence 2 of the *Grundgesetz* (Basic Law - GG) to guarantee freedom of broadcasting in a way that ensured diversity of opinion, had, on the one hand, broad discretion to regulate the involvement of political parties in private broadcasting, since it was necessary to prevent any form of political exploitation of broadcasting. It was therefore free to prohibit the involvement of political parties in private broadcasting if they were able to have a determining influence on programme organisation or content.

On the other hand, the judges thought that an absolute ban on the ownership of shares in private broadcasting companies by political parties without taking into account whether they were actually able to exert an influence was not an admissible legislative means of protecting broadcasting freedom. In other words, a ban on any direct and indirect investment by parties in private broadcasting companies did not meet the legislative objective of taking appropriate account of the relevant legal positions, i.e. those of the parties, broadcasters and broadcasting licence applicants, in the organisation of broadcasting regulations. The Constitutional Court judges further explained that such an absolute ban severely restricted the rights of the parties right, enshrined in Art. 5 para. 1 sentence 2 GG in connection with Art. 21 para. 1 sentence 1 GG , to participate in the formation of the political will of the people by exercising the freedom of communication, including freedom to broadcast. The ban forced them to dispose of their shares, even if their holding was very small, regardless of whether they were able to exercise any influence at all on the broadcasting company concerned.

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However, such a ban made barely any discernible contribution to safeguarding diversity of opinion, since it was not clear whether minority shareholdings that did not provide any determining influence could harm diversity of opinion in broadcasting. Therefore, the resulting disadvantages suffered by political parties, even bearing in mind the extensive powers of the legislator, were disproportionate to the objectives of the legislative provision.

Under this decision, the *Land* of Hessen is required to adopt new legislation, which conforms with the Constitution, by 30 June 2009.

Urteil des Bundesverfassungsgerichts vom 12. März 2008 (Az.: 2 BvF 4/03)

http://www.bverfg.de/entscheidungen/fs20080312_2bvf000403.html

Judgment of the Federal Constitutional Court, 12 March 2008 (case no.: 2 BvF 4/03)

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