[DE] OVG Saarlouis Upholds Appeal against VG Saarland Ruling

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The *Oberverwaltungsgericht Saarlouis* (Saarlouis Higher Administrative Court - OVG) has upheld an appeal by the mayor of Saarbrücken against a decision of the *Verwaltungsgericht Saarland* (Saarland Administrative Court - VG), with the proviso that the mayor, in accordance with the OVG's interpretation of the law, should issue a new decision concerning the disputed application of the private broadcaster *Funkhaus Saar GmbH*.

Funkhaus Saar GmbH had asked for permission to film the mayor's public meetings for television reporting purposes. After the mayor had refused to permit such filming, the broadcaster successfully applied to the VG, via an urgent procedure under Article 123 of the *Verwaltungsgerichtsordnung* (Administrative Courts Code of Procedure), for permission to film for reporting purposes only.

In its summary examination of the urgent application, the OVG concluded that the broadcaster had no automatic right to film the mayor's public meetings. It only had the right to an unbiased and rational decision.

The OVG believes that, under the reporting right protected by the freedom of broadcasting under Article 5(1)(2) of the *Grundgesetz* (Basic Law - GG), it should be possible to use recording and transmission equipment to broadcast, either in full or in part, live or delayed, sound and images of an event to viewers and listeners. However, the freedom of broadcasting did not include the right to demand access to an information source. The protection provided under Article 5(1)(1) GG only applied once information was made accessible to the public, and only covered the information itself. The fact that a meeting had to be open to the public did not mean that broadcasters had the right to film it. Such a right depended not only on whether the meeting was open to the public, but also on the type of access granted. From a constitutional law point of view, there was no fundamental reason why public meetings of a city or municipal council should only be open to the public (and not to the media). Article 43(1) of the *Saarländisches Kommunalselbstverwaltungsgesetz* (Saarland municipal self-administration act - SLKSVG), which gave certain procedural powers to the council chairman, could be considered an admissible restriction of the broadcasting freedom enshrined in Article 5(1)(2) GG. Article 43 SLKSVG should be interpreted as authorising the council chairman, in view of the basic freedom of broadcasting

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and respecting the proportionality principle, to exercise his powers by prohibiting the type of media access requested by *Funkhaus Saar GmbH*. This particularly applied if it could be assumed that this was the only way of ensuring that the city or municipal council could function without interference. This was a discretionary decision.

According to reports, *Funkhaus Saar GmbH* has lodged a complaint with the Constitutional Court about the OVG's decision.

Beschluss des OVG vom 30. August 2010 (Az. 3 B 203/10)

http://www.rechtsprechung.saarland.de/cgi-bin/rechtsprechung/sl_frameset.py

OVG ruling of 30 August 2010 (case no. 3 B 203/10)

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