[DE] Desire for HDTV No Justification for Satellite Dish

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The *Bundesgerichtshof* (Federal Supreme Court - BGH) has decided that a tenant who wants to receive HDTV is not, in principle, entitled to install a satellite dish.

The defendant in this case was a tenant who had installed a satellite dish on his balcony so that he could receive high definition television (HDTV) programmes, which were not available via the cable network. His landlord objected and demanded that he remove the dish. The appeal court found in the landlord's favour, but allowed an appeal to the BGH.

The BGH ruled that the appeal was inadmissible because the appeal court's ruling did not mention any of the possible grounds of appeal listed in the law (Articles 552a(1) and 543(2)(1) of the *Zivilprozessordnung* - Code of Civil Procedure). The BGH also pointed out that the question of when the tenant of a house with a broadband cable connection was entitled to install a satellite dish against his landlord's wishes had already been clarified in relevant case-law of the BGH and *Bundesverfassungsgericht* (Federal Constitutional Court).

The BGH also ruled that the tenant's request was, in any case, ill-founded. It held that the tenant's fundamental right, under Article 5(1)(1) of the *Grundgesetz* (Basic Law - GG), to inform himself without hindrance from generally accessible sources must be protected, even in cases such as this. However, this should be weighed against the landlord's equally important property right, enshrined in Article 14(1)(1) GG, since the landlord must, if necessary, allow a receiving device to be installed on his property. However, this weighing up process could not be fully examined by the appeal court because this was the original task of the trial judge. There were no obvious errors in the appeal court's application of the law. Indeed, the court of lower instance had correctly based its decision on the fact that a tenant's right to information, protected in Article 5 GG, was generally protected sufficiently if the landlord provided a broadband cable connection with access to a sufficient number and quality of channels.

Finally, the BGH stressed that tenants were, in principle, allowed to receive satellite channels, even when a cable connection was provided. Under current legislation, it was only necessary to obtain permission to install the required satellite dish if it was necessary to interfere with the structure of the building or if its outward appearance would be permanently damaged. This is not normally the case when a visually inconspicuous parabolic reflector is installed on a stand.

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Beschluss des BGH vom 21. September 2010 (Az. VIII ZR 275/09)

http://juris.bundesgerichtshof.de/cgi-bin/rechtsprechung/document.py?Gericht=bgh&Art=en&sid=27b412a67d0c6f1ca4b5c8b891b64d4c&nr=53917&pos=0&anz=1

BGH decision of 21 September 2010 (case no. VIII ZR 275/09)

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