[DE] Federal Administrative Court Rules on Film Contributions

IRIS 2011-4:1/17

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On 23 February 2011, the Bundesverwaltungsgericht (Federal Administrative Court - BVerwG) ruled that the obligation to pay film contributions is compatible with the German Constitution and therefore rejected complaints by several cinema operators.

According to the Filmförderungsgesetz (Film Support Act - Art. 66 et seq. FFG), cinema operators, video companies and television providers are obliged to pay film contributions to the Filmförderungsanstalt (Film Support Office - FFA).

However, under the version of the FFG that was valid until July 2010, while cinema operators and video companies had to pay a fixed amount laid down by law, television providers were free to negotiate the amount of their contributions with the FFA. The cinema operators complained that this infringed the principle of equality of contributions derived from Article 3(1) of the Grundgesetz (Basic Law - GG) and contested their obligation to pay the contributions.

The BVerwG also had reservations concerning the constitutionality of this unequal system and, in February 2009, referred the matter to the Bundesverfassungsgericht (Federal Constitutional Court - BVerfG) (see IRIS 2009-4/8 and IRIS 2010-1/17).

In order to dispel these concerns and, at the same time, create a secure legal basis for the financing of the FFA, the German legislator adopted an amendment to the FFG in July 2010, establishing a legal obligation for television companies to pay a fixed level of contributions (see IRIS 2010-8/22).

Consequently, the BVerwG revoked its decision to refer the matter to the BVerfG because it considered that the potentially unconstitutional regime had been corrected. It added that the legality of the obligation for the cinema, video and television industries to pay the contributions was in no doubt. These industries benefited financially from the exploitation of German films at national level, and these films were supported by the FFA. It was therefore appropriate that they should contribute to the costs of the film aid system. The legislator’s failure to include other market players - particularly film exporters - was justified because they made their profits abroad. The BVerwG also ruled that the federal government had legislative competence in the field of business promotion

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(promotion of the film industry in this case) and was therefore also entitled to regulate the film contributions system by law.

Pressemitteilung des BVerwG zu den Urteilen vom 23. Februar 2011 (Az. 6 C 22.10 bis 30.10)

http://www.bundesverwaltungsgericht.de/enid/8df1dd839b1d00d2a9102374cf145d61,85363d7365617263685f646973706c6179436f6e7461696e6572092d093133353838093a095f7472636964092d0931393535/Pressemitteilungen/Pressemitteilung_9d.html

Press release of the Federal Administrative Court on its rulings of 23 February 2011 (case no. 6 C 22.10 to 30.10)

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