[DE] Federal Constitutional Court decision on media concentration

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On 18 December 1996, the Federal Constitutional Court rejected several constitutional appeals by the Berlin-Brandenburg Media Authority (Medienanstalt Berlin-Brandenburg - MABB) as inadmissible. The appeals referred to legal disputes concerning the licensing of the German Sports Television Channel (Deutsches Sportfernsehen DSF), which is part of the Kirch group. Although several Land media authorities had suggested that licensing DSF might be incompatible with the ban on concentrations contained in the 1991 Agreement on Broadcasting between the Federal States in United Germany, the Bavarian Regional Office for New Media (Bayerische Landeszentrale für neue Medien - BLM) had issued the licence. The MABB applied to the administrative courts (see IRIS 1995-8: 10) and the Bavarian Constitutional Court to set this decision aside. Appeal proceedings in the Federal Administrative Court are still pending. The constitutional appeals were directed against decisions in which the Bavarian Constitutional Court had deferred or anulled the suspensive effect (confirmed by the administrative courts) of the application brought by the MABB against the decision of the BLM to license the DSF.

In its constitutional appeals, the applicant claimed that basic rights under Article 5, para. 1, sentence 2, Article 19, para. 4, and Article 101, para. 1, sentence 2 of the Basic Law (the Federal Constitution) had been violated. It argued that the Bavarian Constitutional Court had used Article 111 a of the Bavarian Constitution to reduce the basic right enshrined in Section 5, para. 1, sentence 2 of the Basic Law to a subjective organisational freedom for the BLM. This had the effect of consolidating undesirable developments concerning concentrations in the private broadcasting sector, while making it impossible for the applicant to take court action to rectify them. This undermined the fundamental conditions laid down by the Basic Law for the licensing of private broadcasters. The Federal Constitutional Court rejected the constitutional appeals on formal grounds. It found that legal remedies had not been exhausted, since the applicant was still free to apply, using the urgent procedure, for judicial protection to the Federal Administrative Court, before which the main proceedings were pending.

It is true that the Federal Constitutional Court's decision says nothing on the main issue, but it does give the Federal Administrative Court some clear indications. It states that an urgent application of this kind is by no means hopeless, and refers to its own case-law, which has never in the past left any doubt that plurality of

opinion in broadcasting is important for the formation of individual and collective opinion, and thus for the development of personality and the maintenance of democratic order (BverfGE 12, 205; 57, 295; 73, 118; 83 238). In the present decision, too, it says that compliance with the rule on protecting plurality of opinion is "imperative", and adds that recent developments have in no way reduced that rule's importance. Among such developments, it speaks of the trend towards horizontal integration of the television market, and vertical integration of broadcasting bodies, production firms and the owners of film and sports transmission rights, and also towards the privatisation of transmission facilities. Finally, in its reasons, it explains that compliance with this rule is important because, once things have gone wrong in this sphere, the influence which this gives certain parties - and which can also be exerted politically - makes it very hard to put them right.

Bundesverfassungsgericht, Beschluß vom 18. Dezember 1996, -1 BvR 748/93-, -1 BvR 616/95-, -1 BvR 1228/95.

Federal Constitutional Court, decision of 18 December 1996, -1 BvR 748/93-, -1 BVR 616/95-, -1 BvR 1228/95