[DE] What makes a cable operator? Bavarian court decides

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The applicant operates several broad band cable facilities in Bavaria, using them to relay radio and television programmes received on his personal satellite installation to connected, fee-paying households. On 23 May 1996, he lodged a complaint against the notification requirement embodied in Section 38 I of the Bavarian Media Act and the requirement, embodied in Section 38 II of the Act, that contracts on the retransmission of satellite programmes be concluded with two media operating companies responsible in this area. He argued that he was not an operator within the meaning of Section 38 I of the Act, since clients decided which programmes they wanted to receive. He also argued that the ten-household threshold, above which notification was required, violated basic rights. In its decision of 9 September 1996, the Bavarian Administrative Court found that the applicant was a cable operator within the meaning of Section 38 I of the Bavarian Media Act, even if he described himself as "a sound and television reception and distribution service renter" to clients and concluded rental contracts with them on that basis. It argued that, as the owner and renter of his cable facilities, he had free disposal over them. It was true that his clients decided how much of the service they wanted to take, but they could take only what he offered them. The applicant decided, on the basis of his reception facilities, which programmes would be offered, and this made him an operator within the meaning of Section 38 I of the Act.

The requirement that retransmission to ten or more households be notified, laid down in Section 38 II of the Act, was lawful and did not violate either Articles 5 and 12 or Article 3 I of the Basic Law. The Bavarian Regional Office for New Media had public responsibilities which obliged it to discharge its duties (Section 2 I of the Act) concerning the operation of private cable services, particularly by ensuring that the principles enshrined in Sections 40 and 41 of the Act were respected. It could do this only if cable network operators fully respected the notification requirement of Section 38 I of the Act. The principle of equality was not violated, since small service operators were treated in the same way as the owners of personal satellite reception facilities. Nor was the principle of equality violated by the fact that the rule applied only to satellite reception facilities, since other retransmission systems were of little account and could thus be ignored by the legislator.

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Bayerischer Verwaltungsgerichtshof, Beschluß vom 9. September 1996, 7 CS 96.1818.

Bavarian Administrative Court, decision of 9 September 1996, 7 CS 96.1818.

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