[DE] Administrative Court of Appeal Approves Registration Data Comparison for Licence Fee Collection

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Tobias Raab
Stopp Pick & Kallenborn, Saarbrücken

In a decision of 10 September 2013 (case no. 4 ME 204/13), the Niedersächsische Oberverwaltungsgericht (Lower Saxony Administrative Court of Appeal - OVG) ruled that the comparison of registration data described in Article 14(9) of the Rundfunkbeitragsstaatsvertrag (Inter-State Agreement on the Broadcasting Licence Fee - RBStV) does not infringe the right to "informational self-determination" (the right of the individual to decide what information about himself should be communicated to others and in what circumstances), derived from Article 2(1) in conjunction with Article 1(1) of the Grundgesetz (Basic Law - GG).

Under Article 14(9) RBStV, all personal data is transmitted from the registration authorities to the broadcasters. This one-off comparison, carried out for the purposes of existing and initial registrations, includes data such as current and previous names, doctorates, marital status, dates of birth, and current and previous addresses of first and second residences, including full details of their location and moving-in dates.

In summary proceedings, the Verwaltungsgericht Göttingen (Göttingen Administrative Court - VG) had previously decided on 6 September 2013 that some aspects of the data transmission process constituted an excessive intrusion on the rights of the persons concerned and were therefore unconstitutional (case no. 2 B 785/131). The VG disagreed with the applicant's claim that the data comparison process resulted in a national register of licence fee payers. This was untrue because each broadcaster could only access the data of licence fee payers living in its broadcast territory. Also, the secure storage of the data and the obligation to delete it after it had been used satisfied the provisions of data protection law. However, the VG considered it unnecessary for the data comparison process described in Article 14(9) RBStV to include data on doctorates, marital status and previous first and second residences. This information was irrelevant as far as setting the licence fee was concerned. In this respect, the RBStV infringed the right to "informational self-determination".

The OVG disagreed, considering the data comparison process to be completely necessary and therefore justified. The information about doctorates (Article 14(9)(1)(4) RBStV), for example, was useful for the correct identification of the

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registered licence fee payer. The same applied to the information on marital status (Article 14(9)(1)(5) RBStV), which also helped, in cases where homes were jointly owned, to determine the owners' liability as joint licence fee payers under Article 2(3)(1) RBStV. If married couples with the same surname and address were registered, the Land broadcaster could assume that they lived together in the same home and that they should therefore share the same licence fee account. The information on marital status was therefore necessary. Finally, addresses of previous first and second residences, including all available information about their location (Article 14(9)(1)(7) RBStV) were also required so that registration data could be checked against existing licence fee accounts. For example, if there had been a change of address, it would then be possible to find out whether a newly-registered person and a previously registered licence fee payer were the same person.

The OVG therefore ruled that all the data was absolutely necessary for the collection of the licence fee and that the transfer of the data was not unconstitutional.

Before the OVG took this decision, the Bayerische Verfassungsgerichtshof (Bavarian Constitutional Court) in particular had confirmed the legality of Article 14(9) RBStV in a ruling of 18 April 2013 (case no. Vf. 8-VII-12; Vf. 24-VII-12).

Entscheidung des Niedersächsischen OVG vom 10. September 2013 (Az. 4 ME 204/13)

http://www.rechtsprechung.niedersachsen.de/jportal/portal/page/bsndprod.psml?doc.id=MWRE130002466&st=null&showdoccase=1&paramfromHL=true#focuspoint

Decision of the Lower Saxony Administrative Court of Appeal of 10 September 2013 (case no. 4 ME 204/13)

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