[DE] FFG Film Levy Consistent With Constitution

IRIS 2014-3:1/11

Melanie Zur
Institute of European Media Law (EMR), Saarbrücken/Brussels

In a decision of 28 January 2014, the Bundesverfassungsgericht (Federal Constitutional Court - BVerfG) confirmed that the provisions of the Filmförderungsgesetz (Film Support Act - FFG) concerning the film levy were in conformity with the Constitution.

The BVerfG explained, first of all, that the Federal Government was responsible for legislation on the collection of the film levy according to Articles 72 and 74(1)(11) of the Grundgesetz (Basic Law - GG). Opponents of the levy had argued that it fell under cultural legislation, for which the Länder were responsible. However, the BVerfG ruled that the Federation's legislative jurisdiction could not be dismissed on the grounds that the law had a cultural purpose as well as fulfilling economic objectives. This did not matter as long as the main purpose of the law was economic in nature. According to its objective regulatory provisions, the FFG was designed to support the German film industry and German film-making. It therefore concerned films as an economic asset, as well as the branches of industry that produced and exploited them.

The BVerfG added that, although Article 1(1)(1) FFG described the creative and artistic quality of German films as an objective of the Act, this did not alter the fact that the regulations were fundamentally economic in nature. The conditions of financial support were predominantly linked to the economic success of the film.

Federal legislation was also necessary to protect economic unity in the sense of Article 72(2) GG. There was no doubting the legislator's view that the regulations were necessary in order to safeguard (i) support for film-making regardless of location, (ii) the efficient consultation of the Federal Government with regard to the exercise of external competences in relation to film policy, (iii) film exploitation at fair market value and (iv) financing of film-making by means of a countrywide levy.

The BVerfG also considered that the FFG met the demands of financial legislation. The film levy was not a tax, but a special duty that was not dependent on the provision of a service. The reason for it was not simply to raise funds. The subgroups that paid it, i.e. cinema operators (Art. 66 FFG), programme providers and holders of video licensing rights (Art. 66a FFG) and television companies (Art.

© European Audiovisual Observatory (Council of Europe) 2026

67 FFG), as marketers of cinema films, formed a homogeneous group bound by a close interest in the purpose of the levy and held a certain responsibility to finance the film industry. Their close relationship to the industry and their responsibility to finance it were based on their common interest in the structure and success of the German film industry. The fact that the levy applied to three different subgroups between which there were not only certain differences but also a competitive relationship did not mean there was no homogeneity between them, since they all shared a common interest in the purpose of the levy.

The exclusion of companies that exploited music rights and of merchandising companies was justified, since they only exploited individual aspects of a film rather than the film as a whole and therefore only indirectly benefited from the film's success.

The BVerfG also held that the film levy provided for in Article 66 FFG was consistent with the Constitution even though, in the relevant year of 2004, the obligation of television companies to pay the levy had not been clearly defined. This situation had been rectified through the 2010 amendment to the FFG (see IRIS 2010-8/22). The backdating of the amendment was not unconstitutional because the backdated amendment had not resulted in any detrimental legal consequences.

The BVerfG also ruled that the Awards Commission of the Filmförderungsanstalt (Film Support Office) (Art. 7 FFG) had been legitimately elected. Although the level of personal legitimation was reduced, this was justified in view of the commission's creative and artistic expertise.

Urteil des BVerfG vom 28. Januar 2014 (2 BvR 1561/12, 2 BvR 1562/12, 2 BvR 1563/12, 2 BvR 1564/12)

http://www.bundesverfassungsgericht.de/entscheidungen/rs20140128_2bvr156112.html

BVerfG ruling of 28 January 2014 (2 BvR 1561/12, 2 BvR 1562/12, 2 BvR 1563/12, 2 BvR 1564/12)

© European Audiovisual Observatory (Council of Europe) 2026

© European Audiovisual Observatory (Council of Europe) 2026