[DE] Regional Constitutional Courts find broadcasting charge acceptable

IRIS 2014-7:1/8

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In a ruling of 13 May 2014, which has not yet been published in full, the *Verfassungsgerichtshof Rheinland-Pfalz* (Rhineland-Palatinate Constitutional Court) decided that the new regulations on the financing of public service broadcasting through the levying of broadcasting charges did not infringe the provisions of the Constitution (case no. VGH B 35/12; regarding the introduction of the new broadcasting charge in Germany, see IRIS 2012-2/14). A complaint lodged by the Montabaur-based road construction firm Volkmann und Rossbach, which has numerous branches both in Rhineland-Palatinate and elsewhere, was deemed inadmissible by the court insofar as it concerned details of the collection of the charge and of related data. These details should initially have been clarified by the administrative courts. It was also clear that alleged violations of the freedoms of occupation, trade and information, and of the right to informational self-determination could be ruled out immediately, since the broadcasting charge did not interfere with any of these areas.

The court considered the complaint to be admissible but unfounded insofar as the complainant disputed the Land's jurisdiction to legislate on the grounds that the broadcasting charge was actually a tax that the Länder did not have the authority to introduce. The broadcasting charge was not a tax, but a contribution, as defined under fiscal law, for which the Länder were responsible. The court also rejected the complainant's allegation that the equal treatment principle had been violated. The road construction firm had argued that businesses were categorised according to the number of sites and employees they had, rather than being treated individually, which led to unequal treatment in individual cases. In particular with mass phenomena, as they appeared specifically in fiscal law, the legislature was therefore both obliged and entitled to base its decisions on an overall assessment and to incorporate them into generalised regulations. If this resulted in hardship for some, it did not represent a violation of the general principle of equality. Although it was not currently necessary under constitutional law to take exceptional cases into consideration, the legislature was obliged to continuously monitor and observe developments in the law on the broadcasting charge and technical changes.

Finally, the broadcasting charges were proportionate. They were limited to a small percentage of staff and operational costs. The law on the financing of

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broadcasting also ensured that any budgetary surplus was taken into account when calculating future financial requirements and did not have a detrimental effect on those liable to pay the charge.

This interpretation of the law was confirmed two days later by the *Bayerische Verfassungsgerichtshof* (Bavarian Constitutional Court) (decision of 15 May 2014, case no. Vf. 8-VII-12 and Vf. 24-VII-12). In a case brought in particular by the Rossmann pharmacy chain, it was also argued that the broadcasting charge was a tax and that the aforementioned fundamental rights had been infringed. Rossmann claimed that it had to pay around EUR 280,000 for its 1,750 or so branches, whereas it would only have to pay EUR 39,000 if all its staff worked at the same location. The Bayerische Verfassungsgerichtshof replied that it was not contrary to the nature of a charge such as this that owners of properties in which there was no broadcast reception equipment should be obliged to pay. The proportionality principle did not mean that the legislature should exempt people from the obligation to pay the charge if they did not want to make use of the opportunity it gave them.

Presseerklärung des Verfassungsgerichtshofs Rheinland-Pfalz zum Urteil vom 13. Mai 2014, Aktenzeichen: VGH B 35/12

http://www.mjv.rlp.de/icc/justiz/nav/793/broker.jsp?uMen=793247b4-9c6a-11d4-a735-0050045687ab&uCon=8aa304a9-44f3-f541-1797-4c3077fe9e30&uTem=aaaaaaaa-aaaa-aaaa-aaaa-000000000042

Press release of the Rhineland-Palatinate Constitutional Court concerning the judgment of 13 May 2014 (VGH B 35/12)

Entscheidung des Bayerischen Verfassungsgerichtshofs vom 15. Mai 2014 (Aktenzeichen: Vf. 8-VII-12 Vf. 24-VII-12)

http://www.bayern.verfassungsgerichtshof.de/8-VII-12;%2024-VII-12.htm

Decision of the Bavarian Constitutional Court of 15 May 2014 (Vf. 8-VII-12 Vf. 24-VII-12)

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