[DE] Federal Administrative Court denies unconstitutionality of broadcasting licence fee for private households

IRIS 2016-6:1/8

Tobias Raab
Stopp Pick & Kallenborn, Saarbrücken

On 18 March 2016, the Bundesverwaltungsgericht (Federal Administrative Court) decided in a total of 18 cases, involving appeals on points of law, that the levying of the broadcast receiving licence for private households is constitutional (cases nos. 6C6.15; 6C7.15; 6C8.15; 6C22.15; 6C23.15; 6C26.15; 6C31.15; 6C33.15; 6C21.15; 6C25.15; 6C27.15; 6C28.15; 6C29.15; 6C32.15).

Under the Rundfunkbeitragsstaatsvertrag (Inter-State Agreement on the Broadcasting Licence Fee - RBStV), since the beginning of 2013 a licence fee has been payable by every household, the obligation to pay a device-dependent licence fee having been abolished. Although the RBStV provides for exemption from the obligation to pay the fee on certain social grounds, or when it is objectively impossible for a person to receive a broadcast in their home, there is no exemption for cases where a person does not possess a reception device. The plaintiffs had refused to pay the fees, which were initially EUR 17.89 a month and have been reduced to EUR 17.50 since 2015. After the defendant broadcasting authorities had determined the total amount of unpaid fees, the plaintiffs opposed the payment, stating that they did not possess a reception device. They lost their cases in the lower courts and filed final appeals on points of law, which have now been dismissed by the Federal Administrative Court.

The judges did not agree with the plaintiffs' view that the licence fee was a tax that Länder had no authority to levy. The licence fee, the judges ruled, was not a tax because it was not levied indiscriminately, without the imposition of conditions. Rather, it was levied in return for the possibility of receiving public service broadcasting programmes. In addition, the fees were not used to finance specific public expenditure but to ensure the financing of public service broadcasters in a manner commensurate with their functions. The constitutionally required justification followed, firstly, from the fact that the licence fee was a payment for being able to benefit from receiving broadcasts. Linking the obligation to pay the fees to a specific household, the Court continued, was the right way to establish that benefit because the legislature's assessment prerogative was premised on the assumption that radio and television programmes were mostly received in homes. That followed from, amongst other things, the fact that according to the Statistisches Bundesamt (Federal Statistical

© European Audiovisual Observatory (Council of Europe) 2026

Office), more than 90% of households possessed television sets. The Länder were further/also/thus entitled to adopt rules on the licence fee under their powers to enact broadcasting legislation.

The judges also did not agree with the plaintiffs' view that the Länder should have retained the device-dependent licence fee. It was, for example, doubtful that the latter could have been made compatible with the requirement that taxation be fair for everyone because, in particular, the increase in multifunctional reception devices had made it harder to establish against the owner's will that a reception device was being kept ready for use. In accordance with the binding view of the Bundesverfassungsgericht (Federal Constitutional Court), the Court also regarded the levying of the licence fee as a means of funding appropriate to public service broadcasting: it enabled the broadcasters to carry out their remit under the dual (public and commercial) broadcasting system and at the same time avoid any dependence on advertising or state money that might jeopardise programme diversity. The Court also made it clear that opening up the possibility of granting exemption from the licence fee to people who did not possess a reception device ran counter to the legislative objective of levying the fee as fairly as possible. Furthermore, technical developments meant it could no longer be proved with absolute certainty that an individual did not possess a reception device.

Finally, the judges did not sustain the plaintiffs' objection that the licence fee breached the right of people who lived alone in their home to enjoy the equal treatment guaranteed by Article 3 of the Grundgesetz (Basic Law). The plaintiffs claimed unequal treatment as the licence fee had to be paid once per household, and sowhilst those living together in a household could share the fee, a person living alone had to pay the fee in its entirety.. In the Court's opinion, although that did indeed constitute unequal treatment, that treatment was sufficiently justified in view of the administrative work that would otherwise be involved, the large number of households and the frequency of payments, since the household was traditionally the place where programmes were received and the levying of the licence fee in its present form was possible without any significant investigative work.

Pressemitteilung des BVerwG zur Entscheidung vom 18. März 2016

http://www.bverwg.de/presse/pressemitteilungen/pressemitteilung.php?jahr=2016&nr=21

Press release of the Federal Administrative Court on its decision of 18 March 2016

© European Audiovisual Observatory (Council of Europe) 2026

© European Audiovisual Observatory (Council of Europe) 2026