[DE] Federal Administrative Court finds broadcasting licence fee for business premises and commercial vehicles compatible with the Constitution

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Timo Holl
Institute of European Media Law (EMR), Saarbrücken/Brussels

After hearing a total of four appeal procedures, the Bundesverwaltungsgericht (Federal Administrative Court - BVerwG) decided, in rulings of 7 December 2016 that have not yet been published in full, that the levying of the broadcasting licence fee for business premises and commercial vehicles does not infringe the German Constitution (case nos. 6 C 12.15, 6 C 13.15, 6 C 14.15 and 6 C 49.15).

The Rundfunkbeitragsstaatsvertrag (Inter-State Agreement on the broadcasting licence fee - RBStV), which entered into force on 1 January 2013, requires owners of business premises and commercial vehicles to pay the broadcasting licence fee. The amount due depends on the number of premises, employees, and vehicles used, and is based on information provided by company owners concerning the size of their workforce and the number of relevant vehicles. If companies that paid the licence fee until the end of 2012 fail to provide this information, the broadcasting authorities are entitled to charge them a so-called interim fee, equivalent to the sum that they were previously paying, until they meet their obligations.

The BVerwG confirmed that the provisions of the RBStV did not infringe the Constitution because the licence fee was a non-fiscal, broadcasting-specific levy over which the Länder had regulatory control and for which there was particular justification. The fee was justified because the broadcasting freedom enshrined in the Constitution included a guarantee to finance public service broadcasting, and the licence fee entitled the holder to receive broadcasting services. Basing the fee on the number of business premises and commercial vehicles used was a suitable way of measuring the benefit that businesses derived from broadcasting services, which included help with carrying out operational tasks and use by employees and customers.

According to the BVerwG, the legislator was entitled to assume that broadcasting services were typically received in business premises and commercial vehicles, and that business owners benefited from these services in a specific way, since the virtually universal presence of traditional and new types of reception device in business premises and commercial vehicles was statistically proven. Charging the licence fee with no exemption for companies that did not own any reception

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devices was also justified under the Constitution. It is no longer possible to measure with sufficient certainty whether or not multifunctional reception devices are used in business environments, casting doubt over the equality of treatment within the licence fee system.

Finally, the court dismissed the plaintiffs' view that the rules on calculating the licence fee for business premises and commercial vehicles infringed the principle of equal treatment. Under the RBStV, the fee was quite rightly based on the benefit to the owner of being able to receive broadcasting services. The progressive reduction of the licence fee for business premises was objectively justified on account of the benefit to the business resulting not only from employees' use of broadcasting services but also from that of customers and the fulfilment of operational tasks. The linear calculation of the fee applicable to vehicles was also compatible with the Constitution.

Pressemitteilung zu den Urteilen des BVerwG vom 07. Dezember 2016 (Az.: 6 C 12.15; 6 C 13.15; 6 C 14.15; 6 C 49.15)

http://www.bverwg.de/presse/pressemitteilungen/pressemitteilung.php?jahr=2016&nr=100

Press release on the decisions of the Federal Administrative Court of 7 December 2016 (case nos. 6 C 12.15, 6 C 13.15, 6 C 14.15 and 6 C 49.15)

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