[DE] Broadcasting fee compatible with EU law

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In a decision of 1 March 2018 (Case no. 7 A 11938/17), the Oberverwaltungsgericht Rheinland-Pfalz (Rhineland-Palatinate Higher Administrative Court - OVG Rheinland-Pfalz) ruled that the German broadcasting contribution fee is compatible with European law. A private individual from Trier had complained about the levying of outstanding payments by Südwestrundfunk (SWR), arguing that the fee was incompatible with European law because it gave public service broadcasters an unfair advantage over their private competitors. However, this argument was rejected by the court.

In its decision, the OVG stated that the conformity of the broadcasting contribution fee - in its new form introduced in 2013 - with EU law had already been established by the Bundesverwaltungsgericht (Federal Administrative Court - BVerwG) in 2016 (ruling of 18 March 2016, BVerwG 6 C 6.15). According to that decision, the introduction of the fee in the private sector did not require the European Commission's consent and was also compatible with the Audiovisual Media Services Directive. Since the coexistence of public service and private broadcasters was acknowledged in the recitals of the directive, the OVG considered that they would inevitably be financed in different ways. However, this did not necessarily mean that public service broadcasters were given an unfair advantage because, unlike private broadcasters, they were subject to much more restrictive advertising rules and were therefore financially dependent on the broadcasting fee.

However, this decision does not constitute conclusive clarification of the admissibility of the broadcasting contribution fee under European law. Last year, for example, the Landgericht Tübingen (Tübingen Regional Court, decision of 3 August 2017, case no. 5 T 246/17 and others) ruled that the fee breached EU law and submitted a number of related questions to the European Court of Justice (ECJ), where the request for a preliminary ruling is being dealt with under Case no. C-492/17. The Tübingen court held that the broadcasting fee was an unlawful tax and that it breached the principle of equal treatment in so far as, for example, people living alone were burdened more heavily than people living in a shared household. The ECJ has therefore not yet resolved the issue (although it is, to some extent, questionable whether the European Union's requirement for equal treatment and ban on discrimination are suitable criteria to be applied to the German broadcasting contribution system), although the BVerwG should have submitted the matter to the ECJ if it had doubted the fee's conformity with EU law.

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Pressemittelung des Oberverwaltungsgerichts Rheinland-Pfalz vom 07. März 2018

https://ovg.justiz.rlp.de/de/startseite/detail/news/detail/News/rundfunkbeitrag-europarechtlich-unbedenklich/

Press release of the Rhineland-Palatinate Higher Administrative Court, 7 March 2018

Vorlagefragen des Landgericht Tübingen an den EuGH

http://curia.europa.eu/juris/document/document.jsf?text=&docid=197111&pageIndex=0&doclang=DE&mode=req&dir=&occ=first&part=1

Questions submitted by the Landgericht Tübingen (Tübingen Regional Court) to the ECJ

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