[DE] Debate on Tax Liability and Licence Fee Financing for Public-sector Broadcasting

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Questions involving the financing of the public-sector channels ARD and ZDF are once again the centre of media law debate. In order to ensure equality of competition between public-sector channels and private television broadcasters, the Federal Audit Office (Bundesrechnungshof) is encouraging the Federal Ministry of Finance to make the ARD and ZDF television channels fully liable to tax. Up till now the liability has to a large extent been waived for the two channels. If a new regulation were introduced, the public-sector channels would, in particular, be liable for turnover tax on licence fees. Land and profits taxes would also have to be paid. Applying tax liability would generate more than DEM 1 000 million in funds and inevitably lead to an increase in licence fees. Representatives of ARD and ZDF believe total tax liability would be unconstitutional, as the public-sector channels are intended to serve the public and therefore cannot be compared with private television channels. If the provisions put forward are to be applied, the channels have announced their intention to lodge a constitutional claim with the Federal Constitutional Court (Bundesverfassungsgericht).

The question of the obligation to pay licence fees was discussed following the development of a technical device which can prevent a television set receiving ARD and ZDF. The argument was then raised that television viewers able to prove that they were in fact only able to watch programmes broadcast by private television channels should be able to claim a waiver of the obligation to pay the licence fee.

This is at present still contrary to Section 12, para. 2 of the Agreement between the Fedral States on Broadcasting (Rundfunkstaatsvertrag), according to which every household containing reception equipment must pay the fee. Representatives of ARD and ZDF reject the suggestion and the conditions for waiving the fee. They point out that the licence fee is a mixed fee, ie part of it covers radio reception. There would also be the matter of checking: in practical terms it would be impossible to check whose television sets were actually fitted with such a device.

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