# [DE] Broadcasters allowed to delete social media comments

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In a ruling of 30 November 2022, the *Bundesverwaltungsgericht* (Federal Administrative Court –BVerwG) decided that public broadcasters were entitled to delete comments posted by users in their online forums if the comments were unrelated to their programmes. This applied whether the content was unlawful or not. The court based its decision on the definition of public broadcasters' telemedia-related remit set out in German media law. The case concerned users' comments on programme-related content posted on the Facebook page of Mitteldeutsche Rundfunk (MDR), which the broadcaster had deleted without giving a reason.

Like many other public service broadcasters, MDR has its own page on the Facebook social network, on which it publishes a variety of content related to its programmes. Registered Facebook users are able to comment on these posts. However, each time something is posted, MDR provides a link to its "Rules for posting comments" (Netiquette), which are published on its website. These state, *inter alia*, that users' comments will only be published if they relate to the original post and if they are both serious and relevant to the subject. MDR also reserves the right to delete comments and states that it will not enter into any discussion about deleted comments.

The plaintiff in the case was a Facebook user who had posted a comment that MDR had deleted without giving a reason. Further comments by the user, in which he had complained about MDR's deletion policy and so-called "censorship", had also been deleted. The user had asked the courts to rule that the deletion of 14 of his comments was unlawful. The lower-instance courts had only upheld his complaint in relation to one of his comments. Following his appeal to the BVerwG, only one further comment was deemed to have been unlawfully deleted.

The BVerwG agreed with the lower-instance courts: although the deletion of comments infringed the plaintiff's freedom of expression, which was protected under the *Grundgesetz* (Basic Law), it was justified on the grounds of the specific obligations incumbent on public broadcasters under German media law in application of the so-called *Beihilfekompromiss* (state aid compromise) signed between the Federal Republic of Germany and the European Commission in 2007. Under Article 11d of the *Rundfunkstaatsvertrag* (state broadcasting treaty – RStV), which had applied at the time and was now Article 30 of the *Medienstaatsvertrag*

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(state media treaty), the distribution of telemedia (essentially online media) was part of the public broadcasting remit (the so-called “telemedia remit”), but was limited to specific offerings in order to protect private media and the press in view of the fact that public broadcasters were funded through licence fee revenue. The article stated, *inter alia*, that telemedia could be offered if they served to provide content from a specific programme, including background information, and supported, accompanied and updated the programme thematically or contextually, i.e. they were related to the programme. The services offered on the MDR Facebook page were based on this provision and the Netiquette required comments to be programme-related. Therefore, according to the BVerwG’s decision, Article 11d RStV was a suitable justification for an infringement of freedom of expression and the deletion of comments that were unrelated to the programme. The court therefore extended the telemedia remit and the criterion of programme relevance to the comments section of public broadcasters’ social media pages. The weighing up of conflicting interests, which would normally be required in such cases, was therefore unnecessary. The comments could be deleted for the simple reason that they were unrelated to the programme, regardless of whether their content was unlawful and without the need to provide a reason. The action was therefore only upheld in relation to two comments that had actually been relevant to the programme and should therefore not have been deleted.

### *BVerwG 6 C 12.20 - Urteil vom 30. November 2022*

https://www.bverwg.de/de/pm/2022/75

*Federal Administrative Court, 6 C 12.20 - ruling of 30 November 2022*

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