[DE] No additional fee for broadcasting licence renewal

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In a decision of 28 December 2022, the *Verwaltungsgericht Berlin* (Berlin Administrative Court – VG Berlin) upheld a complaint filed by a national broadcaster against the imposition of an administration fee for the renewal of its broadcasting licence by the relevant state media authority. The court did not believe the fee was justified insofar as it covered not only the administrative costs incurred but also an additional sum charged because the broadcaster had gained an advantage as a result of the administrative work carried out.

The plaintiff has held a broadcasting licence, which is required to broadcast nationally in Germany, since 1992. In 2013, with the initial licence approaching its expiry date, its application for the licence to be renewed was accepted by the relevant state media authority, which set a new expiry date in accordance with legislative provisions. However, in 2014, the media authority informed the broadcaster that, following a change in the law, television broadcasters could now be granted an indefinite national broadcasting licence. Following an exchange of information and a procedure involving the *Kommission für Zulassung und Aufsicht* (Commission on Licensing and Supervision – ZAK), a central organ of the 14 state media authorities that grants national broadcasting licences, the relevant state media authority decided that the expiry date set in the 2013 decision to grant a licence should be removed. However, an administration fee of EUR 60,000 was levied for the 2013 licence, primarily to cover the expenses of the relevant state media authority organs, i.e. the ZAK and the *Kommission zur Ermittlung der Konzentration im Medienbereich* (Commission on Concentration in the Media – KEK). The broadcaster lodged a complaint against the state media authority responsible for implementing the ZAK's decision. The VG Berlin upheld the complaint on the grounds that there had been no effective legal basis for imposing such a fee. In accordance with Article 35(11) of the *Rundfunkstaatsvertrag* (state broadcasting treaty – RStV), which had applied at the time of the decision and was now Article 104(11) of the *Medienstaatsvertrag* (state media treaty), the competent state media authorities were entitled to levy an adequate proportion of the costs on those involved in the procedure. The details were governed by concurrent statutes of the state media authorities.

The VG Berlin held that the regulations on costs that were based on this provision, in connection with the cost index of the relevant state media authority, had not met the requirements of the RStV, which had applied at the time, and were

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therefore null and void. This was because the regulations made provision for a fee to be charged in recognition of a specific economic, legal, intangible or actual advantage gained by the broadcaster as a result of administrative work carried out by a public body. In this case, an advantage had been gained in the sense that the licensing requirement of Article 20 RStV had been removed, enabling the broadcaster to generate income from the sale of advertising, for example. However, this was not covered by Article 35(11) RStV, which should be interpreted as meaning that administrative costs could only be covered through the imposition of a reasonable administration fee. The state media authorities could not extend the scope of Article 35(11) by adopting their own regulations in order to charge an additional fee. Although the state media authorities' performed a unique function as independent regulators, only the legislator could impose such a rule because such a fee would infringe the broadcaster's fundamental rights.

VG Berlin 27. Kammer (27 K 343.16), 28. Dezember 2022

https://gesetze.berlin.de/perma?d=JURE230039586

Berlin Administrative Court, 27th chamber (27 K 343.16), 28 December 2022

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