[DE] Right to Short Reporting Constitutional, Says Constitutional Court

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In a judgment given on 17 Feburary, the Federal Constitutional Court (Bundesverfassungsgericht) ruled that the right to report news items in brief, provided for in Section 3 of the Act on the Westdeutscher Rundfunk in Cologne (the WDR-Act) and Section 3 of the Broadcasting Act for the Land of Nordrhein-Westfalen was essentially compatible with the Basic Law (Grundgesetz - see IRIS 1998-2: 12).

The constitutional review procedure initiated by the Federal Government was nominally concerned with the said sections of the two acts, but those provisions essentially implement the rule agreed by all the Länder in their Agreement on Broadcasting. The current rule is to be found in Article 5 of the Agreement, as amended for the third time from 26 August to 11 September 1996. This allows every licensed television operator in Europe to broadcast, without paying a fee, short reports on organised and other events which are open to the public and of general interest. In principle, the length of such items is restricted to one-and-a-half minutes. In its judgment, the Constitutional Court states that the rule referred to it for review is incompatible with the freedom of profession guaranteed by Article 12 (1) of the Basic Law, insofar as such reports may be broadcast without payment of a fee. It is reasonable that operators who avail of this right should pay an appropriate fee for the privilege, although this must be determined in a manner which ensures that excessive charging does not invalidate the right itself. Concerning the time at which such reports may be shown, the Court interprets the rule to accord with the Constitution. It stipulates that operators must observe an appropriate delay in cases where the purchaser of the (first) rights and the organiser have agreed on a corresponding time-lapse after the event.

The Court recognises that the right to broadcast short reports is justified by rational general interest considerations. The law is intended to ensure that adequate information on events of public interest is available throughout the country, and to make it possible for all television operators to report on such events independently - and this helps to guarantee pluralism in broadcasting. For various reasons, the fact that private TV channels now have nearly the same range as public ones makes no difference here. For one thing, limited accessibility of certain reports may also be a danger if live coverage of outstanding events is limited to pay-channels in future, and so available only to some viewers. For

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another, all television operators have a legitimate interest in reporting in their programmes on events of great interest to the public at large. This is why, to ensure that no one operator can dominate public opinion, it is necessary, not only to have effective anti-concentration measures, but also to guard against information monopolies. Universal marketing of information of general significance, including reports on major sports events, in a way which allowed rightspurchasers to exclude third parties or limit their participation, would be contrary to the principles of broadcasting freedom.

In its judgment, the Constitutional Court also finds that the property rights guaranteed by Article 14 of the Basic Law are not violated by the right to broadcast short reports, even when an exclusive contract has been concluded, since acceptance of that right is a precondition of the transmission rights covered by the contract. Finally, the Court gives the legislator five years to introduce amended regulations and to regulate the question of appropriate fees.

Bundesverfassungsgericht, Urteil vom 17. Februar 1998, - 1 BvF 1/97 -

Federal Constitutional Court, Judgment of 17 February 1998, - 1 BvF 1/97 -

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