

## [DE] Broadcasting fee only considered unconstitutional in case of gross failure to ensure programme diversity

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In its ruling of 15 October 2025, the *Bundesverwaltungsgericht* (Federal Administrative Court – BVerwG) once again had to rule on a case concerning the payment of the broadcasting fee that is used to finance public broadcasters in Germany. It concluded that the levying of the fee is only incompatible with the *Grundgesetz* (Basic Law) if the overall programme offering of the public broadcasters grossly fails to meet the requirements for diverse and balanced content and opinion over a prolonged period of time. However, since it is the task of the lower courts to examine this, the action was referred back to them.

The obligation to pay the broadcasting fee, which currently costs €18.36 per month in Germany, is no longer linked to possession of a receiving device, but simply applies to all households. The relevant rules can be found in the *Rundfunkbeitragsstaatsvertrag* (state broadcasting fee treaty – RBStV). This treaty links the obligation to pay solely to possession of a home in Germany and not, for example, to whether public broadcasting services are actually used or wanted by the home owner. Nevertheless, the plaintiff in this particular case challenged this obligation, arguing that public service broadcasters in Germany do not offer a diverse and balanced programme, but rather “serve as an instrument of the prevailing state power over public opinion”. She argued that there was no constitutional necessity for such a programme and that she was therefore entitled to refuse to pay the fee. However, her action had been rejected by the courts. In the most recent decision, the *Bayerische Verwaltungsgerichtshof* (Bavarian Administrative Court) had ruled that the levying of the fee was justified solely by opportunity it gave citizens to access public service broadcasting. With this in mind, the court saw no reason to examine whether there were structural deficiencies in the fulfilment of the public service mandate. Such deficiencies could only be asserted through a programme complaint, but would have no influence on the obligation to pay the broadcasting fee.

However, the BVerwG took a different view. Referring to the case law of the *Bundesverfassungsgericht* (Federal Constitutional Court), it stated that the obligation to pay only applied if the programme met the requirements of the public broadcasting mandate. This mandate consisted of ensuring diversity and offering guidance as a counterbalance to private broadcasting.

However, this did not mean that individual fee-payers could refuse to pay on account of programming deficiencies in individual cases. Neither the RBStV nor the *Medienstaatsvertrag* (state media treaty) provided for such a link between the obligation to pay the fee and the fulfilment of the public broadcasting mandate. Rather, the legislator had changed the previous broadcasting fee to a household-linked contribution precisely in order to prevent collection and enforcement problems associated with exemptions under the previous system.

However, according to the BVerwG, the constitutionality of the broadcasting fee and the obligation to pay it (i.e. the RBStV) could, in principle, be called into question if the overall programme offering of the public broadcasters “grossly failed” to meet the requirements for diverse and balanced content and opinion over an extended period. Nevertheless, the court noted that the threshold for this was very high and that both the broad discretion afforded to the legislator in designing the fee and the broadcasters’ freedom of programming must be taken into account. In addition, it was difficult to determine whether the required representation of diverse opinions and their balanced presentation in the overall programme offer were actually achieved because programme diversity and balance were target values that could only ever be approximated. The BVerwG therefore ruled that the fee could only be unconstitutional if the overall programme offering of all public broadcasters, including radio, television and telemedia, showed clear and regular deficiencies in terms of diversity of content and opinion over an extended period of time.

Whether such deficiencies exist must now be examined by the Bavarian Administrative Court, to which the case was referred back. However, the BVerwG did not provide any indications that this was the case. If the Administrative Court concludes otherwise, a review procedure will need to be initiated at the Federal Constitutional Court in accordance with Article 100 of the Basic Law in order to finally assess the constitutionality of the broadcasting fee.

### ***Pressemitteilung des BVerwG Nr. 80/2025***

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