



St. Gallen, 10 October 2018

Press Release

regarding judgment A-688/2018 of 1st October 2018

No participation in fees for Radio Central

The Swiss Federal Administrative Court is rejecting Radio Central's complaint against the Swiss Federal Department of the Environment, Transport, Energy and Communications. The private radio station demanded a licence for the participation in fees.

Since 2008, Radio Central has held a licence for FM broadcasting (ultra-short wave) with a “mandate without participation in fees”, covering the region of Southern Central Switzerland. At the end of 2016, the private radio station submitted a request to the Swiss Federal Office of Communications (OFCOM) to change its licence to one with a “mandate and participation in fees”. The Swiss Federal Department of the Environment, Transport, Energy and Communications (DETEC), the department in charge, rejected the application, stating that it is bound by the decision of the Swiss Federal Council to refrain from making amendments to the defined coverage areas in accordance with Annex 1 of the Radio and Television Ordinance (RTVO) at this moment in time. As a result, Radio Central lodged a complaint with the Swiss Federal Administrative Court (FAC).

Radio Central's case

Radio Central argued before the FAC that the radio landscape has changed significantly since 2008 and that the coverage areas are divided up on outdated grounds, leading to unequal treatment. It stated that, as it stands today, it is no longer possible to fulfil the mandate without fee revenue. Radio Central believes Annex 1 of the RTVO violates the protection against arbitrariness and the protection of equality before the law enshrined in the constitution.

No violation of the protection against arbitrariness

Although the FAC has found that the economic potential of numerous radio broadcasters has changed, the protection against arbitrariness does not entitle the Court to narrow the Federal Council's broad margin of discretion with its own idea of how coverage should be determined. The Federal Council is responsible for their expediency.

No violation of equality before the law

Radio Central has also claimed that there has been a violation of the protection against equality before the law, stating that the Federal Council has brought

about legal inequality. It also added that, as a result of the wider dissemination of their programmes on DAB+, other radio stations in the mountainous and outlying regions have comparably large transmission areas but still receive fees. The complainant argued that it is the only station in the mountains that does not receive fees and that this situation does not comply with the principle of equality before the law.

The FAC, however, supports the DETEC's assessment that the developments of the past few years would not only affect Radio Central. All other broadcasters transmitting radio programmes on the FM-Band are affected by the new dissemination technologies to the same degree. Granting a proportion of the fees to Radio Central would equally give rise to unequal treatment of other radio stations that broadcast in mountainous and outlying regions and other areas and that also receive no share of the fees.

A media policy decision

According to the FAC, the question of changing the coverage areas with regard to licences with a participation in fees – and thus the application of reception fees for local and regional radio stations – is one of media policy. It is not the role of the Court to comment on the political appropriateness of the Federal Council's decision. The DETEC's ruling is therefore lawful, which is why the FAC rejects Radio Central's complaint.

This judgment is final and may not be appealed to the Federal Supreme Court.

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About the Federal Administrative Court

Located in St. Gallen, the Federal Administrative Court (FAC) was established in 2007. With its staff of 357 employees (307.65 FTE) and its 76 judges (68.2 FTE) it is the largest federal court in Switzerland. The Federal Administrative Court has jurisdiction to hear appeals against decisions rendered by Swiss federal authorities. In specific matters, the FAC may grant review on decisions rendered by cantonal authorities. Recourse actions are also reviewed by the Court. The FAC is composed of six divisions. It renders an average of 7,500 judgments every year.