[AT] Private Radio - no Suspensive Effect for Appeals

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In December 1997 the Austrian regional radio authority (österreichische Regionalradiobehörde), as the licensing authority for private radio, issued some 50 permits for regional and local radio and the date of 1 April 1998 was set for all the permit holders to start broadcasting. However, most of the permits issued were referred by the unsuccessful candidates to the Constitutional Court (Verfassungsgerichtshof); the appellants also claimed allowance of the suspensive effect of appeals in order to prevent broadcasting starting on 1 April. The Constitutional Court is required by law to allow appeals to have a suspensive effect on application, as long as this is not counter to pressing public interests and after consideration of all the interests involved that the enforcement or exercise by a third party for the appellant of the entitlement created by the decision does not involve a disproportionate disadvantage.

In its decisions on 26 and 27 February 1998 the Constitutional Court did not allow the appellants a suspensive effect. This decision was based on the fact that, as the permits gave a starting date of 1 April 1998, the permit holders had had to make considerable investments from the time the permits were issued to date in order to be in a position to start broadcasting on time on 1 April 1998; this overrode the interests of the entitlement claimed by the appellants. Account was also taken of the fact that Austria has been waiting far too long already for the authorisation of private radio and that the permits for regional radio first issued in 1995 were all - with two exceptions - cancelled in the same year by the Constitutional Court.

From 1 April the first 14 private radios started operation, although the appeals now pending in the matter still have to be settled.

Verfassungsgerichtshof, Beschlüsse vom 26. und 27.2.1998 - Az. B 113/98 u. a.

Constitutional Court, decisions of 26 and 27 February 1998 -- ref. B 113/98 and others

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