[AT] Constitutional Court on Liberalisation of Broadcasting

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The following facts were behind a recent decision of the Verfassungsgerichtshof (Constitutional Court - VfGH): an advertising agency ordered a certain amount of airtime for TV commercials from the Austrian national public broadcaster Österreichische Rundfunk (ORF).

The advertising slots were originally booked on behalf of a magazine publishing company; the advertising agency later asked the ORF to transfer most of the slots from the publishing company to the private radio broadcaster Antenne Wien . This request was turned down by the ORF with reference to its management's decision "not to advertise any competitors from the electronic media field" as a matter of principle.

As a result, Antenne Wien complained to the Kommission zur Wahrung des Rundfunkgesetzes (Commission on the Enforcement of the Broadcasting Act - Broadcasting Commission), claiming that the Rundfunkgesetz (Broadcasting Act) had been breached and asking it to put an end to the "continuing (unlawful) state of affairs". The Broadcasting Commission accepted the complaint (with reference to a previous judgement of the Constitutional Court) insofar as it found that the ORF had violated the Broadcasting Act by refusing to grant Antenne Wien airtime for commercial advertising. The ORF appealed this decision to the Constitutional Court, asserting that its rights to freedom of expression as set out in Article 10 of the European Convention on Human Rights, as well as its rights to protection of property and to equal treatment, all of which were protected by the Constitution, had been violated.

The Constitutional Court decided that the ORF's constitutional right to equality before the law had been breached by the Broadcasting Commission's decision. It stressed that the field of broadcasting law and the actual situation had fundamentally altered since its previous judgement; numerous domestic and foreign broadcasters were now offering advertising possibilities.

Although the ORF no longer enjoys a monopoly position in some major fields, it continues to do so in the sphere of terrestrial television. Ironically, shortly before the Constitutional Court pronounced this judgement, the European Court of Human Rights unanimously declared admissible an appeal against Austria by a private television company Tele 1 on the grounds of a breach of Article 10 of the

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European Convention on Human Rights.

Erkenntnis des Verfassungsgerichtshofes vom 17. Juni 1999, Aktenzeichen B 1757/98.

Decision of the Constitutional Court, 17 June 1999, Case no. B 1757/98.

Ruling of admissibility of the European Court of Human Rights, 25 May 1999, Appeal no. 32240/96.

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