

[AT] Constitutional Court Decides Whether Regional Radio Act is Constitutional

IRIS 2000-3:1/6

*Albrecht Haller
IFPI Austria*

Once again, a provision of the Regionalradiogesetz (the Regional Radio Act - RRG) is being scrutinised by the Verfassungsgerichtshof (the Constitutional Court - VfGH). Considering a host of complaints that various constitutional rights had been breached and other infringements caused by the application of certain "unconstitutional" provisions of the Regional Radio Act, the Constitutional Court raised doubts over the constitutionality of Article 13 RRG (which has since been amended). The Court therefore decided to start proceedings to verify the constitutionality of this provision (in its original version).

The matter in question is the regional radio and cable broadcasting authority (now known as the Privatrund

funksbhörde - the commercial broadcasting authority), which was established by the Federal Chancellery as the supreme and only body entitled to grant licences for the provision of regional and local VHF radio stations to operators other than the Austrian Broadcasting Corporation (ORF).

The regional radio and cable broadcasting authority was established under Article 13 RRG as an independent collegiate tribunal with judicial powers. Decisions made by such bodies are subject only to the higher authority of the Verwaltungsgerichtshof (the Administrative Court - VwGH) if the appeal to the VwGH is expressly declared admissible; before the law was changed on 1 August 1999, this was not the case (hence, appeals could only be made to the VfGH, which is only competent to verify conformity with the Constitution).

Following on from a decision of February 1999, the VfGH thought this situation seemed questionable: a connection between the actions of an administrative authority and the law with no control over the legality of those actions failed to meet the requirements of a democratic constitutional State that respected the rule of law. By combining administrative tasks with the functions of administrative control within a single authority, the legislature was unjustifiably preventing full control from being exercised over these administrative activities.

The current proceedings are designed to clarify whether these doubts are justified. The VfGH is expected to publish its eagerly awaited decision during its June sitting. In case previous decisions to grant licences are revoked, the Federal

Government has announced that the law will be rapidly amended.

Beschluss des Verfassungsgerichtshofes vom 16. Oktober 1999, Aktenzeichen B 2504/97 und andere.

Ruling of the Constitutional Court, 16 October 1999, file no. B 2504/97 etc.

