[AT] Legal Basis of Commercial Broadcasting Authority Unconstitutional

IRIS 2000-8:1/6

Albrecht Haller
IFPI Austria

After examining, on its own initiative, Article 13 of the Regionalradiogesetz (Regional Radio Act - RRG) (see IRIS 2000-3 : 5), which established the Privatrundfunkbehörde (Commercial Broadcasting Authority, formerly known as the Regional Radio and Cable Broadcasting Authority) as an independent collegiate tribunal with judicial powers, the Verfassungsgerichtshof (Constitutional Court - VfGH) ruled at the end of June 2000, as was widely anticipated, that it was unconstitutional. The examination procedure followed a host of complaints about the way in which regional and local radio licences were awarded.

The VfGH deemed the establishment of the Privatrundfunkbehörde as an independent collegiate tribunal with judicial powers to be unconstitutional because (a) the Constitution only allowed such bodies to be founded in exceptional circumstances and (b) special dispensation was required to establish such a body in view of the fact that it was no longer under the authority of the supreme governing organs or of Parliament itself. In the Constitutional Court's opinion, the administrative duties that the Privatrundfunkbehörde carried out, i.e. the award of broadcasting licences, did not justify its being given such a status.

In addition, the VfGH considered the provision that decisions of the Privatrundfunkbehörde (until the law was amended on 1 August 1999) were not subject to the higher authority of the Verwaltungsgerichtshof (Administrative Court) also to be unconstitutional.

Although since August 1999 appeals against decisions of the Privatrundfunkbehörde can be lodged with the Administrative Court, its status as an independent collegiate tribunal with judicial powers has so far remained unchanged. For the time being, therefore, doubts remain concerning the constitutionality of the Privatrundfunkbehörde.

The VfGH is expected to overturn the disputed licensing decisions at its October session. However, the legislature has meanwhile made provision in the RRG that, if licences are revoked, existing licence-holders should be able, under less stringent conditions, to obtain temporary broadcasting permits.

© European Audiovisual Observatory (Council of Europe) 2026

Erkenntnis des Verfassungsgerichtshofes vom 29. Juni 2000, Aktenzeichen G 175-266/99-17.

http://www.vfgh.gv.at/vfgh/presse/G175-17-99.pdf

Decision of the Constitutional Court, 29 June 2000, file no. G 175-266/99-17.

© European Audiovisual Observatory (Council of Europe) 2026

© European Audiovisual Observatory (Council of Europe) 2026