[AT] Constitutional Court Considers the Constitutionality of the Legal Principles for Licensing of Regional Radio Stations

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Following a decision taken on 21 June 1995 the Austrian Constitutional Court Verfassungsgerichtshof (VfGH) instigated constitutionality proceedings to examine the legal basis of regional radio legislation and of the frequency distribution plan which both govern the allocation of regional radio licences.

The proceedings were undertaken following complaints from 33 applicants whose licences were refused and who are appealing against the 10 regional radio licences granted at the beginning of the year. In their complaints, the appellants criticise the violation of a number of rights guaranteed under constitutional law and they cite in particular the freedom to broadcast (Art. 10 ECHR) and equality before the law. They also raise objections against the violation of rights concerning general standards considered to be unlawful and included nonetheless in regional radio legislation and the frequency allocation plan.

To be able to run an independent regional or local radio station in Austria it is necessary to obtain permission under the Regional Radio Act (Regionalradiogesetz), in addition to the approval required under telecommunications legislation for transmission equipment. Just how many private radio stations can be given licences is determined by the frequency allocation plan. This plan is issued by the Federal Ministry of public Economy and Transport in a regulation based on article 2.I of the Regional Radio Act. The purpose of the plan is to assign the different terrestrial radio broadcasting frequencies to the Austrian public broadcaster (ORF) and other stations according to frequency and location.

Frequencies available to the private radio sector are grouped together with individual broadcasting licences granted to applicants following public advertisement and administrative procedures carried out by regional radio authorities.

During the discussions about the complaints of the applicants who were turned down, doubts were expressed by the Constitutional Court about the constitutionality of § 2 I, II, III and V of the Regional Radio Act and the legality of the frequency allocation plan which had been drawn up on the basis of this Act.

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In the opinion of the Court, the frequency allocation plan goes against the legality principle of the Constitution that certain decisive issues for broadcasting policy should be left open. One of the main purposes of the frequency distribution plan was deemed to be to divide up broadcasting capacity between the ORF and the regional and local programme providers. It was considered that the law did not give legislators enough grounds on which to take this important decision. In particular, it could not be clearly ascertained from the Regional Radio Act exactly how many frequencies should be given over to the ORF and how many should be devoted to regional and local radio stations.

The appeal proceedings will be continued once a ruling has been pronounced in the constitutionality proceedings.

Beschluß des österreichischen Verfassungsgerichtshofes vom 21.Juni 1995.

Decision of the Austrian Constitutional Court of 21 June 1995.

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