[AT] ORF Act not Unconstitutional

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Peter Strothmann
Institute of European Media Law (EMR), Saarbrücken/Brussels

On 25 June 2003 the Verfassungsgerichtshof (Constitutional Court -VfGH) published a decision in the proceedings involving the new Act concerning the Österreichischer Rundfunk (Austrian public service broadcasting organisation - ORF). Inter alia, the claimant, the Vienna Land Government, considered the provision of the ORF Act to be unconstitutional, according to which "...at all events, for the prime-time evening programmes (8 p.m. to 10 p.m.), as a rule, a selection of intellectually demanding broadcasts should be on offer," (§ 4 (3) Section 2, the ORF Act). This apparently constituted direct interference with the ORF's right to determine programming. However, the Constitutional Court stated that it is not a matter of evaluating programmes individually, but of the annual and monthly television schedules, which must be devised according to this acceptable programming objective. Nevertheless, in their opinion, to tie the ORF by law to quality benchmarks, which have now been raised, should not be challenged in terms of constitutional law in a dual broadcasting system.

Furthermore the indictment was brought that, in television, reference need only be made to the title and the editorial policy (synonym for the fundamental (re-)orientation of the medium) of print media, and not their content. Moreover, the transmission time allowed for it is 2 minutes at the most, out of all the weekly advertising time, which allegedly means violating the right to freedom of expression. The court nevertheless considered this provision (§ 13 (8), the ORF Act) to be permissible. Inter alia, in their view it restricted the ORF, as a dominant player in the Austrian television market, in the opportunities it had to attain advertising income. According to them this aim represented a legitimate objective as understood in Art. 10, the Convention for the Protection of Human Rights and Fundamental Freedoms, and, indeed, served to guarantee freedom of speech and pluralism. They said the restriction of advertising to the title and editorial line could also be subsumed under the goal of ensuring objectivity, and the independence of the ORF, as permitted in constitutional law.

In the court's view one must rule out for formal reasons, if for no other reason, the Vienna Land Government's claim that, in the light of the members to be delegated by the Federal Government, the composition of the board of trustees runs counter to the requirement for equality and is not objective, and is thus unconstitutional.

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Urteil des Verfassungsgerichtshofes vom 25. Juni 2003, Aktenzeichen G 304/01

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