[AT] Complaint Made by the ORF Rejected by the Constitutional Court

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In a finding dated 5 December 2003 the Verfassungsgerichtshof (Constitutional Court - VfGH) stated that a violation of constitutionally guaranteed rights of the Österreichischer Rundfunk (Austrian public service broadcasting organisation - ORF) could not be declared on the basis of the establishment of failure to meet the objectivity requirement.

The background to the proceedings was the recording of a gala event for the conferring of a drama award, which was broadcast by the second ORF television channel (ORF 2) in October 2002. During the event the laudator had vehemently attacked the government and, in particular, the Federal Chancellor. Then, the presenter had expressed her hope that the elections, due to take place in November 2002, should not descend into the usual `pantomime'.

After transmission, in the competent Bundeskommunikationssenat (Federal Communications Board - BKS) a complaint was lodged under § 36 (1) Item 1 letter b), the ORF Act, asserting a breach of the ORF's duty to provide independent, impartial and objective information in accordance with § 10, (4) and (10), the ORF Act. In an administrative decision the Communications Board found that the ORF had failed to fulfil the programming remit in § 4 (5) in conjunction with the principles of programming of § 10 (4) and (10), the ORF Act. It had omitted to make a declaration, immediately after the broadcast, to the effect that the ORF wished to distance itself from the biased political statements made during the programme in question in the run-up to the elections. It was against this administrative decision that the ORF's complaint was directed.

In its judgement the Constitutional Court rejected the complaint against the Communications Board's decision as being unfounded. The right to broadcasting freedom as enshrined in Art. 10, the Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) was, they said, limited by a twofold restriction. Firstly, according to Art. 10 (2) ECHR, the exercising of broadcasting freedom could be subject to certain statutory restrictions. Thus, in their opinion the Communications Board decision could only have violated Art. 10, the Convention for the Protection of Human Rights and Fundamental Freedoms if, by its being pronounced, a constitutionally unobjectionable legal principle had been applied in a way which would contradict principles of logics. However, this was apparently not so. According to the Constitutional Court's established case law,

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every presentation that is permissible is governed by the statutory requirements of objectivity, impartiality, plurality and the equal treatment of conflicting ideas, according to Art. I (2), the Federal Constitutional Act on Broadcasting. Thus, reporting above all must be objective and impartial; in particular, it must take into account the diversity of opinions represented in public life. For the achievement of this goal, the main consideration should be that the programmes for which the ORF, itself, is responsible, are balanced out against each other. Apparently, in this situation the result was that different standards were applied to the ORF in its fulfilment of the objectivity requirement. These standards were configured in accordance with the nature of the broadcast, and depending on whether a `programme for which the ORF, itself, is responsible,' was under discussion, as understood in § 4 (5), the ORF Act, or merely the transmission of programme content brought in by it from outside. In the Constitutional Court's view, in the present case there is no evidence to contradict the Communications Board's opinion whereby the ORF had been very considerably involved in arranging the drama-award ceremony that it had broadcast. Allegedly it was not unthinkable to derive a breach of the objectivity requirement from the scenario whereby the ORF failed to distance itself, in a statement to the television audience immediately after the award ceremony broadcast, from the opinions expressed during the programme.

Erkenntnis des Verfassungsgerichtshofes vom 5. Dezember 2003, Aktenzeichen B 501/03

Finding pronounced by the Supreme Constitutional Court of 5 December 2003, reference B 501/03

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