[AT] ORF Need Not Pay For Broadcasting Regulator

IRIS 2005-2:1/7

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Austrian-based broadcasters are obliged to make financial contributions to the national broadcasting and telecommunications regulator Rundfunk- und Telekom Regulierungs-GmbH (RTR-GmbH). RTR-GmbH uses this income to cover its own costs and those of KommAustria, the first instance regulatory body for private broadcasters. Only companies with particularly small turnovers are exempt from making these payments. In principle, RTR-GmbH itself determines its budgetary needs, although these decisions are monitored by the Bundeskommunikationssenat (Federal Communications Office). The amount to be paid by the individual broadcasters depends on their turnover from broadcasting activities. Under this system, the public service broadcaster ORF should contribute the vast majority (approx. 80%) of the funds needed to support the broadcasting-related operations of RTR-GmbH and KommAustria. ORF complained about this situation to the Verfassungsgerichtshof (Constitutional Court - VfGH). The Court upheld ORF's complaint and rescinded parts of the KommAustria-Gesetz (KommAustria Act) on the following grounds. Firstly, the KommAustriaGesetz only requires broadcasters to contribute to the costs of the supervisory bodies. However, some of these bodies' activities relate to broadcasting policy and, as such, are not performed for the benefit of broadcasters, but of society in general. They should therefore be funded through tax revenue. The fact that they are funded exclusively by market participants was therefore found inappropriate and unfair. Secondly, the Act stipulates that RTR-GmbH should act as a central authority for audio-visual media and telecommunications. Although it is obliged to carry out this role in an economical, efficient way, nothing is mentioned about how large this authority should be. Since RTR-GmbH can determine this point itself, it has a significant say in how much funding it needs. As no provision is made for other mechanisms to limit expenditure, the Act is too vague and therefore unconstitutional. This decision refers only to funding for 2001-2003. A new, similar provision is now in force.

Decision of the Constitutional Court of 7 October 2004, G 3/04

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