[AT] Supreme Court Rules on "Originating State" Principle for Radio

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The Supreme Court (OGH) has clearly ruled (decision of 4 May 2004, 4 Ob 82/04v) that the "originating State" principle should extend to sound radio, although there is no explicit provision to this effect in either Community or Austrian law.

The ruling is thus of interest to the media sector generally in relation to discussion of the Commission's proposal for a directive on services in the internal market (COM (2004) 2 final) (see IRIS 2005-4: 3).

In the case before the court a private radio broadcaster established and transmitting in the Tyrol region of Austria had brought an action against a radio broadcaster based in South Tyrol (Italy). Following the installation of transmission equipment which at certain times broadcast a stronger signal in the direction of Austria, the respondent's programmes could also be received over a wide area of North Tyrol. One advertisement broadcast by the respondent concerned a technology and business park in Austria. The applicant had sought an injunction to prevent the respondent transmitting its radio programmes in Austria on the grounds that, not having a licence for radio broadcasting in Austria, it was creating a competitive advantage for itself by unlawful means.

The Austrian Private-Sector Radio Act does not stipulate whether a foreign radio broadcaster deliberately transmitting to Austria requires a licence. The Private-Sector Television Act, by contrast, imposes a licensing requirement on broadcasters whose registered office is in Austria and who take editorial programming decisions in Austria. Licences are also required by broadcasters who lawfully use transmission capacity allocated to Austria under international broadcasting law or whose signals are transmitted in Austria via a satellite link.

In its ruling, the Supreme Court applied this provision by analogy to sound radio. In effect, the respondent, whose registered office was in Italy, was not obliged to apply for a radio broadcasting licence under the Austrian Private-Sector Radio Act. There had thus been no breach of the prohibition on unfair competition.

Entscheidung des Obersten Gerichtshofs vom 4. Mai 2004, 4 Ob 82/04v

Supreme Court decision of 4 May 2004, 4 Ob 82/04v

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