[AT] Short Reporting Rights May Not Be Restricted

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The *Verfassungsgerichtshof* (Constitutional Court - VfGH) recently brought a temporary conclusion to a series of legal disputes over the right to broadcast short reports on *Bundesliga* football matches during the seasons 2004/2005 to 2006/2007 (see IRIS 2005-1: 7 and IRIS 2006-3: 10). The *Bundeskommunikationssenat* (Federal Communications Office - BKS) granted a request from *Österreichische Rundfunk* (Austrian Broadcasting Corporation - ORF) that it be allowed to broadcast short reports, but described in detail what kind of incidents could, as a rule, be shown under the right to short reporting (see IRIS 2006-4: 7). Reporting would be restricted to 90 seconds per match. The ORF must pay a fee to Premiere, who owns the exclusive rights, of EUR 1,000 per minute broadcast.

The BKS based its decision to restrict short reporting on Art. 5(3) of the *Fernsehexklusivrechtegesetz* (Exclusive Television Rights Act), which states that "short reporting of an event is limited to short reporting appropriate for a news broadcast. The admissible duration of a short report depends on the length of time needed to convey the news content of the event and should be no longer than 90 seconds". This provision is intended to transpose Art. 9 of the European Convention on Transfrontier Television.

In the recent proceedings, the Constitutional Court had to decide whether the BKS had breached ORF's freedom to broadcast by stipulating which incidents it could show. The VfGH decided in ORF's favour: "However, under Art. 10 of the European Convention on Human Rights, the television broadcaster alone may decide which incidents are of sufficient interest to show to its viewers. If the authority were allowed to determine the content of short news reports and dictate which incidents of a football match could be broadcast, this would constitute a breach of Art. 10 ECHR, which would be neither justified by the public interest nor necessary for the protection of the rights of third parties".

The VfGH also ruled that, when determining the fee to be paid to the exclusive rights holder, the BKS should have taken into account the fact that the value of each minute broadcast could be different when 90-second reports on each match were shown rather than 90 seconds on each round of matches.

The court therefore quashed the decision on the grounds that it breached broadcasting freedom and the principle of equality.

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http://www.vfgh.gv.at/cms/vfgh-site/attachments/7/6/8/CH0006/CMS1168335370736/orf_kurzberichterstattung_b_551-06.pdf

Ruling of the VfGH, 1 December 2006 (case no. B 551/06, 567/06)

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