[AT] Constitutional court rejects appeal against refusal of broadcasting authorisation

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Volker Kreutzer
Institute of European Media Law (EMR), Saarbrücken/Brussels

The Austrian constitutional court has held that the appeal of a private television company against the refusal of a broadcasting authorisation was not grounded. The complainant intended operating a television transmitter in the Vienna area, but the application for authorisation was rejected on the grounds that the operation of broadcasting installations required legal authorisation, which had not been obtained. The private television company appealed against this refusal on the grounds of infringement of the freedom to broadcast embodied in the constitution and infringement of the principle of equality. Secondarily it claimed that legal provisions contrary to the constitution were being applied. The television monopoly existing in Austria, as emerged from the decision by the European Court of Human Rights in the Lentia case, violated Article 10 of the European Convention on Human Rights and was therefore unconstitutional. Since broadcasting legislation allowing the establishment of private television companies had not been enacted, there were no legal grounds for refusal as regarded freedom to broadcast. The constitutional court did not agree with this. It started out from the view that a law was not a barrier but a condition for the admissibility of broadcasting, and then looked at the question of the role of the constitutional court in examining omissions in legislation. It took the view that only a partial omission in the context of existing regulations could be examined. This raised a point of reference making it possible to decide on the effects of an omission. In this case, however, there was total inactivity on the part of the legislator. This could not be taken up by the constitutional court as it could not force the legislator to enact legislation. Thus only a decision of the European Court of Human Rights on non-compliance with the Convention could clarify the matter definitively.

Entscheidung des österreichischen Verfassungsgerichtshofs vom 5. März 1996 B 2674/94-11.

Decision of the Austrian Constitutional Court of 5 March 1996, B 2674/94-11.

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