[AT] Judgments by the Constitutional Court on the constitutionality of the Regional Radio Act, the Frequency Utilisation Plan and the Broadcasting Decree

IRIS 1996-6:1/12

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With a decision on 21.06.1995 the Austrian Constitutional Court (VGH) instigated norm verification proceedings to determine which parts of the Regional Radio Act (RRG) and the frequency utilisation plan regulating the awarding of regional radio broadcasting licences needed to be investigated as to their constitutionality. In a second decision on the same day verification proceedings were also instigated in respect of the constitutionality of parts of the broadcasting decree (RVO) covering cable broadcasting (see : IRIS 1995 - 8 : 8).

In two judgments on 27.09.1995 the VGH set aside the questioned provisions in the norms referred to. In the first judgment the VGH set aside §2, paragraphs 1-5,5 of the RRG and the entire Frequency Utilisation Plan. According to the Constitutional Court the Act leaves undecided how and to what extent in planning frequency utilisation the duties and interests of ORF (the Austrian broadcasting corporation) should be taken into consideration, how the Frequency Utilisation Plan should take into account for regional radio the requirements of local radio, and not only how many locations and frequencies should be planned for regional programme organisers in each region, or at least which criteria should be used in their allocation. The investigated paragraphs of § 2 of the RRG were therefore set aside with immediate effect on the grounds of their contravening the principle of legality. The Frequency Utilisation Plan thereby lost its legal foundation and was also set aside.

In the second judgment the VGH set aside separate passages in §§ 20, paragraph 1, 24a and 24b, paragraph 2 of the RVO. According to the VGH the result of the regulations would be to prohibit the provision of active cable broadcasting other than cable text functions by any operators other than the Austrian broadcasting corporation (ORF); this would lead to an excessive restriction of the freedom to broadcast provided for in Article 10 of the European Convention on Human Rights (ECHR). The VGH cited the comments of the European Court of Human Rights in its judgment in the case of Informationsverein Lentia et al. v. Austria on the meaning and scope of Article 10 of the ECHR (Judgment of 24.11.1993, 36/1992/381/455-459). In §§ 20, paragraph 1, 24a and 24b, paragraph 2 of the RVO the passages were therefore set side as unconstitutional as their effect would be to restrict the provision of cable broadcasting. The Court held that the setting aside should not however become effective until 31.07.1996. In the event of no

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new regulation coming into force by then, a flood of programmes is to be expected from 01.08.1996 as a result of a situation not covered by any legislation.

Erkenntnisse des österreichischen Verfassungsgerichtshofes vom 27. September 1995 Az.: G 1256-1264/95-9 sowie Az.: G 1219-1244/95-21.

Decisions by the Austrian Constitutional Court of 27 September 1995. Az : G1256-1264/95-9 and Az : G1219-1244/95.21.

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