# [AT] Even Non-Commercial Advertising is Advertising

**IRIS 2009-9:1/6**

*Robert Rittler*
*Gassauer-Fleissner Attorneys at Law, Vienna*

On 24 February 2009, the *Oberste Gerichtshof* (Supreme Court - OGH) ruled that non-commercial advertising broadcast in return for payment is subject to the limits on advertising time laid down in broadcasting legislation.

The plaintiff in this case was a private broadcasting company, while the defendant was *Österreichische Rundfunk* (Austrian public service broadcaster - ORF). The parties disputed whether ORF had exceeded the limit of six minutes of advertising on a particular day on a regional radio station. The courts ruled that this was the case if an appeal for donations to support the training of priests in the Third World, which had been broadcast in return for payment, counted as "radio advertising" and was therefore subject to the advertising time limit.

The OGH explained that the appeal did not represent commercial advertising in the sense of Art. 13 (1) of the *ORF-Gesetz* (ORF Act - ORF-G) because it did not aim "to promote sales of goods or the provision of services [...] in return for payment." However, the ORF-G did count non-commercial advertising as advertising in the broader sense of the term. The OGH stressed that the legal principles and consequences enshrined in the ORF-G applied to ORF's radio as well as its television advertising. This was the case even though the rules on television advertising had been issued in accordance with the Television Without Frontiers Directive (89/552/EEC - TWF Directive) and the European Convention on Transfrontier Television, and the legislative body could have adopted different rules for radio advertising. The opinion that non-commercial advertising was subject to the advertising time limit could not be challenged under European law, since Art. 3 of the TWF Directive permitted Member States to adopt stricter rules and therefore to include non-commercial advertising. This was necessary in order to comply with the provisions of the European Convention on Transfrontier Television. The Convention's definition of advertising in Art. 2 (f) included any public announcement in return for payment or for self-promotional purposes intended "to advance a cause or idea, or to bring about some other effect desired by the advertiser or the broadcaster itself". Even charity appeals were intended to advance a "cause". The advertising restrictions enshrined in the Convention were based on this broad definition and were therefore stricter than those contained in Community law. The concept of advertising in the ORF-G must therefore include non-commercial advertising.

© European Audiovisual Observatory (Council of Europe) 2026

Finally, the Supreme Court ruled that the appeal did not constitute a "contribution in the general interest", which would have been exempt from the advertising time limit, because it had been broadcast in return for payment. The spot should therefore have counted towards the daily limit.

***Entscheidung des OGH (Gz.: 4 Ob 223/08k) vom 24. Februar 2009, wbl 2009, 365/162 (Juli-Ausgabe)***

http://www.ris.bka.gv.at/Dokument.wxe?Abfrage=Justiz&Dokumentnummer=JJT_20090224_OGH0002_0040OB00223_08K0000_000

*Ruling of the OGH (case no. 4 Ob 223/08k), 24 February 2009, wbl 2009, 365/162 (July issue)*

http://www.ris.bka.gv.at/Dokument.wxe?Abfrage=Justiz&Dokumentnummer=JJT_20090224_OGH0002_0040OB00223_08K0000_000

© European Audiovisual Observatory (Council of Europe) 2026

© European Audiovisual Observatory (Council of Europe) 2026