

[AT] Administrative Court Decides on Obligation to Pay ORF Licence Fee

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The Austrian Verwaltungsgerichtshof (Administrative Court - VwGH) ruled on 10 May 2010 (Case 2009/17/0177) that the ORF licence fee only has to be paid if it is technically possible to receive all the television programmes covered by the ORF's television remit.

The legal dispute was preceded by an Administrative Court decision in 2008 (Case 2008/17/0163) in which the present plaintiff successfully brought an action against the levying of the ORF licence fee. The ORF had previously informed the plaintiff that a change in the encryption system meant that programmes could in future only be received at the plaintiff's location by means of DVB-T reception modules. The plaintiff did not have the necessary equipment and could no longer receive the television programmes ORF 1 and ORF 2 with his satellite receiver and smartcard, whereupon he stopped paying the ORF licence fee. The defendant, Info Service GmbH (GIS), continued to demand that the plaintiff pay the licence fee as he had at least one operational radio or television set in his household.

By section 31(1) and (3) of the ORF-Gesetz (ORF Act), anyone in Austria is entitled to receive the ORF's radio and television programmes against payment of an ongoing licence fee, and this obligation exists irrespective of the frequency and quality of the programmes or their reception. The beginning and end of the obligation are governed by the Rundfunkgebührengegesetz (Broadcasting Licence Fees Act), sections 2(1) and 1(1) of which provide that anyone who operates broadcasting reception equipment in a building must pay the licence fee. Such equipment comprises technical devices that render presentations or performances visible or audible within the meaning of section 1(1) of the Bundesverfassungsgesetz über die Sicherung der Unabhängigkeit des Rundfunks (Federal Constitutional Law on Safeguarding the Independence of Broadcasting). The Administrative Court concluded from this in 2008 that there was a mutual relationship between the reception of the ORF's programmes and the licence fee payable. It pointed out that a distinction had to be drawn between the obligation to pay the licence fee and the mode of payment, which was governed by the Broadcasting Licence Fees Act. The reference to that legislation in the ORF Act showed that for the purposes of the licence fee the requirement concerning the possession of operational broadcasting reception equipment was only met when the equipment was capable of actually receiving the ORF's programmes, which

was not the case. GIS nonetheless demanded that the licence fee continue to be paid as the plaintiff could receive the speciality channels ORF 2 Europe and ORF Sport Plus without a new smartcard.

The Administrative Court has now ruled that the ORF licence fee only has to be paid when all the television programmes covered by the ORF's remit can be received using existing operational reception equipment. The statutory remit, it stated, required the provision, *inter alia*, of two television programmes that could be received nationwide. If this was not guaranteed, then no licence fee was payable.

Erkenntnis des VwGH vom 10. Mai 2010, Geschäftszahl 2009/17/0177

http://www.ris.bka.gv.at/JudikaturEntscheidung.wxe?Abfrage=Vwgh&Dokumentnummer=JWT_2009170177_20100510X00

Administrative Court's judgment of 10 May 2010, 2009/17/0177

