[AT] ORF Guilty of Breaking Advertising Rules

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In a decision published on 18 October 2010, the Austrian broadcasting authority, the *Bundeskommunikationssenat* (Federal Communications Senate - BKS), declared its position on the difference between an advertising spot and a public information broadcast.

The procedure followed a complaint about the broadcast of a 20-second spot by the Austrian workers' association on *Österreichische Rundfunk* (Austrian public broadcaster - ORF), which labelled it as a "public information broadcast". In the spot, the workers' association dealt with some topical political themes and criticised possible tax reforms and savings schemes. The complainant thought the spot represented political or ideological advertising which, through the message it contained, was clearly designed to express a particular viewpoint and was more or less identical to a key proposal made at a national political party conference. It argued that the spot should not, therefore, have been labelled as a "public information broadcast".

ORF argued that the spot did not represent political advertising. It said that the workers' association had acted within its remit as a representative of workers' interests and had called on workers to consider tax-related issues. This had been an admissible attempt by the workers' association to start and sustain a debate, and to inform workers about current political plans.

The BKS held that the "public information broadcast" label only applied to broadcasts that conveyed factual information from which the general public could derive a specific personal benefit, such as a reference to a public service or behavioural guidelines which, if complied with, were somehow, either directly or indirectly, advantageous to the general public. The concept should therefore be interpreted as including only messages that, in the full sense of the term, "served" the general public in some way. For example, they might promote road safety, environmental protection, public health or civic duties.

In the opinion of the BKS, a spot did not, in any case, represent a "public information broadcast" if - as in this case - it merely started and sustained a general political debate on possible tax reforms and savings schemes. Furthermore, the BKS could not identify any obvious benefit to the public.

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On these grounds, the disputed spot should be considered as ideological advertising and should have been labelled as such and clearly separated from other programme material in accordance with the advertising rules set out in the *ORF-Gesetz* (ORF Act). By failing to label it in this way, ORF had therefore violated the rule on the separation of content, enshrined in Article 13(3) of the *ORF-Gesetz* (old version).

Beschluss des BKS vom 18. Oktober 2010 (GZ 611.919/0005-BKS/2010)

http://www.bundeskanzleramt.at/DocView.axd?CobId=41257

BKS ruling of 18 October 2010 (GZ 611.919/0005-BKS/2010)

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