

[AT] Constitutional Court Cancels Provisions of the ORF-Act about Enfranchised Voters concerning the Choice of the Audience Council

IRIS 2011-9:1/35

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On 27 September 2011, the Austrian Constitutional Court (VfGH) decided that the provisions of the ORF-Act in § 28 section 6 to 10 about enfranchised voters concerning the choice of the ORF-Audience-Council are unconstitutional and therefore must be repealed.

In the opinion of the VfGH, the provisions in § 28 section 6 to 10 of the ORF-Act do not fulfill the requirements for the determination of laws. Article 18 of the Federal Constitutional Law (B-VG) requires that laws have a content by which the conduct of the authorities is determined in advance. This requirement also applies to the statutory definition of barriers concerning the private autonomy of the Austrian public broadcasting (ORF). Therefore, the legislature has to adopt sufficiently certain laws, if he wants to regulate the behavior of the organs of the ORF by law.

The VfGH criticized the fact that it is unclear, which persons are entitled to vote the ORF-Audience-Council. Even after exhausting all possibilities, the persons, who are entitled to vote, cannot be determined with sufficient certainty. In particular, the question could not be answered, whether the ORF-Act only allows television viewers to select, who have a subscriber number, or whether under certain conditions other television viewers are entitled to vote.

According to the law neither all household members of an owner of a television or radio nor any people, who actually only uses a television or radio without being its owner, can be considered as entitled to vote. Such an interpretation of the law would give all users of a television or radio the right to vote and would make the enforcement of the law impossible, because of the ever-changing number of users.

Even the consideration of only those persons as entitled to vote, who have the power to decide about the use of television or radio relating to other people in their environment, makes a reasonable enforcement of the law impossible. The recording of all individuals in each household, who have the right to decide about the use of television or radio through another person, cannot be accomplished with reasonable effort.

In the view of the court, only those persons disposing of a subscriber number seem to be entitled to vote. Consequently, the process of allocation of subscriber numbers is a relevant aspect for the legal assessment. Concerning this process, it is not clear, whether subscriber numbers are allocated in connection with the election of the ORF-Audience-Council, and for the case that this happens, in which way the subscriber numbers will be allocated. The ORF-Act does not contain a provision, according to which household members or nursing home residents have the right to vote, after they have made a report about the use of a television or radio, even though they have to pay any fees for the use of the television or radio, because the fees are already paid by someone else (for example by the owner of the television or radio). In particular, the ORF-Act does not contain a provision, according to which of these people get an own subscriber number or the subscriber number of the person, who is paying the fees.

With regard to the examination of the election rules for the election of six members of the ORF-Audience-Council, the VfGH stipulates that the election code of the ORF is not a sufficient legal regulation, because there is a lack of statutory authority by the legislature.

Urteil des VfGH (G9/11; V5/11) vom 27. September 2011

https://www.ris.bka.gv.at/Dokument.wxe?Abfrage=Vfgh&Dokumentnummer=JFT_09889073_11G00009_00

Judgment of the VfGH (G9/11; V5/11) of 27 September 2011

