[AT] BKS Clears ORF of Breaching Objectivity Requirement in Gambling Addiction Report

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In a ruling of 27 February 2012, the Austrian Bundeskommunikationssenat (Federal Communications Office - BKS) decided that the Austrian public service broadcaster Österreichischer Rundfunk (ORF) had not breached the objectivity requirement set out in Articles 4(5) and 10(5) of the ORF-Gesetz (ORF Act) in a report about a gambling addict.

After the Kommunikationsbehörde Austria (Austrian Communications Authority - KommAustria) had reached the same decision in a previous procedure, the plaintiff had appealed to the BKS, arguing that the disputed report, describing an individual's experiences, had included heavy and ultimately unjustified criticism. Not only had ORF failed to challenge this criticism, but the reporter's remarks and comments had served to reinforce it. The average viewer would have inevitably been given the impression that the addict's experiences could, in principle, apply to anyone. In general, the plaintiff condemned the lack of objective commentary, referring to the "subtle behaviour" of ORF, which had broadcast a considerable amount of advertising for State betting products shortly before and after the programme.

The BKS disagreed and, in accordance with KommAustria's lower-instance decision, noted that the concept of objectivity in the sense of the ORF Act should be understood as the statement of facts and the avoidance of bias, partisanship and distortion of events. The BKS stated that the objectivity requirement would be breached by any statements or wording in a report that had a significant effect of pushing the general context into the background, with the result that the average viewer would inevitably receive a distorted impression of the subject-matter. The BKS did not find any passages in the report concerned that would give the average viewer a distorted impression detrimental to the plaintiff. Also, the report did not contain any polemical or unreasonable wording.

The average viewer would therefore be able to recognise the descriptions of the addict's experiences as portrayed as being personal and individual rather than an accurate portrayal of the private gambling industry as a whole. An objective commentary was unnecessary. Furthermore, the title "Wette verloren - Sportwetten bis zum Ruin" ("Bet lost - sports betting leads to ruin" clearly showed that the report dealt with an individual case, in which the social problem of

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gambling addiction was meant to be portrayed together with background information relevant to criminal law and society.

Finally, the BKS stated that the report could not be considered as a sweeping defamation of private providers nor a recommendation for State providers. Furthermore, the report's structure did not suggest that ORF agreed with the addict's critical comments, or that it was therefore clearly designed as cheap propaganda against private operators, while portraying State providers in a particularly positive light.

On these grounds, the BKS rejected the appeal.

Entscheidung des BKS vom 27. Februar 2012 (GZ 611.995/0002-BKS/2012)

http://www.bundeskanzleramt.at/DocView.axd?CobId=46856

BKS decision of 27 February 2012 (GZ 611.995/0002-BKS/2012)

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