[AT] Information Channel Broadcasting only Still Images Must Record Programmes

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On 25 January 2012, the Austrian *Verwaltungsgerichtshof* (Administrative Court - VwGH) rejected a broadcaster's appeal against a decision of the *Bundeskommunikationssenat* (Federal Communication Office - BKS) and ruled, *inter alia*, that an information channel that broadcasts only a sequence of still images that changes approximately every two months (mainly job advertisements and other advertising) is obliged to record its broadcasts under the terms of the *Privatfernsehgesetz* (Private Television Act - PrTV-G).

In a ruling of 9 March 2009, the BKS had stated that the company concerned should be treated as a broadcaster in the sense of Article 2(1) PrTV-G, since it compiled items to be distributed via its cable network and therefore conducted activities that defined it as a broadcaster in the sense of the PrTV-G. The broadcaster had breached the recording requirement under Article 47(1) PrTV-G since the PowerPoint presentation that was produced for this purpose during the proceedings was not sufficient to ensure that the content actually broadcast could be reproduced at a later date without any changes.

In its appeal, the broadcaster mainly argued that the disputed transmission of information was not a programme in the sense of Article 47(1) PrTV-G, since programmes needed to have a minimum amount of creative and intellectual content. The mere transmission of static, unchanging teletext with still images that changed at certain intervals, with no other video or audio content, could not constitute a programme.

The VwGH agreed fully with the BKS's opinion and confirmed the classification of the plaintiff as a broadcaster. It explained that the recording obligation under Article 47(1) PrTV-G obliged broadcasters to record all their programmes, keep them for a precisely defined period of time and make them available to the regulatory body on request. The Act did not contain a more detailed definition of the concept of a "programme". Agreeing with the BKS, the VwGH ruled that the purpose of this provision was to guarantee effective legal control and enforcement of the law. The provision was therefore designed to enable the regulator to check the programme actually transmitted by the broadcaster as part of its control remit. The duty to record and keep programmes therefore encompassed broadcast programmes in the broadest sense, regardless of how

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much editorial, creative and intellectual input was needed to produce them and no matter how extensive their information content was.

On these grounds, the VwGH rejected the appeal as unfounded.

Entscheidung des VwGH vom 25. Januar 2012 (Az. 2011/03/0059)

http://www.ris.bka.gv.at/Dokument.wxe?Abfrage=Vwgh&Dokumentnummer=JWT_2011030059_20120125X00

VwGH decision of 25 January 2012 (case no. 2011/03/0059)

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