[AT] Judgment by the Constitutional Court repealing the ban on advertising for cable television

IRIS 1997-2:1/7

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On 08.10.1996 the Austrian Constitutional Court (VfGH) repealed the previous total ban on advertising for cable television companies, based on Section 24, paragraph 2 of the Broadcasting Regulation.

The judgment enables cable operators in Austria - some 270 in all - to accept advertising slots in their programmes from now on. The corresponding conditions were repealed by the VfGH on the grounds of being contrary to the Constitution, as the total ban on advertising constituted an extremely serious infringement of the freedom of expression of opinion and the freedom to exercise an economic activity. The explanatory reasons for the judgment state that a decision of any other tenor could have led to proceedings before the European Court of Human Rights. The VfGH reached this conclusion further to a complaint by 17 cable operators, following the repeal by the VfGH at the end of September 1995 of the conditions contained in the Austrian Broadcasting Regulation prohibiting private active cable broadcasting (see IRIS 1996-6: 8 and IRIS 1995-8: 8).

The VfGH judgment also instructed the legislator to create new basic legislation for cable television broadcasting by 31 July 1996, but even if the legislator produced nothing by the deadline, active cable television broadcasting in Austria would still be possible after 01 August 1996, although in the interim it would not be able to include advertising.

In the opinion of the VfGH, the reasons justifying the advertising ban only applied to a transitional period and since 01.08.1996 have now become contrary to the Constitution.

Urteil des österreichischen Verfassungsgerichtshofes vom 8. Oktober 1996 in der Rechtssache G 93/96-9 bis G 100/96-9 und 230/96-6 bis 238/96-6.

Judgment of the Austrian Constitutional Court on 8 October 1996 in cases G 93/96-9 to G 100/96-9 and 230/96-6 to 238/96-6.

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