[AT] Constitutional Court Lifts ORF Facebook Ban

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In a decision of 26 July 2013 (case no. G 34/2013-10), the Austrian Verfassungsgerichtshof (Constitutional Court - VfGH) lifted the so-called "Facebook ban" as was enshrined in Article 4f(2)(25) of the ORF-Gesetz (ORF Act), prohibiting the Austrian public broadcaster Österreichischer Rundfunk (ORF) from using social networks for competition reasons, on the grounds that it was unconstitutional.

Previously, the Austrian communications authority, KommAustria, had ruled that ORF's provision of a Facebook page infringed the ORF Act (see IRIS 2012-3/9). After an unsuccessful appeal to the supreme broadcasting authority, the Bundeskommunikationssenat (Federal Communications Board - BKS), the ORF filed an action with the Constitutional Court and the Verwaltungsgerichtshof (Administrative Court - VwGH). The latter had dismissed the action as unfounded in a decision of 22 October 2012 (see IRIS 2013-1/6).

The VfGH ruled that a ban on the use of social networks in connection with the ORF's own daily online news reporting breached the broadcaster's constitutional right to freedom of expression and broadcasting. Article 10(1) of the European Convention on Human Rights (ECHR) covered advertising as a protected form of expression. It was true that the ban in question pursued a legitimate objective as laid down in Article 10(2) ECHR, in so far as it was meant to protect the ORF's private competitors in the broadcasting market and to prevent distortion of competition. However, in order to achieve this objective it was not necessary to prohibit the ORF from using social networks in general. In this respect, the provision of Article 4f(2)(25) of the ORF Act overstepped the boundaries of Article 10(2) ECHR.

Nevertheless, the VfGH stressed that the provision disputed by the ORF should not be abolished as unconstitutional. In particular, the ORF was still banned from operating its own social network since, in view of its special position vis-à-vis its private competitors in the broadcasting market, such a measure was necessary and therefore not unconstitutional.

Entscheidung des VfGH vom 26. Juli 2013 (Az. G 34/2013-10)

http://www.vfgh.gv.at/cms/vfgh-site/attachments/3/1/9/CH0003/CMS1374746770264/orf_facebook_g_34-

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VfGH decision of 26 July 2013 (case no. G 34/2013-10)

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