[AT] Storage media tax threshold is unconstitutional

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In a ruling of 29 November 2018 (G 296/2017-10), the Österreichische Verfassungsgericht (Austrian Constitutional Court) stated that a rule on the Austrian storage media tax was unconstitutional because the upper limit of 6% of the typical price level violated the principle of equal treatment.

The Austro-Mechana collecting society had submitted a claim against a sole trader who sold blank CDs for payment of the storage media tax provided for in Article 42b of the Copyright Act (UrhG). The storage media tax, which is levied on the initial sale of recordable storage media, is designed to provide copyright holders with fair compensation for the production of private copies. The sum claimed by the collecting society exceeded 6% of the sale price. However, the sole trader refused to pay it on the grounds that Article 42b(4)(8) UrhG limited the tax to 6% of the price. The collecting society's claim was upheld in the first instance. After the defendant appealed, Austro-Mechana asked the Constitutional Court to examine the law in question.

The Constitutional Court decided that the disputed law was unconstitutional because it was incompatible with the principle of equal treatment, which prevents the legislator from adopting rules that are factually unjustifiable. The 6% threshold was factually unjustifiable. The purpose of Article 42 UrhG was to create a legal basis for fair compensation for copyright holders. Fair compensation had to be based on the damage caused to copyright holders by lawful private copying. This damage depended on the capacity, access speed, average length of use and robustness of the storage media concerned. However, since the price of storage media was falling all the time, the rate of tax needed to be increased accordingly in order to compensate for the damage caused by private copying. The system was not sustainable if an upper limit was laid down in law. Since enforcement of the 6% threshold therefore impeded the appropriate compensation of copyright holders, it was factually unjustifiable.

Urteil des Verfassungsgerichtshofs vom 29. November 2018 - G 296/2017-10

https://www.vfgh.gv.at/downloads/VfGH_Entscheidung_G_296_2017_Speichermedienverguetung.pdf

Constitutional Court decision of 29 November 2018 - G 296/2017-10

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