

## [AT] FPÖ video on "E-Card abuse" is discriminatory

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In a decision of 23 July 2019 (KOA 1.960/19-197), the Austrian communication regulator KommAustria ruled that a video produced by the Freiheitliche Partei Österreichs (Freedom Party of Austria – FPÖ) on the theme of “E-Card fraud” was discriminatory and therefore violated Article 31(3)(2) of the Audiovisuelles Mediendienste-Gesetz (Audiovisual Media Services Law - AMD-G).

The FPÖ operates the on-demand audiovisual service ‘FPÖ-TV’ and has registered its own YouTube and Facebook channels with KommAustria. Via its on-demand service, it posted a video about measures taken by the government at the time to combat social security fraud, in particular the fact that the so-called ‘E-Card’ would include a photo of the card-holder. This would ensure that the card could not be used by unauthorised persons. The ‘E-Card’, a smart card containing personal social insurance information (health insurance, unemployment insurance, etc.), must be shown when visiting the doctor, for example, to ensure that the costs are charged to the correct health insurance provider.

The video is an animated film showing a man with a moustache and wearing a fez visiting the dentist. A voice-over calls the man ‘Ali’. In the next scene, a deep laugh can be heard as the man hands an E-Card to the receptionist. The voice-over says: “But stop!”. A buzzer is then heard and the voice-over continues: “Ali has Mustafa’s E-Card because, unlike his cousin, Ali is not insured.” The camera zooms in on the E-Card so the name “Mustafa” is visible on the card, which does not include a photo. In the next image, Mustafa appears in a thought bubble above Ali’s head. He looks virtually identical to Ali, with a moustache and a fez, although he also has a beard. A buzzer is heard again. The receptionist does not accept the E-Card and the voice-over says: “The surgery does not accept the E-Card because in future, thanks to the FPÖ, each E-Card will need a photo.” The receptionist asks Ali for an E-Card with a photo. Since he does not have one, he leaves the surgery with his head bowed and a tear in his eye while the voice-over says: “Bad luck, Ali. Goodbye, social security fraud.”

KommAustria categorised the YouTube version of the video as a form of advertising that seriously infringed the ban on discrimination enshrined in Article 31(3)(2) in conjunction with Article 30(2) AMD-G. The video discriminated against a certain group of people because it contained and promoted negative stereotypes of them.

The appearance of the fez, an item of typical Middle Eastern Islamic headwear, and the first names Ali and Mustafa, which are both very popular in Islamic countries, clearly suggested to the average viewer that both characters were from a Middle Eastern Islamic background. Ali and Mustafa also looked very similar, which demonstrated a clear intention to portray this group of people as typical abusers of the social security system. The average viewer would conclude that the video was designed to place the debate on E-Card fraud in the context of migration. The video also used degrading or ridiculous forms of expression and images, such as Ali's bowed head as he left the surgery with a tear in his eye, having scornfully laughed as he tried to get dental treatment by showing his cousin Mustafa's E-Card. The reference to adult characters by using only their first names was also significant.

In a separate decision of 23 July 2019 (KOA 1.960/19-181), KommAustria rejected a complaint about the video's publication on Facebook on the grounds that no audiovisual media service had been presented. At the time of the allegation, the video had no longer been available at the Internet address cited by the complainant. Nor had any other audiovisual content been available at the time. Since no audiovisual content had been provided, there was no on-demand audiovisual media service under Article 2(4) AMD-G. Facebook had been registered by the FPÖ as a means of distributing the 'FPÖ-TV' on-demand service and appeared in the KommAustria register. However, its registration under Article 9 AMD-G did not prove the existence of an on-demand audiovisual media service, but rather the activity carried out by the provider. The mention of the media service in the authority's public register pursuant to Article 9(4) AMD-G had no constitutive effect, only a declaratory one.

### ***Entscheidung der KommAustria vom 23. Juli 2019 - KOA 1.960/19-181***

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*Decision of the KommAustria of 23 July 2019 - KOA 1.960/19-181*

