European Court of Human Rights: Case Radio ABC vs. Austria

IRIS 1997-10:1/3

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Radio ABC (Alternative Broadcasting Corporation) in 1989 was refused a licence to set up a private local radio station for the Vienna region. After exhausting all national remedies, Radio ABC applied to the European Commission of Human Rights in 1991, relying on Article 10 of the European Convention for the Protection of Human Rights and Fundamental Freedoms. The Commission, in its report of 11 April 1995, considered unanimously that the refusal to grant a licence for private broadcasting was in breach of Article 10 of the Convention. The Court now in its judgement of 20 October 1997 comes to the same conclusion. The Court refers to its judgement in the Case of Informationsverein Lentia vs. Austria (ECourtHR, 24 November 1993, Series A, vol. 276), in which it decided that the restriction on the freedom to impart information by prohibiting private broadcasting, as this was based on the Austrian Broadcasting monopoly, was not necessary in a democratic society and hence was in breach of Article 10, par. 2 of the Convention. As in the period before the entry into force of the Regional Broadcasting Act (1 January 1994) there was no legal basis whereby an operating licence for a local radio station could be granted because of the broadcasting monopoly guaranteed to the ORF, the situation of Radio ABC was identical to that of the applicants in the Informationsverein Lentia case. Accordingly for this period it was undisputed that there was a breach of Article 10. But even in the next period, after the coming into force of the Regional Broadcasting Act in 1994, there was still a breach of Article 10 of the European Convention, because of the fact that the Constitutional Court in its judgement of 27 September 1995 annulled some provisions of the Regional Broadcasting Act, which led to the legal situation which existed before 1994, so that the violation of Article 10 was prolonged.

The Austrian Government at the hearing of 27 May 1997 however informed the Court of the amended version of the Regional Broadcasting Act of 1 May 1997, according to which new licence applications could be lodged in the period between 1 May and 12 June 1997. Although the European Court doesn't rule in abstracto whether legislation is compatible or not with the Convention, the Court nevertheless "notes with satisfaction that Austria has introduced legislation to ensure the fulfilment of its obligations under Article 10" of the European Convention. The Austrian Broadcasting Law opening access for private broadcasting finally seems to be in accordance with the freedom of expression and information as guaranteed by Article 10 of the European Convention on Human Rights (see also ECourtHR, 9 June 1997, Telesystem Tirol Kabeltelevision

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vs. Austria, see IRIS 1997-7 : 4).

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