CASE OF INFORMATIONSVEREIN LENTIA AND OTHERS v. AUSTRIA

In the case of Informationsverein Lentia and Others v. Austria*,

The European Court of Human Rights, sitting, in accordance with Article 43 (art. 43) of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention")** and the relevant provisions of the Rules of Court, as a Chamber composed of the following judges:

Mr R. Ryssdal, President,
Mr R. Bernhardt,
Mr F. Matscher,
Mr L.-E. Pettiti,
Mr A. Spielmann,
Mrs E. Palm,
Mr F. Bigi,
Mr A.B. Baka,
Mr G. Mifsud Bonnici,

and also of Mr M.-A. Eissen, Registrar, and Mr H. Petzold, Deputy Registrar,

Having deliberated in private on 29 May and 28 October 1993,

Delivers the following judgment, which was adopted on the last-mentioned date:

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Notes by the Registrar

* The case is numbered 36/1992/381/455-459. The first number is the case's position on the list of cases referred to the Court in the relevant year (second number). The last two numbers indicate the case's position on the list of cases referred to the Court since its creation and on the list of the corresponding originating applications to the Commission.

** As amended by Article 11 of Protocol No. 8 (P8-11), which came into force on 1 January 1990.

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PROCEDURE

1. The case was referred to the Court by the European Commission of Human Rights ("the Commission") on 26 October 1992, within the three-month period laid down by Article 32 para. 1 and Article 47 (art. 32-1, art. 47) of the Convention. It originated in five applications (nos. 13914/88, 15041/89, 15717/89, 15779/89 and 17207/90) against the Republic of Austria lodged with the Commission under Article 25 (art. 25) by "Informationsverein Lentia", Mr Jörg Haider, "Arbeitsgemeinschaft Offenes Radio", Mr Wilhelm Weber and "Radio Melody GmbH", all Austrian legal or natural persons, on 16 April 1987, 15 May 1989, 27 September 1989, 18 September 1989 and 20 August 1990.

2. The Commission's request referred to Articles 44 and 48 (art. 44, art. 48) and to the declaration whereby Austria recognised the compulsory jurisdiction of the Court (Article 46) (art. 46). The object of the request was to obtain a decision as to whether the facts of the case disclosed a breach by the respondent State of its obligations under Articles 10 and 14 (art. 10, art. 14) of the Convention.

3. In response to the enquiry made in accordance with Rule 33 para. 3 (d) of the Rules of Court, the applicants stated that they wished to take part in the proceedings and designated the lawyers who would represent them (Rule 30); the President gave the lawyers in question leave to use the German language (Rule 27 para. 3).

4. The Chamber to be constituted included ex officio Mr F. Matscher, the elected judge of Austrian nationality (Article 43 of the Convention) (art. 43), and Mr R. Ryssdal, the President of the Court (Rule 21 para. 3 (b)). On 13 October 1992, in the presence of the Registrar, the President drew by lot the names of the other seven members, namely Mr R. Bernhardt, Mr L.-E. Pettiti, Mr A. Spielmann, Mrs E. Palm, Mr F. Bigi, Mr A.B. Baka and Mr G. Mifsud Bonnici (Article 43 in fine of the Convention and Rule 21 para. 4) (art. 43).

5. As President of the Chamber (Rule 21 para. 5), Mr Ryssdal, acting through the Registrar, consulted the Agent of the Austrian Government ("the Government"), the applicants' lawyers and the Delegate of the Commission on the organisation of the proceedings (Rules 37 para. 1 and 38). Pursuant to the order made in consequence, the Registrar received the Government's memorial on 15 April and the applicants' memorials - with their claims under Article 50 (art. 50) of the Convention - on 29 and 31 March and on 13 April 1993. On 27 April the Commission produced various documents, which the Registrar had requested on the President's instructions.

6. On 29 March 1993 the President had authorised, by virtue of Rule 37 para. 2, "Article 19" and "Interights" (two international human rights organisations) to submit written observations on specific aspects of the case. Their observations reached the registry on 11 May.

7. In accordance with the President's decision, the hearing took place in public in the Human Rights Building, Strasbourg, on 25 May 1993. The Court had held a preparatory meeting beforehand.

There appeared before the Court:

(a) for the Government

Mr F. Cede, Ambassador, Legal Adviser at the Ministry of Foreign Affairs, Agent,
Mrs S. Bernegger, Federal Chancellery, Adviser;

(b) for the Commission

Mr J.A. Frowein, Delegate;

(c) for the applicants

Mr D. Böhmdorfer, Rechtsanwalt,
Mr W. Haslauer, Rechtsanwalt,
Mr T. Höhne, Rechtsanwalt,
Mr G. Lehner, Rechtsanwalt,
Mr H. Tretter, Counsel.

The Court heard addresses by the above-mentioned representatives, as well as their replies to its questions.

AS TO THE FACTS

I. The particular circumstances of the case

A. Informationsverein Lentia

8. The first applicant, an association of co-proprietors and residents of a housing development in Linz, comprising 458 apartments and 30 businesses, proposed to improve the communication between its members by setting up an internal cable television network. The programmes were to be confined to questions of mutual interest concerning members' rights.

9. On 9 June 1978 the first applicant applied for an operating licence under the Telecommunications Law (Fernmeldegesetz, see paragraph 17 below). As the Linz Regional Post and Telecommunications Head Office (Post- und Telegraphendirektion) had not replied within the six-month time-limit laid down in Article 73 of the Code of Administrative Procedure (Allgemeines Verwaltungsverfahrensgesetz), the association applied to the National Head Office (Generaldirektion für die Post- und Telegraphenverwaltung), attached to the Federal Ministry of Transport (Bundesministerium für Verkehr).

The National Head Office rejected the application on 23 November 1979. In its view, Article 1 para. 2 of the Constitutional Law guaranteeing the independence of broadcasting (Bundesverfassungsgesetz über die Sicherung der Unabhängigkeit des Rundfunks, "the Constitutional Broadcasting Law", see paragraph 19 below) had vested in the federal legislature exclusive authority to regulate this activity; it had exercised that authority only once, by enacting the Law on the Austrian Broadcasting Corporation (Bundesgesetz über die Aufgaben und die Einrichtung des Österreichischen Rundfunks, see paragraph 20 below). It followed that no other person could apply for such licence as any application would lack a legal basis. Furthermore there had been no violation of Article 10 (art. 10) of the Convention since the legislature - in its capacity as a maker of constitutional laws (Verfassungsgesetzgeber) - had merely availed itself of its power to set up a system of licences in accordance with the third sentence of paragraph 1 (art. 10-1).

10. Thereupon the first applicant complained to the Constitutional Court of a breach of Article 10 (art. 10); the court gave judgment on 16 December 1983.

It took the view that the freedom to set up and operate radio and television broadcasting stations was subject to the powers accorded to the legislature under paragraph 1 in fine and paragraph 2 of Article 10 (art. 10-1, art. 10-2) (Gesetzesvorbehalt). Accordingly, an administrative decision could infringe that provision only if it proved to have no legal basis, or its legal basis was unconstitutional or again had been applied in an arbitrary manner (in denkunmöglicher Weise an[ge]wendet). In addition, the Constitutional Broadcasting Law had instituted a system which made all activity of this type subject to the grant of a licence (Konzession) by the federal legislature. This system was intended to ensure objectivity and diversity of opinions (Meinungsvielfalt), and would be ineffective if it were possible for everybody to obtain the requisite authorisation. As matters stood, the right to broadcast was restricted to the Austrian Broadcasting Corporation (Österreichischer Rundfunk, ORF), as no implementing legislation had been enacted in addition to the law governing that organisation.

Contrary to its assertions, the first applicant had in fact intended to broadcast within the meaning of the constitutional law, because its programmes were to be directed at a general audience of variable composition. The broadcasting law therefore provided a legal

basis for the decision in issue.

Consequently, the Constitutional Court rejected the complaint and remitted it to the Administrative Court.

11. On 10 September 1986 the Administrative Court in substance adopted the grounds relied on by the Constitutional Court and in its turn dismissed the first applicant's claim.

B. Jörg Haider

12. From 1987 to 1989 the second applicant elaborated a project for the setting up, with other persons, of a private radio station in Carinthia. He subsequently gave up the idea after a study had shown him that according to the applicable law as interpreted by the Constitutional Court he would not be able to obtain the necessary licence. As a result he never applied for one.

C. Arbeitsgemeinschaft Offenes Radio (AGORA)

13. The third applicant, an Austrian association and a member of the Fédération européenne des radios libres (FERL - European Federation of Free Radios), plans to establish a radio station in southern Carinthia in order to broadcast, in German and Slovene, non-commercial radio programmes, whose makers already operate an authorised mobile radio station in Italy.

14. In 1988 AGORA applied for a licence. Its application was refused by the Klagenfurt Regional Post and Telecommunications Head Office on 19 December 1989 and by the National Head Office in Vienna on 9 August 1990. On 30 September 1991, on the basis of its own case-law (see paragraph 10 above), the Constitutional Court dismissed an appeal from that decision.

D. Wilhelm Weber

15. The fourth applicant is a shareholder of an Italian company operating a commercial radio which broadcasts to Austria and he wishes to carry out the same activity in that country. However, in view of the legislation in force, he decided not to make any application to the appropriate authorities.

E. Radio Melody GmbH

16. The fifth applicant is a private limited company incorporated under Austrian law. On 8 November 1988 it asked the Linz Regional Post and Telecommunications Head Office to allocate it a frequency so that it could operate a local radio station which it hoped to launch in Salzburg. On 28 April 1989 its application was rejected, a decision confirmed on 12 July 1989 by the National Head Office and on 18 June 1990 by the Constitutional Court, which based its decision on its judgment of 16 December 1983 (see paragraph 10 above).

II. The relevant domestic law

A. The Telecommunications Law of 13 July 1949 ("Fernmeldegesetz")

17. According to the Telecommunications Law of 13 July 1949, "the right to set up and operate telecommunications installations (Fernmeldeanlagen) is vested exclusively in the federal authorities (Bund)" (Article 2 para. 1). The latter may however confer on natural or legal persons the power to exercise that right in respect of

specific installations (Article 3 para. 1). No licence is required in certain circumstances, including the setting up of an installation within the confines of a private property (Article 5).

B. The Ministerial Ordinance of 18 September 1961 concerning private telecommunications installations ("Verordnung des Bundesministeriums für Verkehr und Elektrizitätswirtschaft über Privatfernmeldeanlagen")

18. The Ministerial Ordinance of 18 September 1961 concerning private telecommunications installations lays down inter alia the conditions for setting up and operating private telecommunications installations subject to federal supervision. According to the case-law, it cannot however constitute the legal basis for the grant of licences.

C. The Constitutional Law of 10 July 1974 guaranteeing the independence of broadcasting ("Bundesverfassungsgesetz über die Sicherung der Unabhängigkeit des Rundfunks")

19. According to Article 1 of the Constitutional Law of 10 July 1974 guaranteeing the independence of broadcasting,

"...

2. Broadcasting shall be governed by more detailed rules to be set out in a federal law. Such a law must inter alia contain provisions guaranteeing the objectivity and impartiality of reporting, the diversity of opinions,balanced programming and the independence of persons and bodies responsible for carrying out the duties defined in paragraph 1.

3. Broadcasting within the meaning of paragraph 1 shall be a public service."

D. The Law of 10 July 1974 on the Austrian Broadcasting Corporation ("Bundesgesetz über die Aufgaben und die Einrichtung des Österreichischen Rundfunks")

20. The Law of 10 July 1974 on the National Broadcasting Corporation established the Austrian Broadcasting Corporation with the status of an autonomous public-law corporation.

It is under a duty to provide comprehensive news coverage of major political, economic, cultural and sporting events; to this end, it has to broadcast, in compliance with the requirements of objectivity and diversity of views, in particular current affairs, news reports, commentaries and critical opinions (Article 2 para. 1 (1)), and to do so via at least two television channels and three radio stations, one of which must be a regional station (Article 3). Broadcasting time must be allocated to the political parties represented in the national parliament and to representative associations (Article 5 para. 1).

A supervisory board (Kommission zur Wahrung des Rundfunkgesetzes) rules on all disputes concerning the application of the above-mentioned law which fall outside the jurisdiction of an administrative authority or court (Articles 25 and 27). It is composed of seventeen independent members, including nine judges, appointed for terms of four years by the President of the Republic on the proposal of the Federal Government.

E. The case-law concerning "passive" cable broadcasting

21. On 8 July 1992 the Administrative Court decided that the Constitutional Law of 10 July 1974 (see paragraph 19 above) did not cover "passive" broadcasting via cable, in other words the broadcasting in their entirety by cable of programmes picked up by an aerial. Consequently, the mere fact that such programmes originated from a foreign station and were directed principally or exclusively at an Austrian audience could not constitute grounds for refusing the licence necessary for this type of operation.

F. Subsequent developments

22. On 1 January 1994 a Law on regional radio stations is to enter into force (Regionalradiogesetz, Official Gazette (Bundesgesetzblatt) no. 1993/506). It will allow the authorities under certain conditions to grant private individuals or private corporations licences to set up and operate regional radio stations.

PROCEEDINGS BEFORE THE COMMISSION

23. The applicants lodged applications with the Commission on various dates between 16 April 1987 and 20 August 1990 (applications nos. 13914/88, 15041/89, 15717/89, 15779/89 and 17207/90). They maintained that the impossibility of obtaining an operating licence was an unjustified interference with their right to communicate information and infringed Article 10 (art. 10) of the Convention. The first and third applicants also complained of a discrimination contrary to Article 14, read in conjunction with Article 10 (art. 14+10). The fifth applicant alleged in addition a breach of Article 6 (art. 6), inasmuch as it had not been able to bring the dispute before a "tribunal" within the meaning of that provision.

24. The Commission ordered the joinder of the applications on 13 July 1990 and 14 January 1992. On 15 January 1992 it found the complaints concerning Articles 10 and 14 (art. 10, art. 14) admissible, declaring that relating to Article 6 (art. 6) inadmissible. In its report of 9 September 1992 (made under Article 31) (art. 31), it expressed the following opinion:

(a) that there had been a violation of Article 10 (art. 10) (unanimously as regards the first applicant and by fourteen votes to one for the others);

(b) that it was not necessary also to examine the case from the point of view of Article 14 (art. 14) (unanimously as regards the first applicant and by fourteen votes to one for the third applicant).

The full text of the Commission's opinion and of the separate opinions contained in the report is reproduced as an annex to this judgment*.

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* Note by the Registrar: for practical reasons this annex will appear only with the printed version of the judgment (volume 276 of Series A of the Publications of the Court), but a copy of the Commission's report is available from the registry.

THE GOVERNMENT'S FINAL SUBMISSIONS

25. The Government asked the Court "to find that there had been no violation of Article 10 (art. 10), either taken on its own or in

conjunction with Article 14 (art. 14+10)".

AS TO THE LAW

I. ALLEGED VIOLATION OF ARTICLE 10 (art. 10)

26. The applicants complained that they had each been unable to set up a radio station or, in the case of Informationsverein Lentia, a television station, as under Austrian legislation this right was restricted to the Austrian Broadcasting Corporation. They asserted that this constituted a monopoly incompatible with Article 10 (art. 10), which provides as follows:

> "1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This Article (art. 10) shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.
>
> 2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary."

The Government contested this claim, whereas the Commission in substance accepted it.

27. The Court observes that the restrictions in issue amount to an "interference" with the exercise by the applicants of their freedom to impart information and ideas; indeed this was common ground between the participants in the proceedings. The only question which arises is therefore whether such interference was justified.

In this connection the fact that Mr Haider and Mr Weber never applied for a broadcasting licence (see paragraphs 12 and 15 above) is of no consequence; before the Commission the Government accepted that those two applicants could be regarded as victims and the Government did not argue to the contrary before the Court.

28. In the Government's contention, sufficient basis for the contested interference is to be found in paragraph 1 in fine, which, in their view, has to be interpreted autonomously. In the alternative, they argued that it also satisfied the conditions laid down in paragraph 2.

29. The Court reiterates that the object and purpose of the third sentence of Article 10 para. 1 (art. 10-1) and the scope of its application must be considered in the context of the Article as a whole and in particular in relation to the requirements of paragraph 2 (art. 10-2), to which licensing measures remain subject (see the Groppera Radio AG and Others v. Switzerland judgment of 28 March 1990, Series A no. 173, p. 24, para. 61, and the Autronic AG v. Switzerland judgment of 22 May 1990, Series A no. 178, p. 24, para. 52). It is therefore necessary to ascertain whether the rules in question complied with both of these provisions.

A. Paragraph 1, third sentence (art. 10-1)

30. In the Government's view, the licensing system referred to at the end of paragraph 1 allows States not only to regulate the technical aspects of audio-visual activities, but also to determine their place and role in modern society. They argued that this was clear from the wording of the third sentence of paragraph 1 (art. 10-1), which was less restrictive than that of paragraph 2 and of Article 11 (art. 11-2) and thus allowed more extensive interference by the public authorities with the freedom in question. By the same token, it left the States a wider margin of appreciation in defining their media policy and its implementation. This could even take the form of a public broadcasting service monopoly in particular in cases where, as in Austria, that was the State's sole means of guaranteeing the objectivity and impartiality of news, the balanced reporting of all shades of opinion and the independence of the persons and bodies responsible for the programmes.

31. According to the applicants, the rules in force in Austria, and in particular the monopoly of the Austrian Broadcasting Corporation, essentially reflect the authorities' wish to secure political control of the audio-visual industry, to the detriment of pluralism and artistic freedom. By eliminating all competition, the rules served in addition to protect the Austrian Broadcasting Corporation's economic viability at the cost of a serious encroachment on the freedom to conduct business. In short, they did not comply with the third sentence of paragraph 1.

32. As the Court has already held, the purpose of that provision is to make it clear that States are permitted to regulate by a licensing system the way in which broadcasting is organised in their territories, particularly in its technical aspects (see the above-mentioned Groppera Radio AG and Others judgment, Series A no. 173, p. 24, para. 61). Technical aspects are undeniably important, but the grant or refusal of a licence may also be made conditional on other considerations, including such matters as the nature and objectives of a proposed station, its potential audience at national, regional or local level, the rights and needs of a specific audience and the obligations deriving from international legal instruments.

This may lead to interferences whose aims will be legitimate under the third sentence of paragraph 1, even though they do not correspond to any of the aims set out in paragraph 2. The compatibility of such interferences with the Convention must nevertheless be assessed in the light of the other requirements of paragraph 2.

33. The monopoly system operated in Austria is capable of contributing to the quality and balance of programmes, through the supervisory powers over the media thereby conferred on the authorities. In the circumstances of the present case it is therefore consistent with the third sentence of paragraph 1. It remains, however, to be determined whether it also satisfies the relevant conditions of paragraph 2.

B. Paragraph 2 (art. 10-2)

34. The interferences complained of were, and this is not disputed by any of the participants in the proceedings, "prescribed by law". Their aim has already been held by the Court to be a legitimate one (see paragraphs 32-33 above). On the other hand, a problem arises in connection with the question whether the interferences were "necessary in a democratic society".

35. The Contracting States enjoy a margin of appreciation in assessing the need for an interference, but this margin goes hand in hand with European supervision, whose extent will vary according to the circumstances. In cases such as the present one, where there has been an interference with the exercise of the rights and freedoms guaranteed in paragraph 1 of Article 10 (art. 10-1), the supervision must be strict because of the importance - frequently stressed by the Court - of the rights in question. The necessity for any restriction must be convincingly established (see, among other authorities, the Autronic AG judgment, cited above, Series A no. 178, pp. 26-27, para. 61).

36. The Government drew attention in the first place to the political dimension of the activities of the audio-visual media, which is reflected in Austria in the aims fixed for such media under Article 1 para. 2 of the Constitutional Broadcasting Law, namely to guarantee the objectivity and impartiality of reporting, the diversity of opinions, balanced programming and the independence of persons and bodies responsible for programmes (see paragraph 20 above). In the Government's view, only the system in force, based on the monopoly of the Austrian Broadcasting Corporation, made it possible for the authorities to ensure compliance with these requirements. That was why the applicable legislation and the charter of the Austrian Broadcasting Corporation made provision for the independence of programming, the freedom of journalists and the balanced representation of political parties and social groups in the managing bodies.

In opting to keep the present system, the State had in any case merely acted within its margin of appreciation, which had remained unchanged since the adoption of the Convention; very few of the Contracting States had had different systems at the time. In view of the diversity of the structures which now exist in this field, it could not seriously be maintained that a genuine European model had come into being in the meantime.

37. The applicants maintained that to protect public opinion from manipulation it was by no means necessary to have a public monopoly in the audio-visual industry, otherwise it would be equally necessary to have one for the press. On the contrary, true progress towards attaining diversity of opinion and objectivity was to be achieved only by providing a variety of stations and programmes. In reality, the Austrian authorities were essentially seeking to retain their political control over broadcasting.

38. The Court has frequently stressed the fundamental role of freedom of expression in a democratic society, in particular where, through the press, it serves to impart information and ideas of general interest, which the public is moreover entitled to receive (see, for example, mutatis mutandis, the Observer and Guardian v. the United Kingdom judgment of 26 November 1991, Series A no. 216, pp. 29-30, para. 59). Such an undertaking cannot be successfully accomplished unless it is grounded in the principle of pluralism, of which the State is the ultimate guarantor. This observation is especially valid in relation to audio-visual media, whose programmes are often broadcast very widely.

39. Of all the means of ensuring that these values are respected, a public monopoly is the one which imposes the greatest restrictions on the freedom of expression, namely the total impossibility of broadcasting otherwise than through a national station and, in some cases, to a very limited extent through a local cable station. The far-reaching character of such restrictions means that they can only be justified where they correspond to a pressing need.

As a result of the technical progress made over the last decades, justification for these restrictions can no longer today be found in considerations relating to the number of frequencies and channels available; the Government accepted this. Secondly, for the purposes of the present case they have lost much of their raison d'être in view of the multiplication of foreign programmes aimed at Austrian audiences and the decision of the Administrative Court to recognise the lawfulness of their retransmission by cable (see paragraph 21 above). Finally and above all, it cannot be argued that there are no equivalent less restrictive solutions; it is sufficient by way of example to cite the practice of certain countries which either issue licences subject to specified conditions of variable content or make provision for forms of private participation in the activities of the national corporation.

40. The Government finally adduced an economic argument, namely that the Austrian market was too small to sustain a sufficient number of stations to avoid regroupings and the constitution of "private monopolies".

41. In the applicant's opinion, this is a pretext for a policy which, by eliminating all competition, seeks above all to guarantee to the Austrian Broadcasting Corporation advertising revenue, at the expense of the principle of free enterprise.

42. The Court is not persuaded by the Government's argument. Their assertions are contradicted by the experience of several European States, of a comparable size to Austria, in which the coexistence of private and public stations, according to rules which vary from country to country and accompanied by measures preventing the development of private monopolies, shows the fears expressed to be groundless.

43. In short, like the Commission, the Court considers that the interferences in issue were disproportionate to the aim pursued and were, accordingly, not necessary in a democratic society. There has therefore been a violation of Article 10 (art. 10).

44. In the circumstances of the case, this finding makes it unnecessary for the Court to determine whether, as was claimed by some of the applicants, there has also been a breach of Article 14, taken in conjunction with Article 10 (art. 14+10) (see, inter alia, the Airey v. Ireland judgment of 9 October 1979, Series A no. 32, p. 16, para. 30).

II. APPLICATION OF ARTICLE 50 (art. 50)

45. Under Article 50 (art. 50) of the Convention,

> "If the Court finds that a decision or a measure taken by a legal authority or any other authority of a High Contracting Party is completely or partially in conflict with the obligations arising from the ... Convention, and if the internal law of the said Party allows only partial reparation to be made for the consequences of this decision or measure, the decision of the Court shall, if necessary, afford just satisfaction to the injured party."

The Court examined the applicants' claims in the light of the observations of the participants in the proceedings and the criteria laid down in its case-law.

A. Damage

46. Only two applicants sought compensation for pecuniary damage:

"Informationsverein Lentia" in the amount of 900,000 Austrian schillings and "Radio Melody" 5,444,714.66 schillings.

They based their claims on the assumption that they would not have failed to obtain the licences applied for if the Austrian legislation had been in conformity with Article 10 (art. 10). This is, however, speculation, in view of the discretion left in this field to the authorities, as the Delegate of the Commission correctly pointed out. No compensation is therefore recoverable under this head.

B. Costs and expenses

47. As regards costs and expenses, the applicants claimed respectively 136,023.54 schillings ("Informationsverein Lentia"), 513,871.20 schillings (Haider), 390,115.20 schillings ("AGORA"), 519,871.20 schillings (Weber) and 605,012.40 schillings ("Radio Melody").

The Government took the view that the first of those amounts was reasonable and that it should, however, in their view, be increased to 165,000 schillings to take account of the proceedings before the Court.

Making an assessment on an equitable basis, the Court awards 165,000 schillings each to the applicants "Informationsverein Lentia", "AGORA" and "Radio Melody", for the proceedings conducted in Austria and in Strasbourg. Mr Haider and Mr Weber, who appeared only before the Convention institutions, are entitled to 100,000 schillings each.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. Holds that there has been a violation of Article 10 (art. 10);

2. Holds that it is not necessary also to examine the case under Article 14 read in conjunction with Article 10 (art. 14+10);

3. Holds that Austria is to pay, within three months, in respect of costs and expenses, 165,000 (one hundred and sixty-five thousand) Austrian schillings to each of the applicants "Informationsverein Lentia", "AGORA" and "Radio Melody", and 100,000 (one hundred thousand) Austrian schillings each to the applicants Haider and Weber;

4. Dismisses the remainder of the claim for just satisfaction.

Done in English and in French, and delivered at a public hearing in the Human Rights Building, Strasbourg, on 24 November 1993.

Signed: Rolv RYSSDDAL
President

Signed: Marc-André EISSEN
Registrar