

# **AUSTRIA**

by Uwe Hasebrink and Anja Herzog

## **1. TV VIEWERS' PARTICIPATION IN AUSTRIA**

The TV landscape<sup>1</sup> in Austria is characterised by a rather late creation of a dual broadcasting system. The private broadcasting sector was established only in 2001. In the same year the creation of a regulatory body took place. The liberalisation in the broadcasting sector started in 1997, when the parliament enacted a cable and satellite television law. Today 84 % of all Austrian TV households are equipped either with satellite or cable TV and the average TV household receives 35 TV channels. Most of these are foreign (German language) channels. The dominating Austrian participant at the TV market is still the public service broadcaster ORF, with 54.1 % of audience share of its two channels together.<sup>2</sup> Although there are some private Austrian channels with a nationwide reach none of these channels plays a significant role in terms of audience shares. The next “big players” are the German RTL, SAT.1 and ProSieben.

### **1.1. National Institutions and Government bodies**

As a reaction on the convergence of broadcasting and telecommunication media the Austrian government established under the KommAustria Act (KOG) of April 1, 2001 a so-called “convergence regulator”, the Austrian Regulatory Authority for Broadcasting and Telecommunications (RTR-GmbH). It functions as the operative arm of KommAustria (Austrian Communications Authority) as well as the Telekom Control Commission, the regulatory authorities for broadcasting and for telecommunication media. (See 2.3)

For legal supervision of the public service broadcaster the Federal Communications Board (FCB) was established under the ORF Act Section 35. (See 2.3)

The purpose of the Digital Platform Austria<sup>3</sup> by RTR is to help the regulating bodies with the introduction of digital television, to establish economical and consumer-oriented concepts for introduction. (See 2.3)

### **1.2. Self-Regulation**

The most important way viewers' interests are represented in Austria is the Audience Council of the ORF<sup>4</sup> with 35 members partly elected by the viewers and listeners. As laid down in the ORF Act the Council shall safeguard the interests of the listeners and viewers of the ORF and is established at the headquarters of the Broadcasting Corporation. Among others the Audience Council shall make recommendations regarding programme content and appoint six members of the Foundation Council of the Broadcasting Corporation. (See 3.1)

The *Austrian Press Council* (Verband Österreichischer Zeitungen)<sup>5</sup> stands for the right of freedom of expression in the media and for a pluralist media landscape. But it is solely an organ of the printing press and apart from this its activity is limited since major publishers left the PC in 2002.

### **1.3. Other Organisations**

In Austria there is not any viewers' organisation and no other organisations dealing with media questions in general or viewers' interests in particular.

## 2. TV VIEWERS' RIGHTS: THE REGULATORY FRAMEWORK

### 2.1. Sector (TV) specific regulation

The legal framework for the activities of the public service broadcaster ORF (Österreichischer Rundfunk – Austrian Broadcasting Corporation) is laid down in the ORF Act, that was revised in 2001. In 1993 the regulation was aligned with the EU directives and with the convention of the European Council.<sup>6</sup> Further significant changes for broadcasting in Austria have been made in 2001: Private terrestrial radio was provided with a new legal basis in the Private Radio Act, and private terrestrial television was made possible by the Private Television Act, in which the provisions of the Cable and Satellite Broadcasting Act were also included. On April 1, 2001, the Austrian Communications Authority (KommAustria) was established under the KommAustria Act (KOG, BGBl. I No. 32/2001) for the purpose of leading the administration of regulatory activities in broadcasting. The Austrian Telecommunications Act of 2003 assigned KommAustria additional responsibilities in the regulation of communications infrastructure for the transmission of broadcasting content and additional broadcasting services.

### 2.2. Regulatory practices for positive and negative content regulation

Content regulation for the programmes of the ORF can be found in the ORF Act. The public service programme mandate is described in Section 4. Special mandates (Section 5) are related to programme shares, which must be provided in languages of the national minorities in Austria and to programmes that may be followed by deaf or by people whose hearing is impaired. Part 2 of the ORF Act is concerned with the general programming principles of ORF broadcasting (respect of human dignity, fundamental rights, not incite others to hatred, protection of minors, contribute to public discourse etc.), with the broadcasting of European works (10 %), with the programming of events of major importance for society. Part 3 regulates advertising and sponsoring in ORF programmes, among others advertising for medicines, alcoholic beverages and tobacco is forbidden. Content regulation in the Private Television Act includes rules on human dignity and the fundamental rights (§ 31) and protection of minors (§ 32), recognition of journalistic principles (§ 33) and on advertisement (§§ 34 - 46) as well and implements European level regulation (programme quotas (§ 50), independent programme producers (§ 51), events of major importance (§ 55)).

### 2.3. Instruments established by law

In Austria some years ago the instruments for regulating broadcasting and telecommunication were re-organised. The tasks to supervise private broadcasting and to regulate and control telecommunication services have been combined with the establishment of the *Austrian Regulatory Authority for Telecommunications and Broadcasting (RTR)* in 2001 under the KOG. The RTR splits up into two sections: broadcasting is supervised by KommAustria, telecommunication by the Telekom Control Commission.

The duties of RTR include the operations for KommAustria, operative duties assigned to RTR GmbH under the Austrian Telecommunications Act (TKG), activities under the Signatures Act (SigG), arbitration procedures (§8 KOG), set up and management of a competence centre especially for media and telecommunications convergence issues, administration and allocation of grants from the Digitisation Fund (§§ 9a to 9e KOG) and the Television Film Fund (§§ 9f to 9h KOG).<sup>7</sup> However, the new regulatory authority is accused not to be independent as it was not established as a truly public service organisation.<sup>8</sup> RTR is funded by financing contributions to be paid by broadcasting companies and providers of public communications networks. The website of the RTR gives a lot of information among others on the regulation, the legal framework, the media market and the current consultation procedures. But the possibilities to contact the RTR or the different Boards are limited.

The duties of *KommAustria* are to issue broadcasting licences, to issue permits for the construction and operation of broadcasting stations (including ORF stations) and to supervise the private broadcasting organisations. KommAustria is obliged as well to monitor the compliance of advertising rules by the ORF, its subsidiaries and

the private broadcasters. The regulator publishes monthly monitoring reports, that include data on the broadcasters, the programme, the concerned legal regulation and the state of the proceedings.

The legal supervisory authority for the ORF is the *Federal Communications Board* (FCB, Bundeskommunikationssenat, BKS)<sup>9</sup>, which also acts as a legal authority for decisions made by KommAustria. The FCB consists of five members, three of whom have to be judges, are independent in their official activities. The operations of the Federal Communications Board are handled by Department V/4 of the Federal Chancellery. Complaints on ORF programmes can be filed with the FCB. (See 2.4)

The Austrian Federal Chancellery set up the *Digital Platform Austria* work group “to keeping Austria abreast of developments in the field of digital television”<sup>10</sup>. The key objectives of the Digital Platform Austria work group are to support the regulatory authority in the creation of a Digitisation Concept, with due attention to economic feasibility, to general technical and especially consumer-oriented circumstances, as well as a schedule for the transition from analogue to digital transmission; to promote Austria as a media location in the interest of the communications industry, and promoting Austrian value creation in a technologically relevant field of the future; to submit suggestions for the general regulatory framework of the future, especially with regard to ensuring non-discriminatory access to these new transmission platforms on fair and reasonable terms and observing equal opportunities.<sup>11</sup>

At the website of the platform citizens can inform themselves on the concept and state of digitisation in Austria as well as on practical questions concerning the development of digital broadcasting like “Will there be a phase of parallel transmission of analogue and digital terrestrial broadcasting?” (section: FAQ)

## **2.4. Complaints procedures (established by law)**

The complaints procedure for the public service broadcaster ORF is described in Part 6 of the ORF Act, while the procedure for private broadcasters is laid down in the Private Television Act in §§ 61, 62. The responsible regulatory authority is in the case of the ORF the Federal Communications Board and in the case of private broadcasters KommAustria.

The procedures for complaints on public or on private broadcasting are very similar: the complaints “shall be filed with the regulatory authority within six weeks as of the date of the alleged violation of the law”, they must contain “a concrete statement specifying the programme in which the alleged violation occurred” and “an explanation as to which interests have been affected and why the complainant considers him/herself aggrieved as well as a statement explaining the decisive relevance of the alleged violation” (ORF Act, Sect. 36 (3)). Decisions on complaints on the ORF shall be made by the Federal Communications Board within 6 weeks while the decisions of the regulatory authority for private broadcasting shall be taken within 4 weeks. The authorities decide whether the broadcaster is obliged to publicise the decision. The Federal Communications Board publishes its decisions at its website<sup>12</sup>.

The possibilities to complain are used quite rarely by the viewers. As KommAustria notifies, since the invention of private broadcasting in Austria there were no formal complaints filed at the regulatory body neither by viewers nor by any organisation. Dealing with the programme of the public service broadcaster ORF some so called “popular complaints” (by a group of at least 300 persons) have been filed to the Federal Communications Board, but these total at less than 10 per year.

## **3. VIEWERS’ ORGANISATIONS SOCIAL IMPACT**

### **Case Study: ORF Audience Council**

As laid down in the ORF Act the Audience Council the Council was established to “safeguard the interests of the listeners and viewers”. The Council consists of 35 members, who shall be appointed by “the Federal Economic Chamber, the Conference of the Presidents of the Austrian Chamber of Agriculture as also the Austrian Board of the Chambers of Labour and the Federation of the Austrian Trade Unions” (each shall appoint one member), “the

Chambers of the Liberal Professions” (together one member), the Roman Catholic Church and the Lutheran Church (each one member), “those entities who are responsible for civic political education within the political parties” (each one member), the Academy of Sciences (one member). “For the appointment of further members, the Federal Chancellor shall solicit proposals from the institutions or organisations which are representative of the following sectors or groups: academia, education, arts, sports, youth, students, the elderly, handicapped people, parents and the family, national minorities, tourism, motorists, consumers, and environmental protection” (17 members). Finally, six members are to be elected by the viewers and listeners directly. People can vote via telephone, telefax, Internet and other comparable technical facilities within one week that shall be granted for the casting of votes.

The term of office of the Audience Council is four years. The functions of the Council are to “make recommendations regarding the design of programmes as well as proposals for technical expansions; to appoint six members of the Foundation Council [...]; appeal to the Federal Communications Board; approve decisions of the Foundation Council concerning the amount of programme fees (radio and television fees)”; submit proposals for compliance with the mandate relating to the cases laid down in the law (ORF Act) and comment on the allocation of programme shares to national minorities; “make recommendations on quality assurance systems, make recommendations on the provision of programmes for persons without hearing or with impaired hearing”<sup>13</sup>.

The picture Mr. Glatz gives about the efficiency of the ORF Audience Council is quite dissatisfying. One main reason is the big proportion of members of the council, who are nominated by the Federal government and this is probably the reason why not many people take part in the election of the 6 members of the Council to be elected by the viewers and listeners. Mr. Glatz estimated a figure of 60.000-70.000 voters, i.e. under 2 % of the possible voters. He called it a “fig leaf election”.

Concerning the tasks and the influence of the Audience Council Mr. Glatz was discontent as well, in his opinion, the Council has almost no competencies, no influence. Just in the question of the licence fees the Council has got a voice, as it approves the decisions of the Foundation Council concerning the amount of the programme fees. The recommendations of the Council concerning the programme content, for example the resolution of the Council to stop the reality show “Bachelor” has been ignored by the ORF management. In the field of protection of consumer rights Mr. Glatz stated that some influence can be seen in the last years.

The most important way the Audience Council may influence the programme and the policy of the ORF in the opinion of Mr. Glatz is the public discussion that might be influenced by the Council discussions and decisions. In the meetings of the Council (which are held publicly) media people, journalists participate and by this a broader effect can be obtained. Although in general the discussion of media themes and media politics in the public is very low and in the opinion of Mr. Glatz this is on the one hand because of the media concentration (Kronen Zeitung) and on the other hand because the government does not initiate a public discussion.

On the European level he sees a big trend towards commercialisation and the attacks against public service broadcasters and this is why he does not believe in changes from the political side, but sees the need for the participation of viewers’ initiatives at the European level as well.

#### **4. BEST AND INNOVATIVE PRACTICES**

Recapitulating the above given information one has to admit that viewers and listeners participation or the representation of viewers interests in Austria is comparatively low and examples for best or innovative practices seriously cannot be found. The most important way of representation of viewers’ interests is the Audience Council of the public service broadcaster ORF. But in the opinions of our interviewees this board does not have much influence and the seemingly democratic way of electing six members directly by the audience is more of a “fig leaf election”.

The most “innovative” example for accountability questions is the Digital Platform Austria which provides a lot of information for the general public on its website although a form for questions is missing here like a complaint form is missing on the RTR site in general.

## Annexes:

### 1: Legal Framework

KommAustria Act (KOG) available under

[http://www.rtr.at/web.nsf/englisch/Rundfunk\\_Rundfunkrecht\\_Gesetze\\_RFGesetze\\_KOG](http://www.rtr.at/web.nsf/englisch/Rundfunk_Rundfunkrecht_Gesetze_RFGesetze_KOG)

*Private Television Broadcasting Act (PrTV-G)* available under

[http://www.rtr.at/web.nsf/englisch/Rundfunk\\_Rundfunkrecht\\_Gesetze\\_RFGesetze\\_PrTV-G](http://www.rtr.at/web.nsf/englisch/Rundfunk_Rundfunkrecht_Gesetze_RFGesetze_PrTV-G)

ORF Act available under

[http://www.rtr.at/web.nsf/englisch/Rundfunk\\_Rundfunkrecht\\_Gesetze\\_RFGesetze\\_ORF-G](http://www.rtr.at/web.nsf/englisch/Rundfunk_Rundfunkrecht_Gesetze_RFGesetze_ORF-G)

### 2: Contacts Persons

- Dr. Thomas Steinmaurer, ass. Professor at the Institute for Communication Science at the University of Salzburg.
- Dr. Harald Glatz, member of the ORF Audience Council
- Mr. Simon Humberger, member of the staff, KommAustria

## NOTES

<sup>1</sup> The general information are based on the following articles: Thomas Steinmaurer (2004): Das Mediensystem Österreich, in: Hans-Bredow-Institut (ed.): Internationales Handbuch Medien 2004/2005, Baden-Baden, pp. 505-520. IP International Marketing Committee (2003): International Key Facts - Television 2003 Austria, pp. 57-69.

<sup>2</sup> Figures from 2003, see IP – International Key Facts, p. 57, 62.

<sup>3</sup> <http://www.rtr.at>

<sup>4</sup> <http://publikumsrat.orf.at/> (only German)

<sup>5</sup> <http://www.voez.at/>

<sup>6</sup> English translations of the broadcasting laws are available at the website of the Austrian regulatory authority for broadcasting and telecommunication: [http://www.rtr.at/web.nsf/englisch/Rundfunk\\_Rundfunkrecht](http://www.rtr.at/web.nsf/englisch/Rundfunk_Rundfunkrecht)

<sup>7</sup> [http://www.rtr.at/web.nsf/englisch/Ueber+Uns\\_RTR](http://www.rtr.at/web.nsf/englisch/Ueber+Uns_RTR)

<sup>8</sup> See Thomas Steinmaurer (2004): Das Mediensystem Österreich, in: Hans-Bredow-Institut (ed.): Internationales Handbuch Medien 2004/2005, Baden-Baden, p. 508.

<sup>9</sup> <http://www.bka.gv.at/DesktopDefault.aspx?TabID=4076>

<sup>10</sup> [http://www.rtr.at/web.nsf/englisch/Rundfunk\\_Digitale+Plattform+Austria](http://www.rtr.at/web.nsf/englisch/Rundfunk_Digitale+Plattform+Austria)

<sup>11</sup> [http://www.rtr.at/web.nsf/englisch/Rundfunk\\_Digitale+Plattform+Austria](http://www.rtr.at/web.nsf/englisch/Rundfunk_Digitale+Plattform+Austria)

<sup>12</sup> See <http://www.bka.gv.at/DesktopDefault.aspx?TabID=4076>

<sup>13</sup> See [http://www.rtr.at/web.nsf/lookuid/A1F0E82FAB26F84EC1256EE60046D92B/\\$file/orfg-eng.pdf](http://www.rtr.at/web.nsf/lookuid/A1F0E82FAB26F84EC1256EE60046D92B/$file/orfg-eng.pdf), p.16

