[DE] WDR must invite new “Bündnis Sahra Wagenknecht” party to the “Wahlarena 2024 Europa”

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Sven Braun
Institute of European Media Law

On 5 June 2024, the *Oberverwaltungsgericht Nordrhein-Westfalen* (North Rhine-Westphalia Higher Administrative Court – *OVG Nordrhein-Westfalen*) decided in an expedited procedure that Westdeutsche Rundfunk (WDR) should invite the leading candidate for the “Bündnis Sahra Wagenknecht” (BSW) party, which was taking part in European elections for the first time, to appear in the ARD programme “Wahlarena Europa 2024”. In the programme, broadcast three days before the election, Germany’s leading European Parliament candidates discussed topics related to European politics with a studio audience.

WDR invited the leading European Parliament election candidates of seven well-established parties to take part in the ARD programme “Wahlarena 2024 Europa”, broadcast on 6 June 2024. During the programme, members of the studio audience could ask the invited politicians questions that had been submitted in advance. According to the WDR programme concept, which included a review of the previous electoral period, only parties with a certain number of current MEPs had been invited.

In the urgent first-instance proceedings before the *Verwaltungsgericht Köln* (Cologne Administrative Court – *VG Köln*), the BSW claimed that its exclusion from the “Wahlarena” programme had infringed its right to equal opportunities. However, on 29 May 2024, the *VG Köln* decided there was no obligation to invite the BSW’s leading candidate to participate in “Wahlarena 2024 Europa”. It was true that WDR had a duty to take the right to equal opportunities into account in its pre-election editorial programmes. However, this right had to be weighed against the broadcasting freedom of public service broadcasters, which was guaranteed under the German *Grundgesetz* (Basic Law). WDR could be entitled to choose the participants in such a TV debate. Since it had given the BSW a sufficient level of coverage in its other election-related programmes, its decision to exclude it from the “Wahlarena” programme had been lawful. It had not infringed on the BSW’s right to equal opportunities.

The BSW’s subsequent appeal to the *OVG Nordrhein-Westfalen* was upheld. The BSW was entitled to participate in the programme based on the general constitutional requirement of (graduated) equal opportunities for political parties. Under its editorial freedom, which is protected under fundamental rights, WDR

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could, in principle, limit the participants to representatives of the parties currently represented in the European Parliament. However, reviewing the previous legislative period was not the main purpose of the programme in this case. It was also not apparent why the BSW was considered less relevant than other smaller parties on the guest list. In this case, the party's prospects of success in the forthcoming election, as indicated by opinion polls, were particularly significant because it was the first time the party had participated in a European Parliament election. In addition, even if the BSW's leading candidate was invited to take part, WDR would still be able to review the previous electoral period with the other parties. The *OVG Nordrhein-Westfalen* ruling of 5 June 2024 is final. The BSW won six seats in the European Parliament election on 9 June 2024.

Another decision relating to the European elections was issued by the *Verwaltungsgericht Frankfurt am Main* (Frankfurt am Main Administrative Court – *VG Frankfurt*) on 15 May 2024 regarding the party known as "Die Partei". *Hessische Rundfunk* (Hessian Broadcasting Corporation – HR) had refused to broadcast an election advertisement for "Die Partei" because it contained vulgar, provocative language and was therefore, seriously harmful to minors. It claimed that the advert infringed the *Jugendmedienschutz-Staatsvertrag* (state treaty on the protection of minors in the media). However, the *VG Frankfurt* did not consider it harmful to young people or sufficiently in breach of general criminal law. Such a breach would have justified HR's refusal to broadcast it. In this case, however, HR was obliged to show the advert because the infringement was only minor.

Pressemitteilung vom 5. Juni 2024 zum Beschluss des Oberverwaltungsgerichts für das Land Nordrhein-Westfalen (Aktenzeichen 13 B 494/24)

https://www.ovg.nrw.de/behoerde/presse/pressemitteilungen/30_240605/index.php

Press release of 5 June 2024 on the ruling of the North Rhine-Westphalia Higher Administrative Court (case no. 13 B 494/24)

Pressemitteilung vom 29. Mai2024 zum Beschluss des Verwaltungsgericht Köln (Aktenzeichen 6 L 928/24)

https://www.vg-koeln.nrw.de/behoerde/presse/Pressemitteilungen/12_29052024/index.php

Press release of 29 May 2024 on the ruling of the Cologne Administrative Court (case no. 6 L 928/24)

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Beschluss des Verwaltungsgericht Frankfurt am Main vom 15. Mai 2024 (Aktenzeichen 1 L 1559/24.F)

https://www.rv.hessenrecht.hessen.de/bshe/document/LARE240000612

Decision of the Frankfurt am Main Administrative Court of 15 May 2024 (case no. 1 L 1559/24.F)

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