[DE] AfD's urgent appeal against Berlin-Brandenburg media authority election advert ban unsuccessful

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Sandra Schmitz-Berndt
Institute of European Media Law

On 13 February 2025, the *Verwaltungsgericht Potsdam* (Potsdam Administrative Court) rejected an urgent appeal by the Brandenburg division of the *Alternative für Deutschland* (Alternative for Germany – AfD) party against an order by the *Medienanstalt Berlin-Brandenburg* (Berlin-Brandenburg media authority – mabb) prohibiting the unrestricted distribution and making available of one of the party's election commercials (case no. VG 11 L 74/25).

During the Brandenburg state parliament election campaign in September 2024, AfD Brandenburg, assisted by AI, had created an election advert entitled "*Wochenmarkt oder Drogenmarkt (...)*" (Weekly market or drugs market (...)) and distributed it on social media. The ad had depicted people with dark skin in threatening poses and contained, among other things, a warning about foreign infiltration. The mabb had therefore initiated a supervisory procedure under media law and examined whether the advert violated the *Jugendmedienschutzstaatsvertrag* (state treaty on the protection of minors in the media – JMStV). The *Kommission für Jugendmedienschutz* (Commission for the Protection of Minors in the Media – KJM), a body of the state media authorities, is responsible for assessing possible breaches of the JMStV and acts on the mabb's behalf in such cases. It concluded that the commercial could impair the development of children and young people under 16 pursuant to Article 5 JMStV because it used sweeping stereotypes and thereby fuelled prejudices against people with dark skin, which in turn could establish a basic mistrust among children. Specifically, the advert was likely to impair the development of children or young people into independent and socially responsible individuals. Under threat of a fine of EUR 1,500 per video, an immediately enforceable injunction was issued on 15 January 2025, preventing the continued distribution or making available of the advert. In order to stop under-16s from watching it, the KJM thought it would be sufficient to impose barriers that were commonly used to block access by children. According to Article 5(3) JMStV, providers could fulfil their obligation to prevent access by using technical means, including age verification systems. However, since such systems could not stop users of the social media channels in question distributing the advert, its distribution via these channels should be avoided altogether.

In the above-mentioned decision, the administrative court denied the party the requested emergency legal protection. It saw no reason to doubt the expert

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assessment of the KJM. Weighing up the interests of the protection of minors on the one hand and the fundamental right to freedom of expression and party privilege on the other, it did not consider the mabb's decision disproportionate and therefore did not consider there to be any particular interest in suspending the ban. AfD Brandenburg intends to take further action to contest the ban and has lodged an appeal against the decision with the *Oberverwaltungsgericht Berlin-Brandenburg* (Berlin-Brandenburg higher administrative court). The decision in the main proceedings is still pending.

VG Potsdam, 13.03.2025 - 11 L 74/25

https://dejure.org/dienste/vernetzung/rechtsprechung?Gericht=VG%20Potsdam&Datum=13.02.2025&Aktenzeichen=11%20L%2074%2F25

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