[DE] Media Authorities Issue Legal Guidelines on Election Advertising

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Anita Cicero
Institute of European Media Law (EMR), Saarbrücken/Brussels

In the run-up to the forthcoming Bundestag elections, the Direktorenkonferenz der Landesmedienanstalten (Congress of Land Media Authority Directors - DLM) has published a paper containing legal guidelines on important principles governing political party election broadcasts on national commercial television. Under Article 42.2 of the Rundfunkstaatsvertrag (Inter-State Broadcasting Agreement - RStV), political parties taking part in elections should, subject to certain conditions, be granted a reasonable amount of transmission time. Taking into account the relevant literature and case-law, the document provides broadcasters with guidelines on how to ensure the required equality of treatment, on the beginning, extent, number and timing of party election broadcasts, on admissible content and on questions concerning the reimbursement of costs and related legal proceedings.

Private broadcasters must provide a fair party election broadcast structure. Accordingly, the DLM recommends that a suitable broadcasting plan be drawn up. By offering transmission time, the broadcasters fulfil their obligation under Article 42.2 of the RStV. In general, a party which fails to use its allotted election broadcast slot has no right to demand that the broadcaster provide additional transmission time.

The DLM also points out that, in most Bundesländer, the content of party election broadcasts is not the responsibility of the broadcasters themselves, but of the parties concerned (eg Art. 19.6 of the Landesrundfunkgesetz Nordrhein-Westfalen (North Rhine-Westphalia Broadcasting Act)). Broadcasters have little control over content, mainly on account of the privileges granted to political parties under Article 21 of the Grundgesetz (Basic Law - GG). Party election broadcasts should only be rejected if they clearly breach general law, particularly criminal laws (eg Articles 130 and 131 of the Strafgesetzbuch (Criminal Code), which deal with incitement of the people and the portrayal of violence). However, broadcasters may also reject them if they breach human dignity, as protected by Article 1 of the Basic Law.

With regard to the transmission time allotted to each party and the number of times their broadcasts are shown, the parties are not treated with absolute equality, but according to a grading system. The DLM justifies this with reference

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to Art. 5.1.2 of the Parteiengesetz (Political Parties Act), which states that the amount of transmission time granted may be graded according to the size of the party. This is calculated largely on the basis of the last election result (see Art. 5.1.3 of the Political Parties Act), although other factors such as the age of the party, the size of its membership and how its members are spread across the parliaments are also taken into account. New political groups must also be taken into consideration.

The document also states that, under Article 42.3 of the RStV, the obligation to provide transmission time for party election broadcasts only applies to national commercial broadcasters. Land or regional channels are governed by similar regulations in the respective Land media acts, such as Art. 24 of the Bayerisches Mediengesetz (Bavarian Media Act); in many Bundesländer, the transmission of party election broadcasts and the allocation of transmission time on regional channels are at the discretion of the broadcasters. If broadcasters choose to provide such transmission time but are not obliged to do so under Article 42 of the RStV or under regional laws on the provision of transmission time for party election broadcasts, the aforementioned principles must be respected (eg Art. 24.3 of the Bavarian Media Act stipulates that "if a provider offers transmission time to a party or group of electors in the run-up to an election, it must, on request, provide all other parties and groups of electors that fulfil the conditions governing party election broadcasts for the election concerned with reasonable transmission time, depending on their size").

Rechtliche Hinweise der DLM zu den Wahlsendezeiten für politische Parteien im bundesweit verbreiteten privaten Rundfunk vom 27. Mai 2002

http://www.alm.de/bibliothek/anlage_beschluss1002_rechtl_hinweise_wahlwerbung.doc

Legal guidelines from the DLM concerning transmission time allocated to political parties by national commercial broadcasters, 27 May 2002

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