[DK] Amendment to the Broadcasting Act regarding Political Advertising

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On 1 January 2005, Act No 1437/2004 amending the Danish Broadcasting Act entered into force. The Act amends the provisions regarding political advertising in order to ensure accordance with the European Convention on Human Rights. Television advertising has been permitted in Denmark since 1986, with Article 76, Section 3 of the Broadcasting Act stating: "Advertisements for employers' organisations or trade unions or for religious movements or political parties are not allowed on television". However, Act No 439/2003 significantly expanded the scope of the prohibition as the wording "political parties" was changed to "political opinions". This amendment has never entered into force due to the uncertainty as to whether it was in accordance with Article 10 of the European Convention on Human Rights regarding freedom of expression, pursuant to which everyone has the right to hold opinions and to receive and impart information and ideas. A scrutiny carried out by the Ministry of Culture together with the Ministry of Justice concluded that the wording "political opinions" was not in accordance with the Convention and rulings under the Convention made by the European Court of Human Rights. The ministries argued that a prohibition against "political opinions" was a restriction on the kinds of advertisement that can legally be broadcast and thus a restriction of the television enterprises' possibility of imparting information and ideas on television. In addition, the prohibition was found to be a restriction of private parties' access to advertise on television and thus their access to impart information and ideas on this medium. The ministries also addressed the question whether the broad prohibition against political opinions could be regarded as necessary in a democratic society and thus covered by the exceptions to the freedom of expression, re Article 10, section 2 of the Convention. However, as the prohibition concerned political expressions (as opposed to commercial expressions) this was not deemed to be the case. Therefore, Act No 1437/2004 has now changed the wording of Article 76, section 3 of the Danish Broadcasting Act back to the previous wording "political parties" (however it now also covers political movements and elected members or candidates for political assemblies). A new section 4 does, however, prohibit advertisements for political opinions from the moment an election period is announced until the elections have been held (with a maximum period of 3 months). This specific prohibition is considered to be in accordance with the Convention .

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Lov om ændring af radio- og fjernsynsloven (Politiske reklamer og forlængelse af programtilladelser) Lov nr. 1437

http://www.kum.dk/sw18323.asp

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