[DE] Rulings on the Transmission of Party Political Broadcasts

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Sonnia Wüst
Institute of European Media Law (EMR), Saarbrücken/Brussels

In the run-up to the German parliamentary elections in October 2005 several rulings were issued in the German courts on the requirement for television broadcasters to transmit party political broadcasts.

The subject was the party political broadcast of a small party that had anarchy as part of its political programme. The public service broadcasters ARD and ZDF had refused to broadcast it on the grounds of protecting young people. The verbal content of the broadcast comprised the party's candidate for Chancellor shouting out his “address”. The final fade-in ran: “Your vote for the garbage“. Otherwise the advert showed in short succession shots of an excessive gathering of intoxicated, violent and partly-naked people. The broadcasting institutes viewed this party political broadcast as an infringement of § 4 paragraph 1 line 1 N° 8 and paragraph 2 line 1 N° 3 of the youth media protection treaty (JMStV), since it violated human dignity and was clearly intended to seriously threaten the development of children and young people. Since it did not take a legally admissible form, they were justified in refusing it. They offered, however, the possibility of broadcasting an altered party political broadcast. The appeals against this lodged by the party led to different rulings from the higher administrative courts (OVG) handling them: whilst the OVG for Rhineland-Palatinate having jurisdiction over ZDF found the appeal for the broadcasting of the whole sequence unfounded, ARD had to follow an order from the OVG of Northrhine-Westphalia (NRW) and broadcast the full-length version. In the view of the judge in Rhineland-Palatinate, the party political broadcast without doubt constituted a public and grave violation of human dignity as well as of § 4 paragraph 2 line 1 N° 3 of the JMStV, as it presented the image of a nihilistic and perverted society in which the individual is disparaged. The party lodged a constitutional complaint against this ruling and argued that it was a violation of the principle of equality of opportunity for political parties. Before the parliamentary elections an associated complaint on the issue of a provisional order had been turned down by the Constitutional Court. The judges of the OVG in Northrhine-Westphalia considered the party political broadcast to be tasteless and saw in it no serious contribution to the political debate, however they did not rule that it was a violation of youth protection regulations, i.e. it did not, through the nakedness displayed, constitute pornography punishable by law.

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Beschluss des BVerfG 2 BvR 1545/05 vom 12. September 2005

http://www.bverfg.de/cgi-bin/link.pl?entscheidungen

Ruling of the Constitutional Court 2 BvR 1545/05 of 12 September 2005

Beschluss des OVG Rheinland-Pfalz RP/U/1249 v. 7. September 2005

Ruling of the Higher Administrative Court of Rhineland-Palatinate RP/U/1249 of 7 September 2005

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