European Court of Human Rights: Case of TV Vest SA and Rogaland Pensjonistparti v Norway

IRIS 2009-3:1/1

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On 11 December 2008, the European Court of Human Rights delivered a judgment regarding a ban on political advertising on television. The crucial question the Court had to decide was whether a blanket ban on political advertisements on TV, as it was applied in Norway, was to be considered "necessary in a democratic society'" within the meaning of Article 10 of the European Convention on Human Rights. In principle, there is little scope under Article 10 of the Convention for restrictions on political speech or on debate on questions of public interest. However, a ban on paid political advertisements on TV exists in many countries in Europe, such as the UK, Sweden, Denmark, France, Belgium and Norway. According to Art. 3, 1 (3) of the Norwegian Broadcasting Act 1992, broadcasters "cannot transmit advertisements for life philosophy or political opinions through television". The Court has now decided unanimously that an application of this ban was in breach of Article 10 of the Convention.

The case goes back to the application by TV Vest AS Ltd., a television company in Stavanger, on the west coast of Norway, and the regional branch of a Norwegian political party, *Rogaland Pensjonistparti* (the Rogaland Pensioners Party). A fine was imposed on TV Vest for broadcasting adverts for the Pensioners Party, in breach of the Broadcasting Act. This fine had been imposed by the *Statens medieforvaltning* (State Media Administration) and had been confirmed by the *Høyesterett* (Supreme Court), which found, *inter alia* , that allowing political parties and interest groups to advertise on television would give richer parties and groups more scope for marketing their opinions than their poorer counterparts. The Supreme Court also maintained that the Pensioners Party had many other means available to put across its message to the public. The Pensioners Party had argued that it was a small political party, representing only 1.3 % of the electorate, without powerful financial means or support from strong financial groups, that it seldom got any focus in editorial television broadcasting and, thus, had a real need to establish direct communication between itself and the electorate. The Party was never identified either in national or local opinion polls.

The European Court said that to accept that the lack of consensus in Europe regarding the necessity to ban political advertisements on TV spoke in favour of granting States greater discretion than would normally be allowed in decisions

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with regard to restrictions on political debate. The Court however came to the conclusion that the arguments in support of the prohibition in Norway, such as the safeguarding of the quality of political debate, guaranteeing pluralism, maintaining the independence of broadcasters from political parties and preventing powerful financial groups from taking advantage through commercial political advertisements on TV were relevant, but not sufficient, reasons to justify the total prohibition of this form of political advertising. The Court especially noted that the Pensioners Party did not come within the category of parties or groups that had been the primary targets of the prohibition. In contrast to the major political parties, which were given a large amount of attention in the edited television coverage, the Pensioners Party was hardly ever mentioned on Norwegian television. Therefore, paid advertising on television had become the only way for the Party to get its message across to the public through that type of medium.

The Court was not persuaded that the ban had the desired effect and it explicitly rejected the view expounded by the Norwegian Government that there was no viable alternative to a blanket ban. In the Court's view, there was no reasonable relationship of proportionality between the legitimate aim pursued by the prohibition on political advertising and the means employed to achieve that aim. The restriction that the prohibition and the imposition of the fine entailed on the applicants' exercise of their freedom of expression could not therefore be regarded as having been necessary in a democratic society. Accordingly, there had been a violation of Article 10 of the Convention.

Judgment by the European Court of Human Rights (First Section), case of TV Vest SA and Rogaland Pensjonistparti v Norway, Application no. 21132/05 of 11 December 2008

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