[BE] On the Road to Political Advertising on Radio and Television?

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The Media Commission of the Flemish Parliament has accepted an important modification to the draft of the new Media Decree (see IRIS 2009-2: 8). In pursuance of the European Court of Human Rights judgment in the case of TV Vest SA and Rogaland Pensjonistparti v Norway (see IRIS 2009-3: 2), the Commission has approved a provision allowing paid political advertising on radio and television in pre-election time (Article 47). The provision's viability, however, depends on a double condition: approval in the plenary session of the Flemish Parliament and modification of the federal law on election expenditure and election campaigns. If these conditions are met, a turn of 180 degrees will have been accomplished in relation to the total ban on political advertising on radio and television, as provided in Article 97 § 3 of the present Media Decree.

In the above-mentioned judgment, the ECHR came to the conclusion that the arguments in support of the prohibition on political advertising in Norway, such as the safeguarding of the quality of the political debate, guaranteeing pluralism, maintaining the independence of broadcasters from political parties and preventing powerful financial groups from taking advantage of access to commercial political advertisements on TV, were relevant, but not sufficient, reasons to justify the total prohibition of this form of political advertising. The Court had especially noted, in its judgment of 11 December 2008, that the applicant Pensioners Party, in contrast to the major political parties, received hardly any coverage in the Norwegian media. Therefore, paid advertising on television became the only way for the party to get its message across to the electorate. This judgment does not necessarily mean that any prohibition on political advertising on radio and television has to be abolished, but it makes it clear that any ban should be applied with sufficient flexibility or that exceptions should be applicable for smaller parties and political movements or organizations that receive very little media coverage.

As the law currently stands in the Flemish Community, political advertising on radio and television is prohibited. The federal law on election campaigns also stipulates a ban, but this federal ban is restricted to the three months preceding elections. While the ban in the Flemish Media Decree is directed to the broadcasting companies in the Flemish Community, the federal law prohibits all political parties and their candidates in Belgium from financing political

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broadcasting on radio and television. Hence, in the current situation, the fact that the ban is restricted in time in federal legislation does not change anything for Flemish broadcasters, as they are not allowed at all to broadcast paid political messages on radio and television. Nonetheless, the public broadcasting corporation of the Flemish Community (VRT) is under an obligation to allocate broadcasting time (on radio and television), during a period of two months preceding the elections, to the political parties which are represented in the Flemish Parliament (Articles 29 and 30 § 6 of the present Media Decree). Half of the broadcasting time is divided in accordance with the proportional representation of the political parties in the Flemish Parliament and the other half is divided equally between all parties. This free broadcasting time on public radio and television is a kind of compensation for the existing ban on paid political advertising on radio and television. The problem from the perspective of Article 10 ECHR with the current situation is, however, that it does not guarantee access to this free political broadcasting time to small or new parties that have not yet won representation in the Flemish Parliament and receive only very little media coverage.

Following the amendment approved by the Media Commission, this guarantee regarding free pre-electoral broadcasting on public radio and television will be abrogated and will be replaced by the possibility for broadcasters to offer paid commercial communications to politicians and political parties in pre-election time (Article 47). The Commission of the Flemish Parliament claims that political advertising on radio and television should also be made possible by lifting the federal ban on paid political advertising on radio and television in pre-election time. So far (4 March 2009), no legal proposal whatsoever has been presented in the Federal Parliament, which means that, even if the new Article 47 will have been approved by the Flemish Parliament, paid political advertising on radio and television in the period before the regional and European elections of 7 June 2009 remains prohibited for the political parties and their candidates in Belgium, included in the Flemish Community.

Ontwerp van Decreet betreffende radio-omroep en televisie

http://jsp.vlaamsparlement.be/docs/stukken/2008-2009/g2014-7.pdf

Provisions currently accepted by the Media Commission of the Flemish Parliament

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