[NO] Government Responds to Strasbourg Ruling on Political Advertising on TV

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The Norwegian ban on political advertising on TV will be upheld. This was made clear by the Norwegian Government in an announcement of 11 March 2009, where the Government also stated that it did not intend to appeal the European Court of Human Right's (ECHR) judgment in the case of TV Vest AS and Rogaland Pensjonistparti v. Norway (see IRIS 2009-3: 2) to the Court's Grand Chamber. Instead, the Government proposes changes to the remit of the Norsk rikskringkasting AS (Norwegian public service broadcaster - NRK) that should allow access for small political parties to the TV media.

In its ruling, the ECHR found that a fine imposed on the local station TV Vest by the *Statens medieforvaltning* (the Mass Media Authority) in 2003 for transmitting ads for a political party in an election period constituted a violation of Article 10 of the European Convention on Human Rights. The Government has taken the position that the judgment only addresses the scope of the prohibition as applied to small political parties that are not normally included in the media's editorial coverage of an election campaign. Consequently, the Government has argued that the total ban on political advertising may be upheld, as long as appropriate measures are taken to secure access for small parties to the TV media.

The Government wants to achieve this by imposing stricter obligations on the NRK when it comes to giving small political parties editorial coverage. In Report No. 18 (2008-2009) to the *Storting* (Norwegian Parliament), the Government proposes changes to the NRK-plakat (the NRK's Statement of Commitments), which sets out the overall principles of the NRK's programme activities and its obligations as a public service broadcaster. The first pillar of the statement is entitled "Supporting and strengthening democracy". Point (1)(b) states the following: "The NRK should promote public debate and play its part in ensuring that the entire population receives sufficient information to enable it to actively participate in democratic processes". In its effort to give small political parties access, the Government now proposes the following addition to this wording: "The NRK shall provide a broad and balanced coverage of political elections. All parties and electoral lists over a certain size shall be covered in the normal manner by the editorial election coverage".

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However, in its report, the Government stressed that not all parties and electoral lists will be guaranteed editorial coverage and that the amendment does not entail a requirement of equal treatment. It is made clear that, as for all other public service requirements, it is for the Director General, as the NRK's editor, to secure compliance with the remit. In Norway, it is the task of the *Medietilsynet* (Media Authority) to monitor whether the public service broadcasters fulfil their obligations, but the Authority may not impose sanctions on the NRK, as opposed to the commercial public service broadcasters, for violating its obligations.

Accordingly, the Government has not opted for regulating so-called party political broadcasts, commonly found in many other European States, which give political parties free airtime to present their programmes, sometimes in the format of short advertising spots. This option is however mentioned in the report as a possible solution that may be introduced later, if considered necessary. It is expected that the Parliament will adopt the proposed amendment to the NRK-plakat later this spring.

The Government's response to the judgment has caused a heated public debate in Norway. Media law experts and in particular media representatives have argued that the TV Vest-ruling makes it clear that an absolute prohibition on political advertising, which is what section 3-1 of the Norwegian Broadcasting Act calls for, is a violation of Article 10. The critics argue that, instead of upholding the total ban, the rules must be relaxed. Alternatively, new regulations should be passed, allowing for some restrictions on political advertising on TV. The proposal to amend the NRK-plakat has been criticised as being of little value and has also been characterised as an unacceptable interference with the NRK's editorial independence. Several local TV stations in Norway have, during the last month, defied the Government and transmitted advertisements for political parties, both small and large, that clearly do fall within the scope of the ban. The Media Authority has stated that it will have to conduct an independent evaluation of whether the transmission of these advertisements shall be sanctioned or not.

Fortsatt forbud mot politisk TV-reklame i Norge

http://www.regjeringen.no/nb/dep/kkd/pressesenter/pressemeldinger/2009/fortsatt-forbud-mot-politisk-tv-reklame-.html?id=548607

Announcement from the Ministry of Culture and Church Affairs

St. meld. Nr. 18 (2008-2009)

http://www.regjeringen.no/nb/dep/kkd/dok/regpubl/stmeld/2008-2009/stmeld-nr-18-2008-2009-.html?id=549384

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