[CH] Controversial Commercial Broadcast after 16 Years

IRIS 2010-3:1/10

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At the end of January 2010, *Schweizer Fernsehen* broadcast an advertisement by the *Verein gegen Tierfabriken* (VgT) three times, thus bringing an end to a 16-year legal dispute. In January 1994, the VgT had asked the *Schweizerische Radio- und Fernsehgesellschaft* (Swiss radio and television corporation - SRG) to broadcast its spot, which attempted to raise awareness of the cruel treatment of pigs and to urge viewers to eat less meat. However, SRG's subsidiary, *publisuisse SA*, refused this request on the grounds that the spot infringed the ban on political advertising on television. This was followed by a legal battle in which the Swiss *Bundesgericht* (Federal Court) and the European Court of Human Rights (ECHR) were each involved on three separate occasions.

Following the ECHR's third ruling in the case of 30 June 2009 (see IRIS 2009-10: 4), the Swiss *Bundesgericht* ruled in the VgT's favour. In a judgment of 4 November 2009, the highest Swiss court granted the VgT's (second) appeal. In the grounds for its decision, the *Bundesgericht* held that the disputed spot did not represent banned political advertising on television. It departed from its earlier view, expressed in 2002, that the VgT would need to take the case to a civil court. It ruled that the SRG must take its decision into account with immediate effect and offer a solution within a reasonable period of time. If it failed to do so, the broadcasting regulator (the *Bundesamt für Kommunikation* - Federal Communications Office) would need to consider measures under licensing law.

The SRG subsequently agreed to broadcast the spot. The version that was finally shown in January 2010 differed in two ways from the original spot which the VgT had asked to be broadcast in 1994 and which the various courts had ruled on:

- Firstly, the VgT added a text that was shown on screen and read out at the beginning of the spot. This text mentioned the ECHR judgment and criticised the "censure" by *Schweizer Fernsehen*, to which the minister responsible and the *Bundesgericht* had given their blessing.

- Secondly, the VgT removed part of the original spot because Swiss rules on pig-keeping had changed since the pictures were filmed. It therefore omitted a section containing claims that pigs would be "forced to keep still" and "crammed full of medicines" throughout their lives.

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Urteil des Bundesgerichts 2F_6/2009 vom 4. November 2009

http://jumpcgi.bger.ch/cgi-bin/JumpCGI?id=04.11.2009_2F_6/2009

Judgment 2F_6/2009 of the Federal Court, 4 November 2009

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