

[AT] Withdrawal of Invitation to Discussion Breached Objectivity Rule

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*Robert Rittler
Gassauer-Fleissner Attorneys at Law, Vienna*

In June 2010, the Bundeskommunikationssenat (Federal Communications Senate - BKS) ruled that the withdrawal of an invitation to a political party to participate in a television programme constituted a breach of the objectivity rule.

On 24 December 2009, ORF broadcast the programme "Licht ins Dunkel", in which viewers were encouraged to donate money to charitable causes. The programme included a discussion involving the presidents of the parties represented in the Nationalrat (national assembly). ORF had sent similar invitations to all party presidents. The plaintiff is a political party represented in the Nationalrat and the Vienna Landtag (State parliament). Its president could not accept the invitation. Instead, her deputy was nominated, a proposal that ORF initially accepted. The day before the programme, which was to be broadcast live, ORF informed the party that the invitation to its representative was no longer valid because she was also a leading candidate in the forthcoming 2010 Landtag election in Vienna. The party declined to send another representative, whereupon the programme "Licht ins Dunkel" was broadcast without a representative of that party. The party pointed out that another invited guest was expected to stand as a candidate in the Vienna Landtag election and therefore should also have been excluded from the programme.

The BKS upheld the complaint. It began by explaining that it intended to adhere to previous case-law concerning invitations to participate in certain programmes. ORF had broad discretion to select discussion participants. In principle, no individual, group or political party had the right to appear in a particular programme.

The unusual feature of this case is that, although ORF invited the party to appear in the programme, it did not allow a particular person - the party's deputy leader - to take part. In principle, a political party should be allowed to choose its own representative.

There was no reason why ORF should not include the discussion of non-political themes in a Christmas Eve broadcast. The fact that the discussion was of a non-political nature could even justify its refusal to accept a nominated representative of an invited party official - but not if that representative herself held a senior position in the party. This was the case here: on the basis of her party's statutes,

the invited representative was authorised to deputise for the party president if the latter was unable to fulfil an engagement. ORF should therefore have accepted her nomination. The possibility of the Christmas Eve broadcast being abused for election purposes could have been prevented, for example, by a general invitation to people other than the presidents of the parties represented in the Nationalrat. It was unlawful to exclude one party's top candidate for the Vienna Landtag election from the discussion, but to allow another party's leading candidate to take part. By not inviting the deputy leader of the party, ORF had therefore broken the rule on objectivity.

Entscheidung des BKS vom 2. Juni 2010 (611.940/0007-BKS/2010)

<http://www.bka.gv.at/DocView.axd?CobId=39866>

BKS decision of 2 June 2010 (611.940/0007-BKS/2010)

