[BE] Partial Cancellation of Ban on Advertising for Political Parties

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Until recently, advertising for political parties was banned on audiovisual media services in the French-speaking Community of Belgium. The first sentence of the first paragraph of Article 12 of the Decree by the French-speaking Community of 27 February 2003 on broadcasting (which has since become the Decree of 26 March 2009 on audiovisual media services) provides that “neither political parties nor organisations representative of employers and workers may be the subject of commercial communication”.

This provision was cancelled by the Constitutional Court on 22 December 2010 in response to an application by three of the country’s main private-sector radio networks (Bel RTL, Contact and Nostalgie), although its scope also includes television, and the public as much as the private sector. The Court found that the absolute and permanent nature of the ban contravened Article 19 of the Belgian Constitution, which guarantees freedom of opinion.

Reiterating the limits laid down by the European Court of Human Rights, more particularly in its judgments in the cases of Verein gegen Tierfabriken v. Switzerland of 28 June 2001 and TV Vest AS & Rogaland Pensjonistparti v. Norway of 11 December 2008, the Court found that the text of the Decree could “have the consequence of preventing certain formations from having access to an important means for them of making their positions known to the public”.

It should nevertheless be said that, by virtue of a number of federal laws on expenditure relating to elections, which are applicable to all parts of the country, political parties and candidates are still not allowed to broadcast commercial advertising on radio and television or in cinemas, or paid-for messages on the Internet, during the three months prior to elections.

The cancellation judgment delivered on 22 December 2010 is therefore limited to “ordinary” time, outside periods of election campaigning.

Arrêt de la Cour constitutionnelle du 22 décembre 2010

http://www.const-court.be/public/f/2010/2010-161f.pdf

Judgment by the Constitutional Court of 22 December 2010

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