[CH] Supervisory Body Examines Small Party's Request to Participate in TV Election Broadcast

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In October, the Unabhängige Beschwerdeinstanz für Radio und Fernsehen (Independent Radio and Television Complaints Authority - UBI) dealt for the first time with a dispute over a party's participation in a forthcoming TV election broadcast. The small party "La Gauche", which has one representative in the Swiss parliament, told the UBI that it should be given greater prominence in the election broadcasts of the public service broadcaster Schweizerische Radio- und Fernsehgesellschaft (Swiss radio and television corporation - SRG). It complained that the SRG's Télévision Suisse Romande had categorised it as a small party ("petit parti") and had therefore allocated it much less airtime in its programmes concerning the parliamentary election of 23 October than the 12 large parties.

In particular, since the SRG was due to broadcast one more major live debate, the UBI, an independent court-like body, dealt with the complaint in an expedited procedure. At a public hearing, it ruled on the case the day before the TV election debate was broadcast. The majority of the UBI members agreed that the complaint should be examined on the merits, rejecting the argument that it should not be considered on procedural grounds.

The UBI therefore discussed whether the application of the SRG criteria represented an unlawful refusal to grant access to the programme. It ruled that this was not the case by 5 votes to 1. Excluding the small party from certain election broadcasts could be objectively justified, especially since it had not been treated any differently to similar parties. Broadcasters had considerable autonomy in determining the content of their programmes, including in the run-up to elections.

Access to radio and television election broadcasts is often the subject of disputes in Switzerland. In relation to previous elections, several court decisions have examined the broadcasters' criteria, particularly those of the SRG. In 1999, for example, the Bundesgericht (Federal Supreme Court) ruled that the SRG should take into account equal opportunities, the ban on discrimination and the protection of minorities. This did not mean that all candidates and parties should be treated in exactly the same way in the run-up to an election. However, differences in treatment should be based on objective, non-discriminatory grounds, such as the public interest in detailed information about parties and

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candidates with a realistic chance of being elected.

The right to non-discriminatory treatment in TV election broadcasts is based not only on the Swiss Federal Constitution, but also on the European Convention on Human Rights (Article 13 in conjunction with Article 10). In order to integrate this right into procedural law, the Swiss legislature had created the entitlement to file a complaint against a refusal to grant access in 2006 (Art. 94(1) of the Radio- und Fernsehgesetz (Radio and Television Act), RTVG). Previously, complaints could only be lodged against programmes that had already been broadcast. If a discriminatory refusal to grant access is substantiated, legal action may be taken, independently of any particular programme. In its recent decision, the UBI made it clear that such complaints are valid even if a candidate or party is not completely refused access to a programme, but claims to be the victim of uncalled-for unequal treatment.

Incidentally, “La Gauche” had taken other steps to secure the right to participate in two specific election broadcasts when the civil courts granted it full access to radio and television programmes with candidates in the Valais canton. In provisional measures issued by the Bezirksgericht Sion (Sion district court) on 20 September, the SRG was instructed to grant the party’s request to participate. This decision was based on provisions on the protection of personality rights (Art. 28 of the Zivilgesetzbuch (Civil Code)).

Pressemitteilung der Unabhängigen Beschwerdeinstanz für Radio und Fernsehen vom 11. Oktober 2011

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