[CH] Federal Court Denies SRG Boycott of Verein gegen Tierfabriken

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Since 2008, the Verein gegen Tierfabriken (VgT) has been complaining that Deutschschweizer Fernsehen (SF) has boycotted it systematically for non-objective political reasons. The VgT asked the broadcasting regulator Unabhängige Beschwerdeinstanz für Radio und Fernsehen (Independent Radio and Television Complaints Authority - UBI) to order SF to bring an end to its "television censorship" of the VgT. On 22 October 2010, the UBI rejected the VgT's complaint against the Schweizerische Radio- und Fernsehgesellschaft (Swiss radio and television corporation - SRG), which operates the SF channel. According to the UBI, there were insufficient grounds to rule that the VgT had been the victim of unconstitutional discrimination.

The VgT's appeal against the UBI decision was rejected by the Bundesgericht (Federal Court) on 24 February 2012. The highest Swiss court ruled, in principle, that individuals could nowadays raise public awareness through numerous media thanks to new forms of technology (Internet, digital television, etc.). If, in an individual case, the authorities, on the basis of the European Convention on Human Rights (ECHR) or the Federal Constitution, granted the right of access to a particular television channel, the broadcaster's programming independence would be restricted. Although the State, as the guarantor of media diversity, could interfere in programming independence in order to protect specific interests, such as equal opportunities in the run-up to elections or referenda, it could only do so "in exceptional circumstances".

The VgT case was not exceptional. However, the Bundesgericht admitted that some of Schweizer Fernsehen's behaviour towards the VgT showed a degree of animosity. For example, SF's long-standing editor in chief had inappropriately stated in an interview that the VgT President was "a participant not to be taken seriously in the public debate". This had genuinely given rise to the fear that SF would no longer give sufficient coverage to the VgT and the animal welfare issues that it represented. SF had regularly reported on the VgT and its activities between 1989 and 1997, but had done so rather less since then. According to the Bundesgericht, there were objective reasons "for the relatively small number of reports" about the VgT. The fact that SF was, in some cases, paying greater attention to other animal welfare organisations and the issues they were raising was linked to the current news situation. It was understandable if SF gave

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proportionally more coverage to larger animal protection organisations and their views on animal welfare issues than to the VgT. The SRG had a journalistic duty of care and could not provide the kind of one-sided, uncompromising reporting that the VgT wanted.

The VgT had particularly complained that SF had failed to report immediately about the second ruling of the European Court of Human Rights concerning the broadcast of a VgT advertisement (see IRIS 2010-3/10). However, the Bundesgericht did not consider this to be sufficient evidence of unconstitutional discrimination. There were “thousands of other people and organisations that considered other events or reports as very important and which - measured against the benchmark laid down by the plaintiff - could make an equally valid claim to be mentioned, which is clearly impossible in view of the limited airtime.”

Entscheid des Bundesgerichts vom 24. Februar 2012 (2C_408/2011)

http://jumpcgi.bger.ch/cgi-bin/JumpCGI?id=24.02.2012_2C_408/2011

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