[IE] Political party loses legal challenge over televised leaders' debate prior to election

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In judicial review proceedings in the High Court, a political party (Green Party) challenged the exclusion of its leader from a televised party leaders' debate by public service broadcaster RTÉ.

The applicant (a trustee of the Green Party), sought a declaration that the criteria operated by RTÉ, and in particular the requirement that a party have "at least three sitting members" in the outgoing Dáil Éireann (lower house of Irish parliament) before the leader of that party be invited to participate in the leaders' debate was unfair, undemocratic and unconstitutional and in breach of RTÉ's statutory obligations as a public broadcaster under the Broadcasting Act 2009.

The applicant argued that the inequality of treatment of the Green Party (who were unable to meet the requirement), would be to its detriment and suggested to the public that the Green Party was "not a significant player by its exclusion".

RTÉ said its criteria were objective, fair, transparent and applicable to all political parties and were put in place following an extensive review by an expert Steering Group and in "light of editorial factors". The broadcaster argued that it "must be afforded a margin of appreciation in the making of editorial decisions". RTÉ accepted that the purpose of the leaders' debate is "to bring to the public a debate on national issues between parties holding policy positions on those issues". However as a matter of editorial choice, "it must adopt a formula which results in an informative, engaging and meaningful television programme" which simultaneously "achieves the overall objective of fairness, balance and impartiality." The broadcaster contended that the Green Party were effectively seeking to have RTÉ apply "subjective" criteria for televised party leaders' debates that would favour the Green Party over other parties.

Ms Justice Marie Baker agreed with RTÉ's arguments and found its criteria were "sufficiently reasonable and impartial", not unfair or irrational, and were "proportionate to the needs of the political debate and the public's right to be informed and educated".

The judge stated that RTÉ had accepted that the editorial criteria that it had adopted for the 2016 election were "not perfect". Her primary difficulty with the applicant's argument was that many of the considerations contended for were

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“considerations which would favour the Green Party over other possible participants in the TV debate”. It was claimed by the applicant that the refusal of RTÉ to invite the Green Party leader to the debate “indicated a failure to consider the strength and historical and international importance of Green Party policies”. Ms Justice Baker found those factors were “overly subjective” and could lead to arguments of “partiality and subjectivity”.

According to Ms Justice Baker, the choice of the criteria for determining inclusion in the live TV leaders’ debate arose from an “editorial decision that the debate would not be attractive and informative to viewers if the leader of every political party were to participate”. The judge accepted the general proposition that some threshold requirements and some editorial choice had to be made. In reaching her decision, she took into account the “extent to which the role of RTÉ as an expert must be respected by the Court” and which is given a “singular and unique recognition in the Constitution.” Ms Justice Baker stated that she did not “consider that the High Court can have any role in that editorial choice” and that “the Court cannot be asked to fix programming criteria in which it has no expertise.” Accordingly, Ms Justice Baker refused the relief sought by the applicant.

Kivlehan v. Radió Teilfís Éireann [2016] IEHC 88

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