[DE] Courts decide on NPD European election ads

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The Bundesverfassungsgericht (Federal Constitutional Court - BVerfG) of the Federal Republic of Germany recently took two decisions in urgent proceedings concerning election campaign ads for the NPD political party, while a third case was decided by the Hessische Verwaltungsgerichtshof (Hessian Administrative Court - VGH). A number of public service television and radio broadcasters had refused to broadcast the ads. In two of the three cases, the courts decided that they had been wrong to do so.

Under provisions such as Article 11(1) of the ZDF-Staatsvertrag (Inter-State Agreement on ZDF), political parties and coalitions are entitled to a reasonable amount of airtime on national public broadcasting channels in the run-up to European Parliament elections. There are similar rules at federal state level.

Zweites Deutsches Fernsehen (ZDF) had initially allocated several time slots for the party's campaign ads before refusing to broadcast them on the grounds that they would constitute incitement to hatred. Since the relevant administrative courts and the Bundesverfassungsgericht were in agreement, the broadcaster was allowed to refuse to broadcast the ads.

Incitement to hatred,that is, disturbing public peace by inciting hatred and violence against or defaming segments of the population, is punishable under Article 130 of the Strafgesetzbuch (Criminal Code - StGB). In its European election campaign ad, the NPD claimed that: "Since the arbitrary opening of the border in 2015 and the uncontrolled mass migration that followed, Germans have become almost daily victims of knife-wielding foreigners". A further declaration that "Migration kills!" was followed by a call for the creation of so-called "safe zones" for Germans.

The Bundesverfassungsgericht reached a different decision in the case concerning public service broadcaster Rundfunk Berlin-Brandenburg (rbb), which had legally examined TV election ads for the national ARD channel and, on similar grounds, had refused to broadcast a slightly amended version of the NPD ad. In this case, the court held that there was insufficient certainty that the ad's content would constitute incitement to hatred. Like the administrative courts that had initially heard the case in urgent procedures, rbb had made reference to the party's election manifesto in its interpretation of the ad's content. However, the

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Bundesverfassungsgericht ruled that the content of the ad itself was the only relevant factor and that, since it did not appear to violate Article 130 StGB, the broadcaster was obliged to show the ad. Radio and television advertising remained an important tool in political parties' election campaigns, so airtime needed to be allocated in accordance with the principle of equal opportunities for all political parties.

In early May, a similar decision was reached by the Hessian Administrative Court, which ordered Hessischer Rundfunk (hr) to broadcast a radio election ad and overturned a decision of the Verwaltungsgericht Frankfurt (Frankfurt Administrative Court). In the ad, the NPD had replaced a reference to "knife-wielding foreigners" with an allegation of censorship. According to the court, although broadcasters were not barred from checking whether election ads breached general criminal laws, such an ad could only be rejected if the violation was both obvious and serious. This was no longer the case where the party's amended advertisement was concerned.

Beschluss des BVerfG vom 27. April 2019 (1 BvQ 36/19)

https://www.bundesverfassungsgericht.de/SharedDocs/Pressemitteilungen/DE/2019/bvg19-032.html

Federal Constitutional Court decision of 27 April 2019 (1 BvQ 36/19)

Beschluss des BVerfG vom 15. Mai 2019 (1 BvQ 43/19)

https://www.bundesverfassungsgericht.de/SharedDocs/Pressemitteilungen/DE/2019/bvg19-036.html

Federal Constitutional Court decision of 15 May 2019 (1 BvQ 43/19)

Beschluss des Hessischen VGH vom 9. Mai 2019 (8 B 961/19)

https://verwaltungsgerichtsbarkeit.hessen.de/pressemitteilungen/hessischer-rundfunk-muss-h%C3%B6rfunk-wahlwerbespot-der-npd-senden

Hessian Administrative Court decision of 9 May 2019 (8 B 961/19)

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