[DE] Higher Administrative Court rules on public broadcasters' election reporting obligations

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On 25 May 2023, ruling on an appeal lodged by the *Partei Mensch, Umwelt, Tierschutz* (Animal Protection Party) against a decision favouring the Berlin-Brandenburg state broadcasting authority (rbb), the *Oberverwaltungsgericht Berlin-Brandenburg* (Berlin-Brandenburg Higher Administrative Court) decided that rbb should have specifically mentioned the party's share of the vote in the last Brandenburg state election (2.6% of second votes) in its post-election coverage rather than including it under the heading "Other". The court based its ruling on political parties' constitutional right to equal treatment on the one hand and on public broadcasters' election reporting obligations on the other.

As one of the nine German state public broadcasting authorities, rbb is largely responsible for providing news coverage in the Berlin and Brandenburg area. In several television programmes broadcast after the 2019 Brandenburg state election – "*Brandenburg-Wahl: Die Entscheidung*", "*Brandenburg aktuell*" and "rbb24" – it had reported on the results and the percentage of votes obtained by the various parties. Despite winning 2.6% of the votes, the Animal Protection Party had not been mentioned in its own right but had been grouped together with three other parties, each of which had received well under 1% of the votes, under the heading "Other" in some graphics. Larger parties with higher vote percentages, on the other hand, had been mentioned by name. The Animal Protection Party claimed that this represented a breach of political parties' right to equal treatment enshrined in Article 21(1) in connection with Article 3(1) of the *Grundgesetz* (Basic Law). Arguing that its 2.6% share, which was significant for a small party, should have been clearly communicated to the public in order to prevent it being unfairly treated in comparison with larger parties, it launched court proceedings against rbb. The first-instance administrative court dismissed its claim for an injunction and rectification on the grounds that rbb's summary of the election results had not been arbitrary and was therefore covered by the broadcaster's editorial freedom. The court agreed with rbb's submission that it had followed the principle of so-called tiered equality of opportunity enshrined in party law (although this only applies to pre- rather than post-election reporting) because, as a public broadcaster, it had treated the competing parties "in accordance with their importance" as part of its overall editorial concept. However, in the appeal procedure launched by the Animal Protection Party, the *Oberverwaltungsgericht* rejected this claim. In view of all the circumstances of the

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case, it held that the party had been unduly disadvantaged compared with other, larger parties. Its election results, which the *Oberverwaltungsgericht* described as "not insignificant", should have been mentioned specifically by rbb rather than combined with the results of parties with much smaller percentages of the vote. The party was entitled to have its result mentioned. At the same time, it would not have been difficult for rbb to meet this requirement, so its editorial freedom would not have been significantly infringed.

In view of the fundamental importance of the ruling, the *Oberverwaltungsgericht* left it open to appeal. The *Bundesverwaltungsgericht* (Federal Administrative Court) may therefore be asked to rule on the matter.

Pressemitteilung vom 26.Mai 2023 des Oberverwaltungsgerichts Berlin-Brandenburg

https://www.berlin.de/gerichte/oberverwaltungsgericht/presse/pressemitteilungen/2023/pressemitteilung.1328811.php

Berlin-Brandenburg Higher Administrative Court press release of 26 May 2023

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