



Medietilsynet
NORWEGIAN MEDIA AUTHORITY

EPRA, October 2009

Political advertising

WG I: Political Advertising vs. Public Service Announcements: Drawing the Line

By Linda M. Andersen

Senior Adviser, Norwegian Media Authority

Structure of the presentation

- Short introduction to the Norwegian legislation regarding political advertising
- The judgment from ECHR in the “TV Vest – case”
 - How has the Norwegian Government responded to the judgment?
- The situation in Norway after the judgment
- A short survey on the debate in Norway – seen in perspective with the election period in September 2009

Norwegian legislation regarding political advertising



Medietilsynet
NORWEGIAN MEDIA AUTHORITY

The Broadcasting Act

- Section 3-1: Broadcasters may not broadcast advertisements to promote belief systems or political ends on television (this also applies to teletext services).
 - Advertising: "Any form of marketing.....in return for payment or other form of consideration" (section 1-1)
- Section 3-4: Political party organisations may not sponsor broadcasts.
 - Sponsorship: "Any direct or indirect contribution made to the production or transmission of one or more programmes" (section 1-1)

- Radio: political advertising is allowed, but not sponsorship by political party organisations
- Violations of the regulations in the Broadcasting Act can be sanctioned
 - Warning, financial penalty or coercive fines

How has the Norwegian Government responded to the judgment from the ECHR in the TV-Vest case?

The "TV Vest-case"

- In 2003 the NMA imposed a fine on the local station TV Vest for transmitting ads for the Pensioners Party during the local election.
- TV Vest tried the case in the Norwegian courts. The fine was upheld by the Supreme Court.
- The ECHR gave its judgment on December 11th 2008
- The Norwegian Government had violated Article 10 "Freedom of expression" of the European Convention on Human Rights (ECHR)
- The Government stated in an announcement of 11 March 2009 that it did not intend to appeal the judgment

The decisive factors

- (72) *“(….)there is nothing to suggest that the Pensioners Party fell within the category of parties or groups that were **the primary targets** of the disputed prohibition(…)”.*
- (73) *”In contrast to the major political parties, which were given a large amount of attention in the edited television coverage, the Pensioners Party was hardly mentioned. Therefore **paid advertising became the only way** for the Pensioners Party to get its message across to the public through that type of medium.”*
- (73) *”By being denied this possibility under the law, the Pensioners Party’s position was at a **disadvantage**, compared to that of major parties which had obtained edited broadcasting coverage (….)”.*

How to interpret the judgment?

- The judgment has been interpreted in two different ways:
 - 1) the judgment addresses the ban on political advertising itself, and states that this ban is in violation of Article 10 of the ECHR
 - 2) the judgment only addresses the scope of the prohibition as it applies to small political parties that are not normally included in the media's editorial coverage of an election campaign

- The Norwegian Government has taken the position that the judgment only addresses small political parties (alternative number 2)
- The ban may be upheld, as long as appropriate measures are taken to secure access for small parties to the TV media
- The ban on political advertising was discussed and upheld by the Storting (Norwegian Parliament) on May 29th 2009.

Measures taken by the Government

1. The Government has made changes in the public service broadcaster NRK's mandate that allows for small political parties' access to the TV media (editorial coverage).
2. The Government has supported the Open Channel in order for them to guarantee access for all political parties during the election period.

1. Changes to PSB's mandate

- The Government has made changes in the public service broadcaster NRK's mandate that allows for small political parties' access to the TV media (editorial coverage)
- NRK's mandate section 12 b):
 - *NRK shall promote public debate and play its part in ensuring that the entire population receives sufficient information to enable it to actively participate in democratic processes. NRK shall provide a broad and balanced coverage of political elections. All parties and electoral lists over a certain size shall normally be covered by editorial election coverage.*

- It is the Director General of the NRKs responsibility to secure compliance with the mandate
- Criticism:
 - Not all parties and electoral lists will be guaranteed editorial coverage
 - The mandate does not entail a requirement of equal treatment
 - The amendment to the mandate has been criticized as an unacceptable interference with the NRK's editorial independence

The monitoring of NRK

- Annual assessment: Every year NRK prepares a PSB account (a report). On this background the NMA makes an assessment on how NRK fulfil their programme requirements (NMA's annual PBS report).
- The NMA has only an advisory function towards the Ministry of Culture and Church Affairs. The NMA cannot impose sanctions on NRK for violation its obligations.

2. Access on the Open Channel

- The Government has also supported the Open Channel (“Frikanalen”) in order for them to guarantee access for all political parties during the election period

Free airtime?

- The Government has not opted for so-called party political broadcasts, which give political parties free airtime to present their programmes.
 - This option is however, in the Governments report, mentioned as a possible solution that may be introduced later.

The situation in Norway after the judgment

- Shortly after the judgment was legally in force: 15 local TV-stations stated that they would transmit political advertising
- March 2009 – these TV-stations transmitted political advertising for the Conservative Party
- One TV-station also transmitted advertisements for the Pensioners Party

- The NMA has interpreted the judgment in the same way as the Norwegian Government
- The NMA imposed sanctions on the 15 local TV-stations which transmitted advertisements for the Conservative Party
- The transmission of the advertisements for the Pensioners Party was not sanctioned
 - The advertisements was transmitted before the Government had taken any measures to secure access for small political parties to the TV-media

The debate on political advertising in Norway

Discussions on the ban

- Can Norway continue to have a blanket ban?
 - Several broadcasters, politicians and legal experts claim that political advertising is legal according to ECHR judgment in the “TV Vest-case”, and that the ban is in violation of Article 10
 - Others argue, as the Government does, that the judgment only addresses small political parties access to the TV-media
- Are the measures taken by the Government sufficient as to secure access to the media for small political parties?
 - Or should Norway consider giving “free airtime”?

- Several broadcasters have expressed that they want to fight the ban
- Commercial public broadcaster TV 2
- Commercial broadcaster "TV Norway" (TVN)
 - Offered free airtime during the election period to all political parties of a certain size
 - Several local TV-broadcasters also offered free airtime

Did the measures taken by the Government have any effect on small parties access to the media during the election period?

- Only a few political parties choose to transmit advertisements on the Open Channel
 - The Open Channel has limited distribution and very few viewers
- The NMA will evaluate the coverage of the election campaign from NRK in the annual PBS report
 - The NMA has not received any formal complaints regarding NRK's coverage of the election
 - Several small political parties have, however, stated in the media that they felt they did not get enough editorial coverage during the election period

The future

- None of the national broadcasters have so far violated the ban – is this yet to come?
- The discussion continues – will the Government be forced to take any further measures in order to give small players access to the TV-media?
- Local elections coming up in 2011...

Thank you for your attention