



## Marginalisation of the applicant association in political debates on State-run television breached its freedom of expression

In today's Chamber judgment<sup>1</sup> in the case of [Associazione Politica Nazionale Lista Marco Pannella v. Italy](#) (application no. 66984/14) the European Court of Human Rights held, unanimously, that there had been:

**a violation of Article 10 (freedom of expression) of the European Convention on Human Rights.**

The case concerned a complaint by the applicant association, an Italian political association which was represented in Parliament, that it had not been invited to take part in political debates scheduled during three major current-affairs programmes broadcast by the State broadcasting corporation RAI.

The applicant association had complained to the Communications Regulatory Authority (AGCOM) of an imbalance to its disadvantage on certain television programmes. On two occasions, no further action had been taken on its complaint. Only after the association had applied a second time to a court, alleging a breach of the *res judicata* principle, had AGCOM finally ordered RAI to redress the imbalance that had harmed the applicant association's interests.

It was therefore clear that the applicant association had been absent from three very popular television programmes – which had become the leading means of presenting political debate and disseminating political ideas and opinions in the media – and had found itself, if not excluded from, at least highly marginalised in media coverage of political debate. Accordingly, there had been a violation of Article 10 of the Convention.

### Principal facts

The applicant, Associazione Politica Nazionale Lista Marco Pannella, is an Italian political association with its head office in Rome (Italy).

On 4 June 2010 the applicant association lodged a complaint with the Communications Regulatory Authority (*Autorità per le garanzie nelle comunicazioni* – AGCOM), an independent administrative authority performing regulatory and monitoring functions in the telecommunications and broadcasting sectors – against RAI's three general-interest channels for failure to comply, between 1 April and 3 June 2010, with the obligations stemming from the principles of impartiality and pluralism in the provision of information. The association argued that the news programmes (*TG1*, *TG2* and *TG3*) broadcast by the three channels in question had not included sufficient reports on the initiatives and awareness-raising campaigns it had launched. It also complained that its representatives had not been invited to appear on the main talk shows broadcast on the three State-run channels – *Porta a porta*, *Annozero* and *Ballarò* – whereas representatives of other political movements had taken part.

On 8 July 2010 AGCOM decided to take no further action on the complaint. After assessing the screen time given to the applicant association as reflected by its overall presence across all the news

1. Under Articles 43 and 44 of the Convention, this Chamber judgment is not final. During the three-month period following its delivery, any party may request that the case be referred to the Grand Chamber of the Court. If such a request is made, a panel of five judges considers whether the case deserves further examination. In that event, the Grand Chamber will hear the case and deliver a final judgment. If the referral request is refused, the Chamber judgment will become final on that day.

Once a judgment becomes final, it is transmitted to the Committee of Ministers of the Council of Europe for supervision of its execution. Further information about the execution process can be found here: [www.coe.int/t/dghl/monitoring/execution](http://www.coe.int/t/dghl/monitoring/execution).

and current-affairs programmes broadcast by each of the State-run channels (RaiUno, RaiDue and RaiTre) during the period under consideration, it concluded that the association had enjoyed a sufficient presence, similar to that of other political movements that, like the applicant association, did not have any members of parliament. AGCOM pointed out that, unlike “political communication” programmes, current-affairs programmes were not subject to a rule requiring strict mathematical distribution of the screen time devoted to each political force, and explained that during such programmes, the expression of political views was governed by the rule of equal treatment, the aim being to ensure fair representation of all strands of political opinion. It concluded that there was no indication that the applicant association had been under-represented on screen during the period under consideration.

On 9 November 2010 the applicant association challenged AGCOM’s decision in the Lazio Regional Administrative Court (“the RAC”). On 9 June 2011 the RAC, after specifying that the applicant association could be regarded as a “political subject” under domestic law, upheld the challenge and set aside AGCOM’s decision. After reconsidering the matter, AGCOM maintained its previous decision to take no further action on the applicant association’s complaint.

The association lodged a further application with the Lazio RAC, alleging a breach of the *res judicata* principle, and sought to have AGCOM’s decision declared void and to have the RAC’s judgment of 9 June 2011 enforced.

On 14 March 2013 the RAC upheld the application. Observing that the applicant association was represented in Parliament, it found that it could indeed be regarded as a “political subject”. It again noted that AGCOM had not stated the reasons for changing its approach to the assessment of screen time and for choosing to compare programmes that were extremely different in terms of their popularity and the times at which they were screened. Lastly, it ordered AGCOM to enforce the judgment of 9 June 2011 within thirty days.

On 25 May 2013 AGCOM ordered RAI to invite the applicant association to appear on two programmes, *Porta a porta* and *Ballarò*, by the end of the 2013 programming schedule.

## Complaints, procedure and composition of the Court

Relying on Article 10 (freedom of expression), the applicant association complained of a violation of its freedom to impart political ideas and opinions via the public service broadcaster’s television channels.

The application was lodged with the European Court of Human Rights on 2 October 2014.

Judgment was given by a Chamber of seven judges, composed as follows:

Ksenija **Turković** (Croatia), *President*,  
Péter **Paczolay** (Hungary),  
Alena **Poláčková** (Slovakia),  
Erik **Wennerström** (Sweden),  
Raffaele **Sabato** (Italy),  
Lorraine **Schembri Orland** (Malta),  
Ioannis **Ktistakis** (Greece),

and also Renata **Degener**, *Section Registrar*.

## Decision of the Court

### Article 10

The Court observed that outside election periods, political views and opinions were disseminated via “political communication programmes” and “current-affairs programmes”, both of which sought to contribute to political debate at national level and ensured pluralism in the information received by and serving the public. The planning and thematic choices of current-affairs programmes was a matter falling within the editorial autonomy of each channel and each editorial board. Provisions of statute law laid down the general principles applicable to radio and television, leaving it to the parliamentary supervisory commission and AGCOM to adopt secondary regulations implementing those principles. The task of monitoring compliance with these various rules fell to AGCOM.

In the present case, the applicant association had complained to AGCOM of an imbalance to its disadvantage in the coverage provided by certain television programmes. On two occasions, no further action had been taken on its complaints. On 9 June 2011 the Lazio RAC had declared AGCOM’s initial decision void and had asked it to take into account the applicant association’s status as a “political subject” that, as such, could not be compared to political movements that were not represented in Parliament. It had noted that some political movements not represented in Parliament had taken part in three programmes with a large audience. It had asked AGCOM to provide reasons for having chosen to depart from its previous practice when supervising the observance of the principle of pluralism.

The Court observed that it was only after the applicant association had lodged a second application with the court, this time alleging a breach of the *res judicata* principle, that AGCOM had finally ordered RAI to redress the imbalance that had harmed the applicant association’s interests.

The Court accordingly considered that AGCOM’s approach had been excessively formalistic. AGCOM had carried out an overall assessment of the applicant association’s presence during all of the current affairs programmes on the channels in question, without taking into account the time at which the programmes were screened or their popularity. The Court observed that in general, current-affairs programmes were not subject to a strict requirement of proportional representation of the views of each political formation but simply to a duty to represent different political opinions in a balanced manner. However, the internal practice employed by AGCOM and the TAR regarding the application of the general principles on pluralism indicated that “political subjects” enjoyed increased protection of their access to a specific category of current-affairs programmes, including the ones to which the applicant association’s complaint had related.

It was therefore clear that the applicant association had been absent from three very popular television programmes and had found itself, if not excluded from, at least highly marginalised in media coverage of political debate.

There had therefore been a violation of Article 10 of the Convention.

### Article 6

In view of its finding of a violation of Article 10 of the Convention, the Court did not consider it necessary to carry out a separate examination of the complaint under Article 6.

### Just satisfaction (Article 41)

The Court held that Italy was to pay the applicant association 12,000 euros (EUR) in respect of non-pecuniary damage and EUR 5,000 in respect of costs and expenses.

*The judgment is available only in French.*

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**The European Court of Human Rights** was set up in Strasbourg by the Council of Europe Member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.