EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

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Discontinuance of "political platform" programmes on State-run TV did not breach freedom of expression of applicant political association

In today's **Chamber** judgment[1] in the case of Associazione Politica Nazionale Lista Marco Pannella and Radicali Italiani v. Italy (application no. 20002/13) the European Court of Human Rights held, unanimously, that there had been:

no violation of Article 10 (right to freedom of expression) of the European Convention on Human Rights**, and**

a violation of Article 13 (right to an effective remedy)

The case concerned the discontinuance of certain political programmes, known as "political platforms", on State-run television. The applicants were two political associations complaining of a breach of their right to impart their ideas and opinions.

The Court noted that the programmes had been discontinued as a result of inaction on the part of the "oversight commission" – a political body expressing the wishes of the Italian Parliament as regards public-service broadcasting – which had stopped providing the RAI channels with the instructions needed to organise the political broadcasts in question. It had thus been a political choice, within the discretion of Parliament.

The format of the programmes had dated back to the early 1970s, when the societal context was very different from that of today. All political groups and parties which had taken part, without distinction, had been affected by the consequences of the discontinuance. The gradual replacement of these "political platforms" by more in-depth political debates had given the RAI greater editorial freedom. Thus the public-service broadcasting system now afforded other possibilities for imparting political ideas and opinions on the television. The discontinuance of the "political platform" thus had to be seen in the context of the general evolution of State-run broadcasting in Italy.

The Court observed, however, that the applicant association had not had an effective legal remedy for the purpose of challenging the discontinuance of the programmes in question.

Principal facts

The applicants, Associazione Politica Nazionale Lista Marco Pannella and Radicali Italiani, are two Italian political associations whose head offices are in Rome. They argued that the discontinuance of a television programme consisting of political debate had breached their right to freely impart their opinions and ideas.

As regards the relevant legislation, the provisions specific to Italian broadcasting distinguish between two categories of programme. Political "communication" programmes, which include "electoral platforms", organised in the pre-election period, and "political platforms", broadcast as part of

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.

ordinary programming. There are also “news" programmes, dealing with current affairs, society and politics.

The legislature has entrusted the task of controlling the programming and activity of television channels to two bodies: the parliamentary commission for the general oversight and supervision of radio and television broadcasting (*Commissione Parlamentare per l'indirizzo generale e la vigilanza dei servizi radiotelevisivi* – “the oversight commission”) and the authority for communications safeguards (*Autorità per le garanzie nelle comunicazioni* – “AGCOM”). The oversight commission conveys the intentions of Parliament in matters of public-service broadcasting. AGCOM is an independent administrative authority exercising regulatory and supervisory functions in the telecommunications and audiovisual sectors.

On 21 November 2007 the oversight commission issued instructions to the RAI for the last round of “political platforms” to be held before the elections. Following the 2008 parliamentary elections, the composition of the oversight commission was renewed and the new commission failed to provide the RAI with the necessary instructions for the organisation of a new round of political communication programmes. As a result, the “political platform” programmes were no longer scheduled.

Complaints, procedure and composition of the Court

Relying on Article 10 (freedom of expression), the first applicant association complained about the discontinuance of certain political programmes, which it claimed had been the result of inaction by the oversight commission. It argued that its right to freely impart its ideas and opinions had been breached.

The application was lodged with the European Court of Human Rights on 27 December 2012.

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

The Court found that the association Radicali Italiani, the second applicant, had not shown how it had been directly affected by the discontinuance of the “political platform” programmes and concluded that its complaint had been directed in the abstract against the alleged omissions of the national authorities. The second applicant could not therefore claim, under Article 34 of the Convention, to be a victim of the situation complained of and its application thus had to be rejected, pursuant to Article 35 §§ 3 (a) and 4 of the Convention.

Article 10

The Court observed that, outside election periods, the organisation of “political platforms” on State-run channels required an instruction from a parliamentary body, namely the oversight commission, while the initiative for news programmes fell within the editorial autonomy of each channel and

each television newsroom, subject to compliance with the general principles of impartiality and pluralism of information.

The Court noted that the discontinuance of the “political platforms" had been the result of inaction on the part of the oversight commission – a political body expressing the wishes of the Italian Parliament as regards public-service broadcasting – which had stopped providing the RAI with the instructions needed to organise the programmes at issue. It had thus been a political choice, within the discretion of Parliament. The Court thus had to ascertain whether the effects of the discontinuance of those broadcasts on the first applicant’s freedom of expression were compatible with the Convention.

The Court noted, firstly, that the format of the “political platform” programmes dated back to the early 1970s, when the societal context had been very different from that of today. The applicant association had not been the only “political subject” to be affected by the discontinuance of those programmes: all political groups and parties which had taken part in them, without distinction, had sustained the consequences of the discontinuance. It would have been different if the refusal to allow air time for a given political party had been decided at the same time as allowing the broadcasting of the opinions of others, thus creating a disparity which might have breached Article 10 of the Convention. The gradual replacement of these “political platforms” by more in-depth political debates had given the RAI greater editorial freedom. Thus the public-service broadcasting system now afforded other possibilities for imparting political ideas and opinions on the television.

The Court therefore took the view that the discontinuance of the “political platform” programme had to be seen in the context of the general evolution of State-run radio and television broadcasting in Italy. This evolution consisted in a gradual reduction in the role of the political authority and recognition of the editorial autonomy of each channel and of the newsrooms responsible for news programming, with the aim of promoting the impartiality, objectivity and pluralism of information.

The Court’s conclusion was that the discontinuance of the “political platform” broadcasts had not deprived the applicant association of the possibility of imparting its opinions and that there had been no disproportionate breach of its right to freedom of expression.

There had thus been no violation of Article 10 of the Convention.

Article 13

The Court noted that the domestic courts had taken the view that, as a parliamentary body, the oversight commission expressed the wishes of the Italian Parliament and that its actions were thus of a political nature. Decisions taken by this body under Law no. 103 of 1975 were not administrative but political.

In respect of the discontinuance of the television programmes in question, the Court found that the applicant association had not been afforded an effective domestic remedy.

There had thus been a violation of Article 13 of the Convention.

Just satisfaction (Article 41)

The Court held that the finding of a violation constituted sufficient just satisfaction for the non-pecuniary damage sustained by the first applicant and that the respondent state is to pay the first applicant EUR 127 for 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.