

[IT] The Constitutional Court and Equal Access to the Media at Election Times and at Times of Referendums

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In March 1995, the Italian government issued decree n° 83, dated 20 March 1995 (see IRIS 1995-5: 9), providing for equal access to the media during election and referendum campaigns (known under the title "par condicio").

Subsequently, on 29 March 1995, Giuseppe Calderisi, Lorenzo strik Lievers and Elio Vito, the three members of the Italian parliament who initiated the referendums allowed by decisions of the Constitutional Court given in 1995 for trade, council elections and trade union levies, appealed against the Government and the Garant (Garant) in order to obtain the suspension and subsequent cancellation of legislative decree n° 83 of 20 March 1995.

The initiators of the referendums, quoting order (ordonnance) n°17 and decision (arrêt) n°69 pronounced by the Constitutional Court in 1978, claimed to be "representing the power of the State" (at least until such time as the referendums actually took place).

They gave as the main reasons for their appeal the fact that articles 1, 2, 3 and 14 of the decree infringed article 75 of the Constitution (unreasonable extension of the strict regulations governing the supervision, interdictions and penalties relating to referendum campaigns as provided for in Decree n°83/1995 and, in particular, the excessive, unreasonable and disproportionate nature of paragraph 6, article 3 of the same decree), at such a time as when an election campaign is running at the same time as a referendum campaign. This situation would seriously affect the efforts of the political movements both for and against the request for abrogation.

Through Decision (arrêt) n°161 of 10 May 1995, the Constitutional Court amended the legislative decree n° 83 of 20 March 1995, in particular with retroactive effect for the provision of paragraph 6, article 3 which forbids all electoral advertising during the 30 days preceding a referendum vote (except for electoral consultations).

The judges of the Constitutional Court argued that the ban on commercials in political or administrative election campaigns is justified by the need to give priority to propaganda as opposed to advertising, whereas for referendums, where only a "yes" or "no" answer is required, there is little difference between

advertising or propaganda on television, the two being essentially identical.

The unreasonable nature of the provision banning advertising during the 30 days preceding referendums is shown by the reduction, beyond reasonable limits, of the possibilities of giving information to those people who wish to see either the abrogation or survival of the laws that the referendums are called to judge upon.

Following this decision of the Constitutional Court, which did away with an interdiction, but which upheld the "par condicio", the Garantor for broadcasting and the press passed the regulation of 13 May 1995 which laid down the number and the cost of the commercials for referendums.

