European Court of Human Rights: Case Centro Europa 7 S.r.l. and Di Stefano v. Italy

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Dirk Voorhoof
Human Rights Centre, Ghent University and Legal Human Academy

In 2009 Centro Europa 7 complained in Strasbourg that for a period of almost ten years the Italian Government had not allocated it any frequencies for analogue terrestrial television broadcasting, while the company had already obtained a licence for TV broadcasting in 1999. The company submitted that the failure to apply the broadcasting law of 1997, the refusal to enforce the Constitutional Court's judgments imposing the effective allocation of frequencies for new private TV stations and the duopoly existing in the Italian television market (RAI and Mediaset) were in breach of Article 10 of the Convention. In this regard Centro Europa 7 especially referred to the private broadcaster Mediaset - owned by the family of Prime Minister Silvio Berlusconi - being treated preferentially and being the reason for the years-long postponing of making frequencies available to other broadcasting companies.

The Grand Chamber of the European Court of Human Rights reiterates that a situation whereby a powerful economic or political group in society is permitted to obtain a position of dominance over the audiovisual media and thereby exercise pressure on broadcasters and eventually curtail their editorial freedom undermines the fundamental role of freedom of expression in a democratic society as enshrined in Article 10 of the Convention, in particular where it serves to impart information and ideas of general interest, which the public is moreover entitled to receive. It also clarifies that in such a sensitive sector as the audiovisual media, in addition to its negative duty of non-interference the State has a positive obligation to put in place an appropriate legislative and administrative framework in order to guarantee effective pluralism. It recognises that the failure to allocate frequencies to Centro Europa 7 deprived the licence it obtained in 1999 of all practical purpose since the activity it authorised was de facto impossible to carry out for nearly ten years, until June 2009. This substantial obstacle amounted to an interference with Centro Europa 7's exercise of its right to impart information and ideas. According to the European Court this interference was not justified under the scope of Article 10 §2 of the Convention as it was not 'prescribed by law'.

The Court indeed finds that the Italian legislative framework until 2009 lacked clarity and precision and did not enable Centro Europa 7 to foresee, with sufficient certainty, the point at which it might be allocated the frequencies and be able to

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start performing the activity for which it had been granted a licence in 1999, notwithstanding the successive findings of the Constitutional Court and the CJEU that the Italian law and practice was in breach of constitutional provisions and EU law. Furthermore the laws in question were couched in vague terms which did not define with sufficient precision and clarity the scope and duration of the transitional schemes for the allocation of frequencies. The Court also notes that the authorities did not observe the deadlines set in the licence, as resulting from Law no. 249/1997 and the judgments of the Constitutional Court, thereby frustrating Centro Europa 7's expectations. The Italian Government has not shown that the company had effective means at its disposal to compel the authorities to abide by the law and the Constitutional Court's judgments. Accordingly, it was not afforded sufficient guarantees against arbitrariness. For these reasons the Court considers that the legislative framework in Italy at the time did not satisfy the foreseeability requirement under the Convention and deprived the company of the measure of protection against arbitrariness required by the rule of law in a democratic society. This shortcoming resulted, among other things, in reduced competition in the audiovisual sector. It therefore amounted to a failure by the State to comply with its positive obligation to put in place an appropriate legislative and administrative framework to guarantee effective media pluralism.

These findings were sufficient to conclude that there has been a violation of Centro Europa 7's rights to the freedom to express and impart ideas and information under Article 10 of the Convention. The Court reached the same finding in relation to Article 1 of Protocol No. 1 (right of property) being violated, as the interference with the Centro Europa 7 company's property rights did not have a sufficiently foreseeable legal basis either within the meaning of the Courts case-law.

Centro Europa 7's claim of EUR 10,000,000 in respect of non-pecuniary damage was also awarded. The Court considered it appropriate to award this lump sum in compensation for the losses sustained and the loss of earnings resulting from the impossibility of making use of the licence by Centro Europa 7. In addition, the Court considered that the violations it had found of Article 10 of the Convention and Article 1 of Protocol No. 1 in the instant case must have caused Centro Europa 7 "prolonged uncertainty in the conduct of its business and feelings of helplessness and frustration". The Court also took into account that Centro Europa 7 already has been awarded compensation at domestic level, referring to the judgment of 20 January 2009 of the Consiglio di Stato awarding the company the amount of EUR 1,041,418 in compensation.

Judgment by the European Court of Human Rights (Grand Chamber), 7 June 2012, Centro Europa 7 S.r.l. and Di Stefano v. Italy, nr. 38433/09

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