European Court of Human Rights: A*ssociazione Politica Nazionale Lista Marco Pannella and Radicali Italiani v. Italy* and *Associazione Politica Nazionale Lista Marco Pannella v. Italy*

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On 31 August 2021, the European Court of Human Rights (ECtHR) delivered two judgments dealing with political pluralism in programmes broadcast by *Radio Televisione Italiana* (the Italian state radio and television service — RAI). In both cases, the ECtHR emphasised the need for pluralism in news and current affairs programmes, and in political platform programmes offered by the public broadcaster. In the first case (*Associazione Politica Nazionale Lista Marco Pannella and Radicali Italiani v. Italy*), the ECtHR found no violation of the right to freedom of expression as guaranteed by Article 10 of the European Convention on Human Rights (ECHR), of a political association who had complained about the discontinuance of political platform programmes on RAI. In the second case (*Associazione Politica Nazionale Lista Marco Pannella v. Italy*), the ECtHR found a violation. In that case the ECtHR found that the applicant association had been, if not excluded, at least highly marginalised in the media coverage of political debate, as, on three occasions, it had been excluded from taking part in popular current-affairs television programmes broadcast by RAI.

The first case concerned the discontinuance of certain political programmes, known as political platforms, broadcast by RAI. The applicants, two political associations, complained that this discontinuance had resulted in a breach of their right to impart their ideas and opinions. The ECtHR noted that the programmes had no longer been scheduled 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 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. Furthermore, all of the political groups and parties which had taken part in the political programmes had been affected by the consequences of the discontinuance without distinction. The replacement of those political platforms by more in-depth political debates had also given RAI greater editorial freedom, affording it other possibilities for imparting political ideas and opinions on the television. The discontinuance of the political platforms thus had to be seen in the context of the general evolution of State-run broadcasting in Italy. That evolution had consisted of a gradual reduction in the role of the political authority, and of the recognition of the editorial autonomy of each channel and of the newsrooms responsible for

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news programming, with the aim of promoting the impartiality, objectivity and pluralism of information. The ECtHR came to the conclusion that the discontinuance of the political platform broadcasts had not deprived the first 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. The ECtHR considered however, that the first applicant association had not had an effective legal remedy for the purpose of challenging the discontinuance of the programmes in question and therefore it found a violation of Article 13 of the ECHR (right to an effective remedy). The complaint of the association *Radicali Italiani*, the second applicant, was dismissed as inadmissible, as it had not shown how it had been directly affected by the discontinuance of the political platform programmes.

In the second case, the applicant association (who had also been an applicant in the first case), complained that it had not been invited to take part in political debates scheduled during three major current-affairs programmes broadcast by the public RAI channels. The applicant association had complained to the *Autorità per le garanzie nelle comunicazioni* (Communications Regulatory Authority — AGCOM) of an imbalance, to its disadvantage, on certain television programmes, and that the RAI's three general-interest channels had failed to comply 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 RAI-channels – *Porta a porta, Annozero and Ballarò* – whereas representatives of other political movements had taken part. On two occasions, no further action had been taken on its complaint. Only after the association had applied a second time to an administrative court, alleging a breach of the *res judicata* principle, had the AGCOM finally ordered the RAI to redress the imbalance that had harmed the applicant association's interests. It was 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 in Italy. The ECtHR considered that the AGCOM's approach had been excessively formalistic, by carrying out an overall assessment of the applicant association's presence during all of the news and current affairs programmes on the RAI-channels, without taking into account the time at which the programmes were screened or their popularity. The ECtHR 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 had a duty to represent different political opinions in a balanced manner. However, the internal practice employed by the AGCOM and the jurisprudence of the administrative court regarding the application of the general principles on pluralism indicated that "political subjects" enjoyed increased protection of their

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access to a specific category of current-affairs programmes, including the ones to which the applicant association's complaint had related. Therefore the association as a political organisation had found itself, if not excluded, at least highly marginalised in media coverage of political debate. The ECtHR decided, unanimously, that that exclusion had amounted to a violation of the applicant association's rights under Article 10 of the ECHR.

Arrêt de la Cour européenne des droits de l'homme, première section, rendu le 31 août 2021 dans l'affaire Associazione Politica Nazionale Lista Marco Pannella et Radicali Italiani c. Italie, requête n° 20002/13

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Judgment of the European Court of Human Rights, First section, case of Associazione Politica Nazionale Lista Marco Pannella and Radicali Italiani v. Italy, Application no. 20002/13, 31 August 2021

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Judgment of the European Court of Human Rights, First section, case of Associazione Politica Nazionale Lista Marco Pannella v. Italy, Application no. 66984/14, 31 August 2021

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