联合国 E

经济及社会理事会

Distr.
GENERAL

E/CN.4/2005/G/20
21 March 2005
CHINESE
Original: ENGLISH

人权委员会
第六十一届会议
议程项目 11 (c)

公民权利和政治权利，包括言论自由问题

2005 年 3 月 18 日意大利常驻联合国日内瓦办事处致联合国人权事务高级专员办事处的普通照会

意大利常驻联合国日内瓦办事处和其他国际组织代表团向联合国人权事务高级专员办事处致意，并谨随函附上意大利政府就增进和保护见解和言论自由权问题特别报告员汉姆贝伊·利加博先生对意大利的访问报告提出的意见。意大利常驻代表团请将所附文件* 作为人权委员会第六十一届会议的正式文件分发。

* 附件不译，原文照发。

GE. 05-13067 (C) 230305 230305

Annex

Permanent Mission of Italy
to the International Organizations
10, Chemin de l'Impératrice

Genève

OBSERVATIONS OF THE ITALIAN GOVERNMENT ON THE REPORT OF THE SPECIAL RAPPORTEUR ON THE PROMOTION AND PROTECTION OF THE RIGHT TO FREEDOM OF OPINION AND EXPRESSION, AMBEYI LIGABO FOLLOWING HIS VISIT TO ITALY (20-29 OCTOBER 2004)

The Government of Italy thanks the Special Rapporteur and avails itself of this opportunity to renew to the Special Rapporteur its full cooperation and assistance in the accomplishment of his mandate.

The Government of Italy wishes also to provide clarifications and make the following comments on some of the issues raised in the report.

LAW 112 OF 3 MAY 2004 ORGANISATION OF THE BROADCASTING SYSTEM

The aim of the law is to achieve a comprehensive reform of the provisions governing the broadcasting system, taking into account the considerations in this regard made by the President of the Republic in his message to the Chamber of Deputies on 23 July 2002, in which he underscored the need for a system-level law inspired by the Constitutional value of pluralism in communications media, by the new division of legislative competencies following the reform of Article 117 of the Constitution, by the development of competition with due respect for the new EU legislation in this area, and by the technological innovations driven by the advent of digital technology.

The law also answers to the necessity to bring the rules governing RAI-Radiotelevisione S.p.A. (the State Broadcasting Company) into line with the Additional Protocol to the Treaty of Amsterdam and the Communication on the subject of state aid and to provide for the gradual privatisation of RAI.

The reform starts with the process of convergence among communications media (radio and television broadcasting, publishing, Internet), promoting the formation of an integrated communications system.

The possibility of using TV sets for interactive services and the opportunity for integrating editorial content in the press with video programmes open up new prospects for the development of the market. In this wider multimedia context the division of the communications market into limited segments, each with an anti-competitive ceiling on audience share, no longer appears to be compatible with the strong impetus exerted by new technologies, which is encouraging companies to seek cross-fertilisation and synergies. The new limit of 20% needs to be applied to the integrated communications system, thereby fostering the growth of all the companies concerned without involving any risk for the weakest, with a view to achieving the responsible and balanced development of competition. It is in this vein that the provision preventing the owners of more than one national TV network to acquire stakes in newspaper publishing companies until 31 December 2010 should be interpreted.

The principles regarding the protection of competition remain firm, however, and in particular the ban on attaining a dominant position in each component market of the integrated communications system. The 20% limit on the transmission of programmes by any one content provider remains unchanged. Cross-ownership arrangements between the television and publishing sectors provide an opportunity for the development of companies and, indeed, the entire sector. Another pillar of the law is the great boost it provides to the digital system.

The growth in the number of channels as a result of new digital technology enables the access of new voices to information and a fuller and more complete affirmation of the value of pluralism. The reform maps out the path through which all transmissions must be converted to digital technology – knows as the switch-off, which under Law 66/2001 has to take place no later than 31 December 2006 – and establishes a clearly defined start-up period during which all broadcasters can implement this programme gradually. During this phase, it is natural that the antitrust limit should be related to the new number of analog and digital programmes, as an obvious consequence of the increase in the number of channels on offer and of effective pluralism. The launch of digital radio also receives its due share of attention, through a special provision that maps out the lines for its development.

The law also addresses the important issue of children. The interests of children in television programming are finally being given their due share of attention. The rules contained in the self-regulatory code signed on 29 November 2002 have been placed on a legislative footing. These are important rules whose scope ranges from provisions governing programming during protected and family viewing times to rules on advertising. Any breach of these rules entails heavy penalties, foremost among which is the requirement for the broadcaster responsible to publicise the penalties incurred in a variety of ways, including in news programmes broadcast at peak or prime viewing times. Regulation of the employment of children under 14 years in television programmes (and the ban on their use in advertising messages and spots) is to be covered by specific rules.

With respect to local broadcasters, specific rules enable them to expand by extending their broadcasting area (six service areas, not necessarily adjacent) and to increase their resources by raising the ceilings on advertising.

Taking into consideration the new Title V of the Constitution, the reform assigns new powers to the Regions and Autonomous Provinces in terms of local broadcasting and establishes the general principles to be observed in the exercise of concurrent legislative powers. In this respect the law delegates to the Government the task of drawing up a consolidated text that merely brings together and provides an overview of these principles and the other provisions governing radio broadcasting.

Finally, the reform law also lays down rules concerning RAI.

It envisages the privatisation of the corporation along the lines of the tried and tested public company framework, with a broad shareholder base. The privatisation process is entrusted to the Interministerial Committee for Economic Planning (CIPE), which within four months of the date of completion of the merger of RAI and RAI Holding – that took place on 17 November 2004- should establish the timetable, stages and the percentage to be divested. The administration and management of the company is entrusted to a nine-member Board of Directors who, until such time as 10% of the capital of RAI has been divested, will be selected as follows: seven will be elected by the Parliamentary Supervisory Committee on a one person, one vote basis, and two, including the Chairman, will be appointed by the Minister for Economic Affairs and Finance. The Chairman must obtain the approval of two-thirds of the Supervisory Committee.

The privatisation will also allow private shareholders to choose one or more members of the Board of Directors and therefore it will facilitate depoliticizing RAI.
A key feature of the law is the introduction of a requirement for the separation of accounts, as required by the Additional Protocol to the Treaty of Amsterdam. This will ensure transparency in the use of public funds and advertising revenues by the public service licensee.

With reference to the draft report on freedom of expression in Italy by the United Nations Special Rapporteur, Ambeyi Ligabo, we wish to make the following remarks.

Regarding the Special Rapporteur's comments on antitrust restrictions, we wish to point out that sections 14 and 15 of law 112/04 laid down a number of provisions setting ceilings designed to guarantee pluralism in the media:

- a 20% ceiling on the number of television and radio programmes that can be broadcast on terrestrial frequencies nationwide using the networks provided by the national radio and television digital frequency allocation plan.
  Although the number of networks for which the plan provides is considerably larger than those under the analog frequency allocation plan (considering that digital technology is capable of multiplying channels up to sixfold) it is not unlimited. Contrary to the doubts raised in the report, the limit is based on criteria of certainty and on the reasonableness of the antitrust ceiling to give access to a large number of new operators.

- A 20% ceiling on revenues from the integrated communications system covering all the leading economic sectors in the mass media field.
  This ceiling is the result of the phenomenon of media convergence.
  There are precedents for this in both law 223/90 (section 15(c)) and law 249/97 (section 2(1), which lay down similar restrictions. The SIC is therefore a natural development, commensurate with the degree of technological innovation introduced in the meantime, of the concept of the media market to include all the various forms of expression and communication (dailies and periodicals, radio, television, advertising, the cinema, the Internet).

The growth potential of medium-sized companies is, however, much more pronounced (considering the presumed amount of SIC of EUR25 million, according to sectoral study data, still to be confirmed by the Communications Regulatory Authority) in the case of small companies than for large companies, which are now very close to the ceiling. Furthermore, the prohibition on national television operators owning more than one network from acquiring equity interests in daily newspaper publishing companies until 31.1.2010 is intended to foster competition in favour of publishers rather than large broadcasters.

- The ban on creating a dominant position on individual markets making up the SIC.

  This prohibition ranges far beyond the statutory limits laid down in Italian competition law (which prohibits abuse of a dominant position and acquisitions and mergers, or anti-competitive agreements) in that it is designed to provide a further guarantee for protecting pluralism. The power of control is vested in the Authority which also identifies the individual relevant markets.
  In resolution 136/05/CONS, the Communications Regulatory Authority recently adopted seven measures to foster competition on the digital terrestrial market, mainly based on the obligation to invest in expanding the network, the obligation to provide independent third-party programme content suppliers with 40% of available frequencies in order to give low-cost television market access to new broadcasters, and the obligation on Publitalia to act according to the principles of transparency and non-discrimination on the publicity market.

We therefore consider that the real scope of the restrictions as illustrated should dispel any doubts set out in the report.

As far as the governance of RAI is concerned, we believe that the privatisation of the corporation, enabling directors appointed by the private shareholders to serve on the Board, and the new procedures for electing Directors to ensure that the opposition parties are properly represented, with an impartial chairman elected with a two-thirds majority vote in favour on Parliamentary Oversight Commission, has certainly helped to gradually distance RAI from politics, which is a long-standing phenomenon and something that is certainly not encouraged by the present government.

With regard to the Santoro and Biagi cases, we would point out that until Santoro was elected to the European Parliament, he had an open-ended employment contract with RAI under which, with the contractual status of news editor, he was required to deal with current affairs issues providing services to the Network, on a salaried basis, like any other salaried employee.

The programme, Sciuscià, which Santoro presented throughout the 2001-2002 television season, was not included in the programme schedule for RAI Due at which Santoro worked, because the Director of RAI Due, exercising his own independent editorial powers, felt that this programme did not fit in with his editorial policies.
Moreover, RAI had already been sanctioned by the Communications Regulatory Authority for infringing the "par condicio" law with Santoro's programme.

Enzo Biagi, on the other hand, worked with RAI on a self-employed basis, under a contract concluded on 20 December 1999, initially for a two-year period running from 1.2.2000 to 31.12.2001, which was subsequently extended to 31 December 2002 under the clause tacitly

renewing the agreement if not terminated with three months' notice.

After the termination of the contract, RAI offered Mr Biagi a new one, which he declined.

(Annex: explanatory note of the LAW 112 OF 3 MAY 2004)

PUBLIC SUBSIDIES IN THE MEDIA SECTOR

The Report contains some technical errors and/or misunderstandings about Italian laws and regulations. Point 37 in particular does not reflect in the proper way the law in force. The support to the press is, in Italy, realized either with direct (grants) or indirect (subsidized credit; tax credit; fiscal cuts) instruments; while the second ones are addressed to all the headings (because they are granted to the publishing products and not to the subjects); first ones are restricted by law (with reference to art. 21 of the Italian Constitution) to "niche" headings, which the Legislator thinks must exist as instruments aimed at granting pluralism regardless of their commercial outcome. Among them, political movement organs. Therefore we believe that it would be appropriate to state that "in Italy allocation of subsidies to newspapers was subjected to law".

CONFLICT OF INTEREST

Paragraphs 54, 55 & 56 of the report relate to law n. 215/2004 which detail the rules for the resolution of conflict of interest. It is noted that the objections raised do not appear to be correct.

In fact, it is not correct to state that the 'property' of a company or that of shareholding is not taken into account by law n. 215/2004. In clause 2 relating to incompatibility with holding a government position, 'property' could not be singled out because such provision would have been in contrast with clauses 42 and 51 of the Italian Constitution which protects the fundamental right of individuals to hold private property and freedom to be elected to public offices. Furthermore the provision of 'property' amongst 'incompatibilities' would have lead as a consequence of “Forced Sale” of a company or taking part in the shareholding, to an irretrievable situation at the expiration of public office in contravention of the said clauses of the Constitution. Contrary to other provisions of incompatibility (such as the practice of professional activities), which legally provide for a right of quiescence and which will be restored at the expiration of the *'munus publicum'*.

Rather, the law in its context, considers “property” in the following aspects:

- The second theory in which a “conflict of interest” subsists in accordance with clause 3 takes place independently of the situations of incompatibility stated in clause 2;
- Clause 5 compels the holder of public office, his spouse and even his relatives of second degree to declare their assets and shareholding, including those held up to three months prior to the assignment of that office (i.e. “disclosure”);
- In accordance with clause 6 (3), the Authority “garante della concorrenza” (competent in all cases of conflict in any type of professional activity), monitors the professional activity of the holder of public office (as stated by clause 5) and in the event that it finds that steps were taken to advantage the professional activity of the former, inflicts a pecuniary sanction on the company and reports the holder of the public office to Parliament (Political Censure);

- In accordance with clause 7, the “Garante delle Comunicazioni” performs the same activity but specifically in the area of mass communication and inflicts pecuniary sanctions also in the event that it provides privileged support to the holder of public office.
- Pecuniary sanctions inflicted on companies, apply to the owner of the company and not its director.

Finally, it is noted that in accordance with clause 1 of law n. 215/2004 holders of public office are: the prime minister, ministers, under-secretaries of state and commissioners of government.

Annex

LAW 112 OF 3 MAY 2004
ORGANISATION OF THE BROADCASTING SYSTEM

CHAPTER I

GENERAL PRINCIPLES

Article 1 (Purpose and scope of application)
Sets out the subject of the law (general principles governing the broadcasting system) and its scope (adaptation of the broadcasting system to the advent of digital technology and to the convergence between broadcasting and other means of communication).

Article 2 (Definitions)
Contains definitions of the terms used in the law. Also defines the scope of local television broadcasting and sets the ceiling for coverage, which must be less than 50% of the population.

Article 3 (Fundamental principles)
Sets out the fundamental principles underpinning the broadcasting system. In addition to the principles of freedom and pluralism in the communications media, the article also refers to objectivity, completeness, impartiality of information, the protection of the cultural and artistic heritage at both the national and local levels, the protection of the dignity and well-being of the person and the physical, psychological and moral well-being of children.

Article 4 (Principles concerning the protection of user rights)

Sets out principles for the protection of users. Concerns access by users, the fundamental rights of the individual, impartiality in advertising, and access to programmes by disabled persons.

Article 5 (Principles guaranteeing pluralism and competition in the broadcasting system)
This article sets forth the principles of: pluralism; distinct eligibility requirements for network operators, content providers and providers of interactive services; equal treatment and non-discrimination between content providers; separate accounts in the event of any one operator being authorised to act as provider of both content and services or corporate separation in the event of any one operator being authorised to act as content provider and network operator.

Article 6 (General principles regarding the provision of information in public service broadcasting and other duties)
This is a key part of the law. It establishes that the informational activities of all broadcasters – both public and private – is a general-interest service, as distinct from the general public broadcasting service, which has additional specific obligations performed by the licensee. It sets forth the fundamental rules governing information broadcasting.

Article 7 (General principles concerning broadcasting at the local level)

This article was expanded considerably during the parliamentary debate. It envisages an extension of the area in which local broadcasters may broadcast (six service areas, not necessarily adjacent to each other); arrangements governing the programme/advertising balance; new rules for advertising and an obligatory requirement for government departments to devote at least 15% of their budget for institutional communication airtime to local broadcasters. The main new features concern the possibility of revoking contributions to broadcasters who transmit misleading advertisements and an increase from 35% to 40% in the maximum time for advertising broadcasts by local channels, including offers to the public.

Article 8 (Connected broadcasts)
This article increases the duration of interconnections (to 12 hours in the case of local TV channels) but safeguards identification of the local nature of broadcasting companies and programmes.

Article 9 (Provisions concerning the regularisation of transmitters)

This article enables the penalty applied to broadcasters to be reduced by one third if they bring their installations into line with requirements within 180 days of a conformance order.

Article 10 (Protection of minors in television programming)
This provision is a key element of the law. It requires broadcasters to comply with the Self-Regulatory Code of Conduct for Television and Minors and allows the Communications Authority to impose fines ranging from €25,000 to €350,000. Educational campaigns to promote the correct use of television are envisaged in schools, the aim being to encourage sports commentators to disseminate healthy sporting values, especially in football match broadcasts, and to help prevent violence. The law also includes an obligatory requirement to publicise any penalties incurred by broadcasters that breach the rules for the protection of minors. The adoption of regulations governing the use of children under 14 years of age (which is banned in the case of advertising) in television programmes is envisaged.

Article 11 (Protection of European audiovisual production)

The obligations contained in Law 122/1998, i.e. the obligation to reserve most of transmission time (with the exception of news bulletins, advertising, sport and games) for European works are confirmed.

Article 12 (Efficient use of the electromagnetic spectrum)
The fundamental principles for the use of the spectrum (network integrity, lowest possible environmental impact, respect for human health, signal quality, full local cover, elimination of interference) are laid down in this article.

Article 13 (Communications Authority)

This article underscores the role of the Communications Authority with respect to the fundamental rights of the individual in the communications sector.

CHAPTER II

SAFEGUARDS CONCERNING COMPETITION AND THE MARKET

Article 14 (Ascertaining the existence of dominant positions in the integrated communications system)
The Communications Authority is charged with ensuring that dominant positions are not established in the integrated communications system and its component markets, and that the cumulative limits envisaged by Article 15 with respect to television and radio programmes and to resources are respected.

Article 15 (Cumulative limits concerning television and radio programmes and revenues in the integrated communications system; provisions concerning advertising)
The first paragraph envisages that, once the national plan for the allocation of digital technology radio and television frequencies is fully implemented, no single provider of content may hold , including through affiliates or subsidiaries, licences allowing them to broadcast more than 20% of all radio programmes that can be broadcast on terrestrial frequencies at the national level over the networks envisaged by the plan.
The second paragraph, without prejudice to the ban on establishing dominant positions in the integrated communications system, provides that companies required to register as communications operators may not earn revenues of more than 20% of the overall revenues of the integrated communications system.
The third paragraph establishes which revenues are taken into consideration (radio-television license fees, national and local advertising in direct form from tele-sales, sponsorship, sales promotions, on-going conventions with public bodies, state benefits disbursed directly to operators carrying out the activities

indicated at Article 2.1 letter g), pay television, subscriptions and sales of newspapers and periodicals including books and audiovisual materials distributed as supplements, as well as national press agencies, directory and electronic publishing including via the Internet, and the use of films in various formats for public use).
An asymmetric provision is envisaged whereby telecommunications operators whose revenues in the telecommunications services market, as defined by Article 18 of the Electronic Communications Code (Legislative Decree 259/2003), exceed 40% of total revenues for that market may not obtain revenues in the integrated communications system of more than 10% of those of the sector itself.
Article 15 also prohibits operators and subsidiaries, parent companies or affiliates that engage in television broadcasting activities at the national level through more than one network from acquiring equity interests in newspaper publishers prior to 31 December 2010, or from taking part in the establishment of new newspaper publishing companies.

CHAPTER III
GUIDING PRINCIPLES AND CRITERIA FOR A CONSOLIDATED BROADCASTING ACT

Article 16 (Enabling authority for the Government to issue a consolidated broadcasting act)

This act provides for enabling authority for the Government to issue a consolidated text on broadcasting and contains the principles for the concurrent regional legislation governing broadcasting at the regional and provincial levels. Regional service contracts drawn up between the Regions and the public licensee for the public service activities to be carried out at the regional level are also envisaged.

CHAPTER IV

DUTIES OF THE GENERAL PUBLIC SERVICE BROADCASTING AND THE REFORM OF RAI-RADIOTELEVISIONE ITALIANA SPA

Article 17. (Definition of the duties associated with the general public broadcasting service)
This article defines public service duties, such as nationwide cover, an adequate number of radio and television programme-hours devoted to information and culture, access, broadcasting for audiences abroad, European production, public utility services, and the promotion of local cultures and dialects.

Article 18. (Funding of the general public broadcasting service)
This article reaffirms the principle of the accounting separation of license fee and advertising revenues to ensure that license fees only fund public service activities.

Article 19. (Verification of performance of duties)
This article establishes that the Communications Authority shall have responsibility for verifying that licensees meet their obligations, and describes in detail the procedures to be followed.

Article 20. (Regulations concerning RAI-Radiotelevisione italiana Spa)
The general public broadcasting service licence is granted to RAI for a period of twelve years. The licensee's board of directors is made up of nine members elected by the shareholders' meeting through a **'**list vote' mechanism. The Chairman is appointed by the Board from its own ranks but the appointment only becomes effective after approval by two-thirds majority of the Parliamentary Supervisory Committee. The maximum number of candidates in the list submitted by the Minister for Economic Affairs and Finance and drawn up in accordance with the resolutions of the Supervisory Committee and the Minister should be proportionate to the number of shares held by the State.

Until such time as 10% of the RAI shares have been divested, there shall be a single list composed as follows: 7 members elected by the Supervisory Committee on a one person, one vote basis and two members, including the Chairman, appointed by the Minister for Economic Affairs.

Article 21. (*Disposal of State holding in RAI-Radiotelevisione italiana Spa***)**
Concerns the RAI privatisation plan and envisages, within sixty days of the law coming into force, the merger of RAI Spa into RAI-Holding Spa, which will take the name "RAI-Radiotelevisione italiana Spa". Within four months of the date of completion of the RAI-RAI Holding merger, the procedure for the disposal of the State's holding in RAI will be initiated, in accordance with the terms and timetable established by the CIPE.
Until 31 December 2005, RAI may not dispose of any divisions of the company.

Chapter V

FINAL TRANSITIONAL REGULATIONS AND PROVISIONS REPEALS

Article 22. (*Implementation of the national plan for the assignment of digital broadcasting frequencies***)**
This article entrusts the Authority with the task of drawing up the programme for the implementation of the Plan.

Article 23. (*Regulations concerning the start-up phase for digital television broadcasting***)**

Governs the trial stage of digital television broadcasting and confirms the position of law 66/2001 as governing the acquisition of network operator licenses. It also gives local broadcasters who can demonstrate that they meet the requirements the option of becoming national television network operators.

Article 24. (*Regulations concerning the start-up phase for digital radio broadcasting***)**
Entrusts the Communications Authority with the task of issuing regulations governing the launch of digital radio using terrestrial digital audio broadcasting (T-DAB). Also reforms the criterion for identifying the scope of local coverage for radio broadcasting and sets a single ceiling of 15 million inhabitants, regardless of the number of broadcasting service areas, whether or not they are adjacent to each other.

Article 25. (*Accelerating and facilitating switch to digital terrestrial broadcasting***)**
Establishes the timetable to be followed by RAI for the gradual conversion to digital technology (50% of the population as of 1 January 2004; 70% of the population by 1 January 2005).
Contains regulations governing the launch phase, during which the two technologies, digital and analog, will co-exist. The antitrust ceiling is 20% of programmes authorised or aired cumulatively using either analog or digital technology. However, television programmes broadcast using digital technology may only be included in the calculation if they reach a coverage level of 50% of the population and do not comprise simultaneous broadcasts duplicating analog programmes.
By 30 April 2004 the Authority is required to review the overall range of digital terrestrial programmes on offer, taking market trends into account, to ascertain: the proportion of the population covered by digital networks, which must not be less than 50%; the availability of affordable decoders on the national market; and that the public is being offered different programmes from those broadcast by analog networks.
Only if these conditions are met will licences and authorisations for analog licences within the antitrust ceiling be renewed until 31 December 2006.

Article 26. (*Special provisions for the autonomous region of Valle d'Aosta and the autonomous provinces of Trento and Bolzano***)**
These local authorities are required to ensure that the objectives of the present law are achieved within the scope of the specific competencies attributed to them, including with reference to those parts of Title V of the Constitution that envisage greater autonomy than that already conferred.

Article 27. (Regularisation of existing plant)
Sets forth the conditions under which the installations of licensees serving small municipalities and that have been operating for at least ten years at the date of the entry into force of the present law may continue to operate.

Article 28. (Provisions repealed)
Repeals the limits on cross holdings of print media and television companies established by Article 15 of the Mammì Law, and of the anti-trust rules contained in the Maccanico Law.

Article 29. (Entry into force)
The date for the entry into force of the law is the day following publication in the *Gazzetta Ufficiale.*

- - - - -