

Strasburgo. Consiglio d'Europa. Assemblea Parlamentare. Risoluzione 1387(2004) del 24 giugno 2004.
<<Servizio pubblico di radiodiffusione in Italia>>. Assemblea Parlamentare preoccupata da
concentrazione potere mediatico in Italia

In una risoluzione adottata il 24 giugno 2004, l'Assemblea Parlamentare del Consiglio d'Europa lancia un appello al Parlamento italiano affinché vengano introdotte leggi e prese misure regolamentari che mettano fine all'ingerenza politica, in atto da tempo, nell'attività dei media e venga adottata una legge che regoli il conflitto di interessi tra la proprietà e il controllo dell'azienda e l'esercizio delle funzioni pubbliche. Tuttavia, sullo stesso argomento, non è stata approvata una raccomandazione ai governi europei.

Parliamentary Assembly
Assemblée parlementaire



Provisional edition

Monopolisation of the electronic media and possible abuse of power in Italy

Resolution 1387 (2004) [\[](#)

1. Italy is a founding member of the Council of Europe and strongly supports the ideals for which it stands. The Assembly is therefore concerned by the concentration of political, commercial and media power in the hands of one person, Prime Minister Silvio Berlusconi.
2. The Parliamentary Assembly cannot accept that this anomaly be minimised on the grounds that it only poses a potential problem. A democracy is judged not only by its day-to-day operations but by the principles the country upholds to its own citizens and internationally. The Assembly recalls that, in accordance with Article 10 of the Convention for the Protection of Human Rights and Fundamental Freedoms and the case-law of the European Court of Human Rights, states are under a duty to protect and, when necessary, take positive measures to safeguard and promote media pluralism.
3. The Assembly deplores the fact that several consecutive Italian governments since 1994 have failed to resolve the problem of conflict of interest and that appropriate legislation has not yet been adopted by the present Parliament. It disagrees that the leading principle of the Frattini Bill currently under consideration - that only managers, not owners, should be held responsible - provides a genuine and comprehensive solution of the conflict of interest concerning Mr Berlusconi.
4. Through Mediaset, Italy's main commercial communications and broadcasting group and one of the largest in the world, Mr Berlusconi owns about half of the nation-wide broadcasting in the country. His role as Head of Government puts him also in a

position to influence indirectly the public broadcasting organisation RAI which is Mediaset's main competitor. As Mediaset and RAI command together about 90% of the television audience and over three quarters of resources in the sector, Mr Berlusconi therefore has an unprecedented control over the most powerful medium in Italy.

5. This "duopoly" in the television market is in itself an anomaly from an anti-trust perspective. The status quo has been preserved even though provisions affecting media pluralism in the legislation have twice been declared unconstitutional and the competent authorities have established the dominant positions of RAI and the three TV commercial channels of Mediaset. An illustration of this situation has been a recent decree of the Prime Minister, approved by Parliament, which allowed the third channel of RAI and Mediaset's *Retequattro* to continue their operation in violation of the existing anti-trust limits until the adoption of new legislation. Competition in the media sector is further distorted by the fact that the advertising company of Mediaset, Publitalia '80, has a dominant position in TV advertising. The Assembly deplores the continued exclusion of a potential national broadcaster, Europa 7, winner of a 1999 government tender to broadcast on frequencies occupied by Mediaset's *Retequattro*.

6. The Assembly believes that the newly adopted law on the reform of the broadcasting sector ("Gasparri Law") may not effectively guarantee greater pluralism simply through the multiplication of TV channels in the course of digitalisation. At the same time it manifestly allows Mediaset to expand even further as it leaves the possibility of market players to have monopoly in a given sector without ever reaching the anti-trust limit in the overall Integrated System of Communications (SIC). The Assembly notes that because of these concerns, the previous version of the law was opposed by the President of the Republic.

7. The Assembly is particularly concerned by the situation of RAI, which is contrary to the principles of independence laid down in Assembly [Recommendation 1641 \(2004\)](#) on public service broadcasting. RAI has always been a mirror of the political system of the country and the internal pluralism has moved from the proportionate representation of the dominant political ideologies in the past to the "winner takes all" reflection of the present political set up. The Assembly notes with concern the resignations of the Chairperson of RAI and of one of the most popular journalists in protest over the lack of balanced political representation in the Council of Administration and over political influence on RAI's programming.

8. While the printed media in Italy has traditionally provided greater pluralism and political balance than the broadcasting sector, most Italians receive their news through the medium of television. The high cost of newspaper advertising relative to TV advertising is having a damaging effect on the printed media in Italy. However, the Assembly wishes to record its approval of Government measures to help small- and medium-sized newspapers and other measures to boost newspaper readership.

9. The Assembly is extremely concerned that the negative image that Italy is portraying internationally because of the conflict of interest concerning Mr Berlusconi could hamper the efforts of the Council of Europe in promoting independent and unbiased media in the new democracies. It considers that Italy, as one of the strongest contributors to the functioning of the Organisation, has a particular responsibility in this respect.

10. The Assembly points out that several international bodies, such as the OSCE representative on Freedom of the Media and, most recently, the European Parliament, have expressed concerns similar to its own. It welcomes the measures for safeguarding media pluralism proposed in the Resolution of the European Parliament of 22 April 2004 on “risks of violation, in the EU and especially in Italy, of freedom of expression and information (Article 11(2) of the Charter of Fundamental Rights)”, namely that the protection of media diversity should become a priority of EU competition law.

11. The Assembly therefore calls on the Italian Parliament to:

i. pass as a matter of urgency a law resolving the conflict of interest between ownership and control of companies and discharge of public office and incorporating penalties for cases where there is a conflict of interest with the discharge of public office at the highest level;

ii. ensure that legislation and other regulatory measures put an end to the long-standing practice of political interference in the media, taking into account in particular the Committee of Ministers’ Declaration on freedom of political debate in the media, adopted on 12 February 2004;

iii. amend the Gasparri law in line with the principles set out in Committee of Ministers Recommendation No. R (99) 1 on measures to promote media pluralism, in particular by:

a. avoiding the emergence of dominant positions in the relevant markets within the SIC;

b. including specific measures to bring an end to the current RAI-Mediaset duopoly;

c. including specific measure to ensure that digitalisation will guarantee pluralism of content.

12. The Assembly calls on the Italian government to:

i. initiate measures to bring the functioning of RAI in line with Assembly Recommendation 1641 (2004) on public service broadcasting, with the declaration of the 4th European Ministerial Conference on Mass Media Policy in Prague and with Committee of Ministers’ Recommendations No. R(96) 10 on the guarantee of the independence of public service broadcasting and Rec(2003)9 on measures to promote the democratic and social contribution of digital broadcasting;

ii. give a positive international example by proposing and supporting initiatives within the Council of Europe and the European Union promoting greater media pluralism at European level.

13. The Assembly asks the Venice Commission to provide an opinion on the compatibility of the Gasparri Law and the Frattini Bill with the standards of the Council of Europe in the field of freedom of expression and media pluralism, especially in the light of the case-law of the European Court of Human Rights.

Assembly debate on 24 June 2004 (23rd Sitting) (see [Doc. 10195](#), report of the Committee on Culture, Science and Education, rapporteur: Mr Mooney and [Doc. 10228](#), opinion of the Committee on Legal Affairs and Human Rights, rapporteur: Mr Ates). *Text adopted by the Assembly* on 24 June 2004 (23rd Sitting