



18.7.2011

NOTICE TO MEMBERS

Subject: **Petition 0248/2011 by Ryszard Czarnecki (Polish), and one co-signatory, on the incompatibility of the new Polish electoral law with Directive 2010/13/EU of the European Parliament and of the Council on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services**

1. Summary of petition

The petitioner is protesting against the new Polish electoral law, which has introduced a ban on electoral committees disseminating election announcements via radio or TV programmes on either public or private channels in return for payment. The petitioner believes that this law limits freedom of information and citizens' access to information, and that it constitutes a breach of the provisions of Directive 2010/13/EU of the European Parliament and of the Council on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services, recital 8 of which states that it is essential for the Member States to ensure the prevention of any acts which may prove detrimental to freedom of movement and trade in television programmes or which may promote the creation of dominant positions which would lead to restrictions on pluralism and freedom of televised information and of the information sector as a whole. The petitioner also believes that in this case there has been a lack of compliance with the provisions of the European Convention on Human Rights concerning freedom of speech, which cover the freedom to have one's own opinion and to communicate and receive information and ideas. Therefore, the petitioner is requesting that the Committee on Petitions investigate this matter together with the European Commission.

2. Admissibility

Declared admissible on 31 May 2011. Information requested from Commission under Rule 202(6).

3. Commission reply, received on 18 July 2011

The Audiovisual Media Services Directive (Directive 2010/13/EU)¹ provides for a legal framework covering all audiovisual media services, both traditional broadcast and on-demand services. It also sets the rules on audiovisual commercial communications, including television advertising. However, it does not cover political advertising, including election announcements. It neither regulates freedom of expression and information. The recital 8 of the Directive, as claimed in the petition, does not provide for regulation of media freedoms. It addresses Member States by calling on them to ensure the freedom to provide services in the field of television broadcasts by preventing any acts that can be detrimental to this freedom.

Regarding the question of fundamental rights on EU level, the Commission recalls that, according to Art. 51 of the Charter of Fundamental Rights, the provisions of the Charter are addressed to the Member States only when they are implementing Union law. This means that the Commission is only able to act to ensure the respect for media pluralism and freedom of information in those specific cases where Member States are implementing EU law. On the basis of the information provided by the petitioner, it does not appear that the matter referred to falls within the scope of application of the Charter of Fundamental Rights.

When Member States do not implement EU law, it is for Member States alone to ensure that their obligations regarding fundamental rights stemming from international agreements, such as the fundamental right as set in Article 10 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, and from their internal legislation are fulfilled.

In that case, respect by the Member States of fundamental rights, as set out in Article 10 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, is subject to scrutiny by the European Court of Human Rights.

The matter of political advertising, raised in the petition, is not covered by European Union law. The Commission lacks the powers to intervene in the areas that are reserved for the Member States' competence.

¹ <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2010:095:0001:0024:EN:PDF>.