

APPLICATIONS N° 35790/97 and N° 38438/97  
(joined)

Giuseppe CASTELLI and others v/ITALY

DECISION of 14 September 1998 on the admissibility of the applications

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**Article 10, paragraph 1 of the Convention** *This provision protects not only the substance of ideas but also the form in which they are conveyed*

*Article 10 cannot be construed to guarantee that an opinion expressed, even by institutional means such as a referendum will produce the expected results*

*Following a referendum in which a very large majority of voters approved the repeal of the system for the public funding of political parties new legislation was passed reintroducing a mechanism for the public funding of parties. The applicants who considered that the reintroduction of the new mechanism went against the opinion expressed in the referendum were able to express their opinion by voting*

**Article 3 of Protocol No. 1** *The obligations of the High Contracting Parties under this provision are limited to the field of elections concerning the choice of the legislature. Referenda outside the scope of this provision*

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## THE FACTS

The first applicant, born in 1946, is an Italian citizen and lives in San Benedetto del Tronto (province of Ascoli Piceno), where he is a lawyer

The four other applicants have applied to the Commission both on behalf of the four associations of which they are the legal representatives and on their own behalf in their capacity as Italian citizens. The first, second and fourth applicants were born in 1946, 1925 and 1944 respectively. They are, respectively a bank official, a lawyer and a retired broker. The third applicant's date of birth and profession are unknown. They were all represented before the Commission by Ms Wilma Viscardini Dona, a lawyer practising in Padua.

The facts of the case, as submitted by the applicants, may be summarised as follows:

1 *Particular circumstances of the case*

On 18 and 19 April 1993 a referendum was held on whether or not to repeal the relevant provisions of Law no. 195 of 2 May 1974, which had set up a system for the public funding of political parties (see section 2 below). The voters elected by a very large majority (90.3%) to repeal the provisions. In Presidential Decree no. 173 of 5 June 1993 the President of the Republic certified them repealed.

However, Law no. 2 of 2 January 1997 reintroduced a mechanism for the public funding of parties, albeit on different terms. Section 1 of that Law provides that any tax payer can decide to contribute 0.4% of his or her income tax to the funding of political movements and parties.

In theory, tax payers' voluntary contributions should be allocated proportionally to those parties which have applied for them before 31 October each year (section 2). Section 3 provides, additionally, that the amounts earmarked for the parties must be determined by the Treasury and the Ministry of Finance before 30 November each year. Also according to section 3 (sub-section 4) payment must be made before 31 January of the following year.

Under section 4, however, the Minister of the Treasury had to allocate the parties, in a decree to be adopted before 28 February 1997, an initial automatic payment of 160,000,000,000 Italian lire (ITL) for 1997. For the following years, the maximum total voluntary contributions to party funding remains fixed at ITL 110,000,000,000 (section 9 of Law no. 2 of 1997).

On an unspecified date, an association sought a ruling from the Constitutional Court that the Law in question was unconstitutional. Its application was ruled inadmissible, however, on unknown grounds.

At the beginning of March 1998, the Standing Committee on Legislation of the Chamber of Deputies, exercising the powers conferred on it by the internal rules to approve Laws in particular cases (Article 72 of the Constitution) decided to allocate

the political parties an advance of ITL 110,000,000,000 for 1998, that is, the maximum which the parties could receive under Section 9 of Law no. 2 of 1997, subject to any subsequent adjustment. It also extended to 31 December 1998 the time-limit for submitting the form for political parties to apply for a share of voluntary contributions. Theoretically, in such cases, the Chamber of Deputies can be requested to determine the issue in plenary session at the request of the Government, of one tenth of the members of the Chamber or of one fifth of the members of the commission. In the instant case, however, that did not happen

## 2 *Relevant domestic law*

Section 3 of Law no 195 of 2 May 1974 provided for a mechanism for the regular funding of parliamentary groups "as a contribution to the cost of carrying out their tasks and exercising the functions of the respective political parties to which they belong". The sum was initially ITL 45,000,000,000 and was subsequently increased. Furthermore, that Law provided for a form of part-reimbursement of electoral expenses

Article 75 of the Italian Constitution provides:

(Original)

"E' indetto *referendum* popolare per deliberare l'abrogazione, totale o parziale, di una legge o di un atto avente valore di legge, quando lo richiedono cinquecentomila elettori o cinque Consigli regionali

Non e ammesso il *referendum* per le leggi tributarie e di bilancio, di amnistia e di indulto, di autorizzazione a ratificare trattati internazionali

Hanno diritto di partecipare al referendum tutti i cittadini chiamati ad eleggere la Camera dei deputati.

La proposta soggetta a *referendum* è approvata se ha partecipato alla votazione la maggioranza degli aventi diritto e se è raggiunta la maggioranza dei voti validamente espressi

La legge determina le modalità di attuazione del *referendum* "

(Translation)

"A popular referendum can be held on whether to repeal, in full or in part, a Law or a measure having statutory force if such is requested by five hundred thousand voters or by five regional councils

Referenda are not allowed in the case of fiscal or budget laws, amnesties or remission of punishment, or laws authorising the ratification of international treaties

All citizens entitled to vote in elections of members of the Chamber of Deputies are entitled to vote in a referendum

The proposal submitted to referendum is approved if a majority of those eligible have voted, and if it has received a majority of valid votes

The procedure for holding a referendum is laid down by law.”

In addition, pursuant to Article 49 of the Italian Constitution

(Original)

“Tutti i cittadini hanno diritto di associarsi liberamente in partiti per concorrere con metodo democratico a determinare la politica nazionale ”

(Translation)

“All citizens have the right freely to form political parties in order to contribute by democratic means to determine national policy ”

Section 38 of Law no. 352 of 25 May 1970, which lays down implementing provisions in respect of referenda, stipulates further that in the event that a Law or the relevant provisions thereof are not repealed as a result of a referendum, no further referendum on the same legislative provisions can be held for the following five years.

No provision expressly prohibits Parliament from reintroducing, explicitly or in substance, legislative provisions which have been repealed by a referendum. In this respect, it should also be pointed out that in its judgment no. 17 of 10 February 1997, the Constitutional Court specified that in examining whether or not a particular matter can be put to a referendum, no account is taken of the sponsors' intentions as to possible future legal provisions to replace those which are to be repealed.

## COMPLAINTS

The applicants complain of a serious infringement of the principles of democracy

The first applicant invokes Article 10 of the Convention, submitting that the opinion of the people freely expressed in a referendum was ignored

The other applicants add that, although the Convention does not contain any clause specifically relating to referenda, there has in this case been a clear infringement

of the basic principles of democracy, which constitute the basis of the Convention and thus also of Article 3 of Protocol No 1 to the Convention. They submit that in the light of a combined reading of the Preamble to the Convention and Article 3 of Protocol No 1, such a manifest disregard of the popular will expressed by referendum amounts to an infringement of the people's sovereignty and of the democratic system.

The applicants submit, in particular, that as the Ministry of Finance takes several years to process tax returns, it will be impossible to check in time, each year, the number of persons voluntarily contributing 0.4% of their tax to political parties. In this respect, account should be taken, the applicants argue, of the fact that these returns must be submitted between 30 June and 29 November every year, whereas the time limit under the new Law for paying parties the amounts voluntarily contributed by the taxpayers is 30 November. This means that contributions which are, in theory, voluntary, become *de facto* compulsory, contrary to the result of the referendum and, moreover, to the status under Article 49 of the Italian Constitution, of political parties as private associations.

## THE LAW

The applicants complain of a serious infringement of the fundamental principles of democracy.

The first applicant invokes Article 10 of the Convention, submitting that the opinion of the people freely expressed in a referendum was ignored.

The other applicants add that although the Convention does not contain any clause specifically relating to a referendum, there has in this case been a clear infringement of the basic principles of democracy, which form the basis of the Convention and thus also of Article 3 of Protocol No 1 to the Convention.

Article 10 of the Convention guarantees everyone the right to freedom of expression and provides *inter alia* "This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by political authority and regardless of frontiers.

Furthermore, Article 3 of Protocol No 1 to the Convention provides "The High Contracting Parties undertake to hold free elections at reasonable intervals by secret ballot, under conditions which will ensure the free expression of the opinion of the people in the choice of the legislature."

The Commission notes at the outset that the applicants do not, as such, complain before it of the system of public funding of parties in force until the 1993 referendum.

or of the system based on voluntary contributions which was introduced after the referendum in question. The real subject of their complaint is Parliament's decision reintroducing that system *de facto* contrary to the spirit of a new Law adopted in the meantime by the same Parliament and based on tax payers' consent - by "provisionally" allocating to the parties the maximum funds which could be allocated to them under the new Law, without even ascertaining the exact amount of voluntary contributions, which ran counter to the result of the referendum. They thus complain that a binding opinion expressed in a referendum was *de facto* circumvented.

As regards the complaint of a violation of Article 3 of Protocol No. 1 to the Convention, the Commission recalls that the obligations of the High Contracting Parties under this provision are limited to the field of elections concerning the choice of the legislature and that referenda are outside the scope of this provision (see No. 7096/75, Dec. 3.10.75, D.R. 3, p. 165).

As regards Article 10 of the Convention, the Commission recalls first that this provision protects freedom of expression as one of the essential foundations of a democratic society, regarding both the substance of ideas and all the freely chosen forms in which they are conveyed (see on this point Eur. Court HR. *Oberschlick v. Austria* judgment of 23 May 1991, Series A no. 204, p. 25, para. 57).

The applicants were able to express their opinion by voting in favour of abolishing the system for the public funding of political parties, but Article 10 cannot be construed as extending to a guarantee that an opinion expressed, even by institutional means such as a referendum provided for in the Constitution, will produce the expected results.

It follows that the applications must be rejected as incompatible *ratione materiae* with the provisions of the Convention within the meaning of Article 27, para. 2 of the Convention.

For these reasons, the Commission

Unanimously,

JOINS Applications No. 35790/97 and No. 38438/97

and by a majority

DECLARES THE APPLICATIONS INADMISSIBLE