

Agcom's clarifications on Mr Di Pietro statements

Mr Di Pietro's insistence in challenging Independent Authorities, and particularly the Communication Regulatory Authority, requires some clarifications.

The contestation is as much vehement as groundless and, since regarding the Authority's legitimization in the middle of an electoral campaign, it makes even more delicate its action, which is already extremely difficult because of the need to apply – as much as possible, though with a reasonableness principle at the same time – a law (that on equal access to the Media) which presupposes a different scenario than that which is instead currently visible, with 18 competing lists and 15 candidates for Prime Minister.

The independence and effectiveness of the Authority's interventions during the last electoral campaign, have been acknowledged at international level by third Institutions of unquestioned reputation, such as the OSCE (the Organisation for Security and Cooperation in Europe, which pays particular attention to the democratic institutions' functioning and to men's rights) and by the Council of Europe.

All great European democracies commit Independent Authorities with the delicate task to monitor television information; this is a Community principle that cannot be overturned by the national legal order.

With the same commitment, alacrity and incisiveness, the Authority is carrying out its duty in the electoral campaign currently underway. Naples and Rome's offices are active every day, including holidays, in order to manage pointing outs and complaints *ad horas*. Following a complaint or pointing out it is possible to carry out the preliminary investigation in one day time and to immediately call a meeting of the board which is responsible for the final decision.

Just as documented on the institutional website, Agcom has taken dozens of decisions in order to implement law provisions.

It is thanks to the Authority's interventions that Mr. Di Pietro has had the opportunity to benefit from specific recovery time, with a more persistent presence on television.

As for the Authority's alleged inactivity after the European sentence on Europa 7, it is surprising how Minister Di Pietro shows his unfamiliarity with the Court of Justice's pronouncement that refers to a prejudicial question addressed to it by our Council of State, to whom now relies the responsibility to finalize the judgement. The judgement shall then be enforced and complied with by all competent Administrations. These are the rules of a State order based on law; and it won't be this Authority to overturn them.

But, it is not so much the "oversight" of legal nature that offends in Mr. Di Pietro's statements. What is unacceptable is that – without a truthful basis – the Authority's efforts for the compliance with European law in the radio-television system are not taken into account.

It is important to clarify, in this respect, that Agcom acts only on the regulatory field since (this is the only case in Europe) it does not have the competence over the single authorization or concessions titles. Such competence- according to the current law- is under the Ministry of Communications' exclusive competence, which is to say under the Government.

It only lies with the Authority to guarantee the reallocation of spectrum in the switch over phase to digital television - when it will be carried out by the competent Ministry - to be founded on objective, transparent,

non discriminatory and proportionate criteria, which moreover means that the reallocation cannot be limited to the current users.

This is just what has been done with the frequencies reallocation plan in digital technology for the Region of Sardegna, approved by the Authority. This is a plan that obtained the full consent of all operators.

With such plan, the guidelines have been basically anticipated, that the Court of Justice established by its judgement, therefore forcing the national law in order to try and conform it to the European law.

It is up to the legislator to amend the Gasparri Law bringing to an end the transitional system; it is up to the Government to speed up the transition to digital.

Italy is late compared to the other Countries as for the setting up of plants, for programs and contents. This mortifies initiatives and discourages both intellectual and in technology equipment investments.

Rome, April the 1st 2008