



Ban on paid political advertising in the UK is justified

In today's Grand Chamber judgment in the case of [Animal Defenders International v. the United Kingdom](#) (application no. 48876/08), which is final¹, the European Court of Human Rights held, by nine votes to eight, that there had been:

no violation of Article 10 (freedom of expression) of the European Convention on Human Rights.

The case concerned the complaint by a non-governmental organisation that it had been denied the possibility to advertise on TV or radio.

The Court noted that both parties maintained that they were protecting the democratic process. It found in particular that: the reviews of the ban by both parliamentary and judicial bodies had been exacting and pertinent, taking into account the European Court's caselaw; the ban only applied to advertising and the applicant NGO had access to alternative media, both broadcast and non-broadcast; and, the lack of European consensus on how to regulate paid political advertising in broadcasting meant that the UK Government had more room for manoeuvre when deciding on such matters as restricting public interest debate. Overall, the Court found that the reasons given to justify the ban were convincing and that the ban did not therefore go too far in restricting the right to participate in public debate.

Principal facts

The applicant is a non-governmental organisation, Animal Defenders International ("ADI"), based in the United Kingdom. Its aims include protecting animals from suffering. ADI campaigns against the use of animals in commerce, science and leisure, seeking to achieve changes in law and public policy and to influence public and parliamentary opinion to that end. Given the organisation's campaigning objectives, it is not eligible for registration as a charity.

In 2005, ADI began a campaign ('My Mate's a Primate') directed against the keeping and exhibition of primates in zoos and circuses and their use in television advertising. As part of the campaign, it wished to screen a TV advertisement with images of a girl in chains in an animal cage followed by a chimpanzee in the same position. It submitted the advert to the responsible body, the Broadcast Advertising Clearance Centre ("the BACC"), for a review of its compliance with relevant laws and codes. The BACC refused to clear the advert, drawing attention to the political nature of ADI's objectives, which as such prohibited the broadcasting of the advert under section 321(2) of the Communications Act 2003.

That decision was upheld by the High Court in December 2006 and by the House of Lords in March 2008. The House of Lords' judgment held, in particular, that the ban on political advertising under UK law was justified by the aim of preventing the public debate from being distorted by the highest spender so that the legislative choice made in

¹ Grand Chamber judgments are final (Article 44 of the Convention).

All final judgments are transmitted to the Committee of Ministers of the Council of Europe for supervision of their execution. Further information about the execution process can be found here: www.coe.int/t/dghl/monitoring/execution

the 2003 Act was not incompatible with Article 10 of the European Convention on Human Rights (freedom of expression).

The advertisement could and can be viewed on the Internet.

Complaints, procedure and composition of the Court

Relying on Article 10, ADI complained that it had been unjustifiably denied the opportunity to advertise on television or radio.

The application was lodged with the European Court of Human Rights on 11 September 2008. On 29 November 2011, the Chamber to which the case had been allocated relinquished jurisdiction in favour of the Grand Chamber. A [Grand Chamber hearing](#) was held on 7 March 2012.

Judgment was given by the Grand Chamber of 17 judges, composed as follows:

Dean **Spielmann** (Luxembourg), *President*,
Nicolas **Bratza** (the United Kingdom),
Françoise **Tulkens** (Belgium),
Josep **Casadevall** (Andorra),
Nina **Vajić** (Croatia),
Ineta **Ziemele** (Latvia),
Elisabeth **Steiner** (Austria),
Päivi **Hirvelä** (Finland),
George **Nicolaou** (Cyprus),
András **Sajó** (Hungary),
Zdravka **Kalaydjieva** (Bulgaria),
Mihai **Poalelungi** (Moldova),
Nebojša **Vučinić** (Montenegro),
Kristina **Pardalos** (San Marino),
Vincent A. **de Gaetano** (Malta),
Julia **Laffranque** (Estonia),
Helen **Keller** (Switzerland),

and also Michael **O'Boyle**, *Deputy Registrar*.

Decision of the Court

[Article 10 \(freedom of expression\)](#)

Both parties had the same objective of maintaining a free and pluralist debate on matters of public interest, and more generally, of contributing to the democratic process. They also both agreed that that was an entirely legitimate aim.

The Court therefore had to decide whether the ban went too far in restricting the right to participate in public debate. It weighed in the balance, on the one hand, the applicant NGO's right to impart information and ideas of general interest which the public is entitled to receive, with, on the other hand, the authorities' desire to protect the democratic debate and process from distortion by powerful financial groups with advantageous access to influential media.

It had three main considerations in making that assessment: the process by which the ban had been adopted and any review by the judicial authorities; the impact of the ban and any steps that might have been taken to moderate its effect; and, what happens in other countries, particularly those where the Convention applies.

As far as the process was concerned, account was taken of the fact that the complex regulatory regime governing political broadcasting in the United Kingdom had been subjected to exacting and pertinent reviews and validated by both parliamentary and judicial bodies. There was an extensive pre-legislative review of the ban, which was enacted with cross-party support without any dissenting vote. The proportionality of the ban was also examined in detail in the High Court and the House of Lords. At all stages the compatibility of the measure with the Convention was considered and relevant Convention case-law analysed.

The Court rejected the applicant NGO's arguments which took issue with the rationale underlying these legislative choices, finding notably that:

- The broadcast media is influential, its impact immediate and powerful. There is no evidence that the development of the internet and social media in recent years in the United Kingdom has shifted this influence to the extent that the need for a ban specifically on broadcast media should be undermined;
- Advertisers, well aware of the advantages of broadcast advertising, continued to be prepared to pay large sums of money for such advertisements, which went far beyond the reach of NGOs wishing to participate in the public debate;
- The ban was relaxed in a controlled fashion for political parties – the bodies most centrally part of the democratic process – by providing them with free party political, party election and referendum campaign broadcasts;
- Allowing a less restrictive prohibition could give rise to abuse and arbitrariness, such as wealthy bodies with agendas being fronted by social advocacy groups created for that precise purpose or creating a large number of similar interest groups, thereby accumulating advertising time. Given the complex regulatory background, this form of control could lead to uncertainty, litigation, expense and delay.

As to the impact of the ban, the Court noted that the ban only applied to advertising and the applicant NGO had access to alternative media, both broadcast (radio and television discussion programmes of a political nature or adverts on radio and television on non-political matters via a charitable arm) and non-broadcast (print media, the internet and social media, demonstrations, posters and flyers).

Finally, while there may be a trend away from broad prohibitions, there was no European consensus on how to regulate paid political advertising in broadcasting. A substantial variety of means are employed by the Contracting States to regulate political advertising, reflecting the wide differences in historical development, cultural diversity, political thought and democratic vision. That lack of consensus meant that the UK Government had more room for manoeuvre when deciding on such matters as restricting public interest debate.

Therefore the Court considered that convincing reasons had been given for the ban on political advertising in the United Kingdom and that it had not amounted to a disproportionate interference with the applicant NGO's right to freedom of expression. Accordingly, there had been no violation of Article 10.

Separate opinions

Judge Bratza expressed a concurring opinion. Judges Ziemele, Sajó, Kalaydjieva, Vučinić and De Gaetano expressed a joint dissenting opinion and Judge Tulkens expressed a

dissenting opinion, joined by Judges Spielmann and Laffranque. These opinions are annexed to the judgment.

The judgment is available in English and French.

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The European Court of Human Rights was set up in Strasbourg by the Council of Europe Member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.