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THE IMPACT OF THE REFORM OF THE ITALIAN PUBLIC BROADCASTER RAI ON THE OUTCOME OF THE 2018 PARLIAMENTARY CAMPAIGN

Abstract

The public broadcaster RAI (Radiotelevisione italiana), in its parliamentary campaign in 2018, was to be the guarantor of the electoral success of the Italian centre-left. However, this was not the case. The Democratic Party (Partito Democratico) lost the elections. The decision of the then Prime Minister Matteo Renzi to strengthen political control over the RAI before the upcoming elections was wrong. The model of government television criticised by the opposition proved to be dysfunctional. The restriction of the autonomy and the consequent reduction in the credibility of the public broadcaster RAI gave the Italian opposition an argument to change its electoral strategy and to transfer the campaign to the network, which determined its final outcome. In the 2018 parliamentary campaign in Italy, RAI stopped serving as a forum for public debate, thus ending the stage of its domination as a medium in the process of political communication during the Second Republic.

Key words: mediatization of parliamentary campaign, politicization of media, protection of media pluralism, hybridization of election campaign

Beppe Grillo, leader of the victorious 5 Stars Movement (MoVimento 5 Stelle), commenting on the political consequences of the RAI reform, compared them to the changes in the Polish public media in 2016, writing on his blog about the “reform of the fascist RAI television based on the Polish model” (alla polacca).¹ Grillo saw an analogy in the actions of the Polish and Italian governments, whose intention was to subordinate the antenna of the public broadcaster to the implementation of

¹ *Blog Grillo: Rai fascista, riforma Renzi come quella di tv polacca*, [online:] http://www.askanews.it/politica/blog-grillo-rai-fascista-riforma-renzi-come-quella-di-tv-polacca_711714700.htm (access: 30.09.2017).

short-term political goals by the ruling party.² Grillo claimed that the quality of media pluralism, which is an essential tool for the good functioning of democracy, had significantly decreased in both countries.³ On this basis, the then Italian opposition demanded that the European Commission initiate a procedure to protect the rule of law against Italy, similarly as in the case of Poland,⁴ arguing that the public broadcaster RAI was the main information channel for the government, which weakened the condition of Italian democracy and contradicted the idea of media pluralism.⁵

According to the opposition, the result of the RAI reform is the loss of political control of the Italian public broadcaster by the parliament and its exclusive disposal by the government.⁶ Although the European Commission assessed the political situation in Italy and Poland differently, emphasizing that the authorities of all EU member states have full autonomy in defining the governance model of the public broadcasters of the EU member states, the 5 Star Movement consistently claimed that the RAI reform was a “coup d'état”.⁷ As a result of the reform of Renzi's government, the RAI ceased to control power, becoming the sole channel of political indoctrination for those in power.⁸

² J. Sawicki, *Prove tecniche di dissoluzione della democrazia liberale: Polonia 2016*, “Nomos” 2016, no. 1, [online:] http://www.nomos-leattualitaneldiritto.it/wp-content/uploads/2016/05/Sawicki_Nomos1-2016.pdf (access: 5.09.2017); M. Miżejewski, *Politicization of the Media in the First Decade of Polish Membership in the European Union*, “Nomos” 2015, no. 1, pp. 1–18, [online:] http://www.nomos-leattualitaneldiritto.it/wp-content/uploads/2015/06/Mizejewski_Nomos-1_2015.pdf (access: 15.06.2019).

³ M. Miżejewski, *La crisi della democrazia in Polonia*, “Federalismi.it 2018”, no. 22, [online:] <https://www.federalismi.it/ApplyOpenFilePDF.cfm?artid=37435&dpath=document&dfi=20112018170955.pdf&content=La%2Bcrisi%2Bdella%2Bdemocrazia%2Bin%2BPolonia%2B-%2Bstato%2B-%2Bdottrina%2B-%2B> (access: 15.06.2019); J. Sawicki, *La conquista della Corte Costituzionale ad opera della maggioranza che non si riconosce nella Costituzione*, “Nomos” 2016, no. 3, [online:] <http://www.nomos-leattualitaneldiritto.it/wp-content/uploads/2017/01/Polonia-3-2016-2-sawicki-ok.pdf> (access: 5.09.2017).

⁴ J. Sawicki, *Prosegue il deterioramento dello Stato di diritto, mentre il Governo subisce una prima sconfitta ad opera dell'Unione Europea*, “Nomos” no. 1, 2017 [online:] <http://www.nomos-leattualitaneldiritto.it/wp-content/uploads/2017/05/Polonia12017-1.pdf> (access: 5.09.2017); J. Sawicki, *La cronizzazione dello scontro sullo Stato di diritto costituzionale*, “Nomos” 2016, no. 2 [online:] <http://www.nomos-leattualitaneldiritto.it/wp-content/uploads/2016/09/Polonia22016.pdf> (access: 5.09.2017).

⁵ M. Miżejewski, *Polityczne konsekwencje nowelizacji ustaw medialnych w Polsce w latach 2015–2016*, “Politeja” 2018, no. 55.

⁶ M. Miżejewski, *Kryzys modelu zarządzania RAI i jego polityczne uwarunkowania*, “Politeja” 2017, no. 49.

⁷ M. Miżejewski, *La crisi dell'ordine costituzionale in Polonia negli anni 2015 e 2016 con le sue conseguenze politiche*, “Nomos” 2017, no. 1, [online:] <http://www.nomos-leattualitaneldiritto.it/wp-content/uploads/2017/05/Mizejewski.pdf> (access: 15.06.2019); J. Sawicki, *Gli interrogativi circa la degenerazione in una 'democrazia illiberale'*, “Nomos” 2016, no. 1, [online:] <http://www.nomos-leattualitaneldiritto.it/wp-content/uploads/2016/05/Cronache-PoloniaSettembre2015apr.-2016.pdf> (access: 5.09.2017).

⁸ M. Miżejewski, *Kryzys pluralizmu mediów we Włoszech w XXI w.*, [in:] A. Jaskiernia, K. Gajlewicz-Korab (eds.), *Pluralizm mediów, pluralizm w mediach*, Media Początku XXI w., vol. 33, Warszawa: Oficyna Wydawnicza ASPRA-JR, 2017.

It was symbolized by the so-called principle of equal opportunities (*par condicio*), which was to implement the idea of political pluralism in the conditions of dynamic changes on the Italian political scene.⁹ This principle, defined in the 2000 law and sanctioned by the case law of the Constitutional Court (Corte costituzionale), was further supported by the ban on broadcasting electoral spots on national television channels. According to the opposition, the idea of *par condicio* was a return to censorship and restricted the constitutional right to freedom of information. Berlusconi described it as a “gag law” (*legge-bavaglio*). The *par condicio* principle imposed on broadcasters respect for the rights of all political forces in terms of equal access to television antennas, thus undermining the autonomy of the media. The strategy legis of this law was based on the erroneous assumption that it was possible to determine the validity of arguments and their potential for political persuasion according to the criterion of broadcasting time allocated to parties in accordance with the principle of political parity. In the opinion of the leaders of the Italian opposition, it proved absurd to impose a statutory obligation on broadcasters to create a communication space equal for all parties, regardless of the support they enjoy on the political stage.

Despite the determination of the centre-left, which aims to subordinate the RAI to its own political goals, the result of the parliamentary elections in Italy in 2018 was determined by the increased activity of opposition politicians in social media, free from restrictions on forms and methods of political communication. Traditionally strong pressure from the politicians of the ruling party on RAI television, traditionally strong in Italy, even influenced the protest of this medium as incapable of exercising functions of control over power. The growing importance of social media in the process of political communication on a global scale, including Italy, enabling the electorate to participate in an interactive public debate, determined the change of electoral strategy, especially of anti-systemic parties, such as the 5 Stars Movement (MoVimento 5 Stelle) Beppe Grillo or Matteo Salvini's League (Lega).

Wide possibilities of influencing the course of the campaign offered to Italian voters by social media, additionally mobilized the activity of the young electorate in particular, open to polemics on the Internet. The RAI television, which symbolizes the old system and is entangled in the political dependence of the changing government teams, ceased to be a source of reliable information, especially during the election campaign. Such a model of communication, defined only by the political decision-maker, turned out to be anachronistic and inadequate to the reality of the contemporary Italian political scene.

Facebook, Twitter and political party leaders' blogs have replaced traditional media, especially RAI television, in the formation of public opinion. Given the strong political pressure on the public broadcaster RAI from the then ruling centre-left Democratic Party, the main themes of public debate during the campaign were

⁹ M. Miżejewski, *Zasada równych szans (par condicio) a mediatyzacja kampanii parlamentarnej we Włoszech w 2018 roku*, Kraków: Wydawnictwo Uniwersytetu Jagiellońskiego, 2019, pp. 9–60.

taken up by the opposition party leaders not on the air of the public broadcaster RAI, but in a network that provided politicians with an open forum for exchanging views and shaping voters' opinions.

This resulted in a significant increase in the level of political mediation in Italy. Thus, the quality of political discourse significantly weakened the condition of Italian democracy, bringing to power anti-systemic, populist, and Eurosceptic groups.

Italian political commentators stressed that the time of party influence, called "partitocrazia", had come to an end on RAI television. Their place on the air will now be taken by the government, which poses a serious threat to democracy. This is a risky change of venue that undermines the constitutional principle of freedom of information and the citizens' right to freedom of expression.¹⁰

The example of Poland given by Grillo was meant to provoke reflection on the role of the public broadcaster RAI, aspiring to be the guarantor of public debate in Italy.¹¹

The delegitimisation of Italian politics has now become the main source of a crisis of confidence in the media. The first to notice this trend was the then opposition leader Beppe Grillo. His predilection to conduct his political activity on the Internet is the result of the contestation of traditional media, especially television, the awareness of the exhaustion of their formulas in the process of political communication, low transmission costs, the scale of their impact and interactivity. Moreover, the different nature of the political officer and the replacement of the existing system forced the necessity to find a new communication channel. Only the network guaranteed the effectiveness of reaching the electorate. It was no coincidence that Grillo drew attention to its relationship with direct democracy and the equal status of candidates in the process of communication. In this way, the leader of the 5 Star Movement undermined the principle of equal opportunities *par condicio*, which is well established in the traditional media, emphasizing his distance to both the political class and the media world, which stood out from the political adversaries. This was supposed to convince voters of the uniqueness of the political alternative proposed by the anti-system movement.

The position of power and advantage of public television in relations with parties became paradoxically a factor of its weakness. RAI contributed to the overthrow of the centre-left government, which it was supposed to strengthen. The dominance of the propaganda function, criticised by the opposition led by Movimento 5 Stelle Beppe Grillo, significantly weakened the credibility of the public broadcaster, and consequently caused a discrepancy between the government and Italian society, as the information on the most important political decisions did not reflect the actual social problems. The level of frustration and dissatisfaction of the

¹⁰ M. Miżejewski, *Il sistema radiotelevisivo polacco sullo sfondo delle trasformazioni politiche*, "Nomos" 2004, no. 2.

¹¹ M. Miżejewski, *Il giornalismo televisivo al tempo della crisi del pluralismo in Polonia*, "ComunicazionepuntoDoc" 2018, no. 19.

Italians therefore motivated even more political activity, especially from anti-systemic, populist, and Eurosceptic groups.

The Democratic Party, by strengthening its political control over RAI, intended to fully subjugate the public broadcaster to its own political interests in the 2018 parliamentary campaign, but in vain.¹² The appearance of pluralism on the air was to be guaranteed by the principle of equal opportunities *par condicio*. In the parliamentary campaign, however, this principle turned out to be anachronistic, as it restricted the freedom of public debate, especially in the opinion of parties contesting television as a medium subordinate to power. Moreover, in view of the growing importance of social media in the process of political communication, *par condicio* no longer had such a significant impact on the final outcome of the campaign as it had done so far.

After three months of political stalemate, populist parties finally agreed with President Sergio Mattarella on the appointment of a new government. This was the longest and most dramatic parliamentary crisis in the history of the Italian Republic. The compromise resulted in the creation of a new Giuseppe Conte cabinet, which was sworn in on 1st June 2018. Forza Italia, Silvio Berlusconi, as the main ally of the centre-right electoral coalition in the 2018 campaign, did not form part of the new government but was in opposition. Matteo Salvini's League decided to form a government with MoVimento 5 Stelle, a formation which, in Berlusconi's opinion, "is not fit to govern the state". In "Il Giornale", the leader of Forza Italia described the new government as "another government not elected by the Italians".¹³

In the year that preceded parliamentary election in Italy, in June 2017 Mario Orfeo was nominated the new chief executive officer of the RAI.¹⁴ The Italian opposition parties of that time are divided in their opinions on the nomination.¹⁵ The Five Star Movement has defined it as a "coup d'état" whose purpose is militarisation of the public media sector, fearing potential electoral defeat.¹⁶

Meanwhile, the second largest party of the Italian parliamentary opposition, Forza Italia of Silvio Berlusconi has welcomed the nomination of the new CEO of the RAI considering him an impartial professional, who as the former editor-in-chief of an influential newspaper "Il Messaggero" and then as the head of TG1 (RAI's news programme) was not an object of criticism from the Berlusconi's party

¹² O. Grandinetti, *La "governance" della Rai e la riforma del 2015*, [in:] *Rivista Trimestrale di Diritto Pubblico*, fasc. 3, 2016, p. 833.

¹³ M. Miżejewski, *Zasada równych szans (par condicio)...*, op. cit., pp. 131–135.

¹⁴ A. Biondi, *Rai, Mario Orfeo sarà il nuovo direttore generale*, [online:] <http://www.ilsole24ore.com/art/notizie/2017-0609/rai-mario-orfeo-sara-nuovo-direttore-generale-113714.shtml?uuiid=AEwxndbB> (access: 30.09.2017).

¹⁵ *Rai, sull'ipotesi Orfeo è braccio di ferro tra Renzi e Gentiloni*, [online:] <http://ricerca.repubblica.it/repubblica/archivio/repubblica/2017/06/09/rai-sullipotesi-orfeo-e-braccio-di-ferro-trarenzi-e-gentiloni14.html> (access: 30.09.2017).

¹⁶ *Rai, Orfeo è il nuovo direttore generale. Freccero contrario, M5s: "Golpe renziano"*, [online:] <http://www.ilfattoquotidiano.it/2017/06/09/rai-orfeo-e-il-nuovo-direttore-generale-freccero-contrario-m5s-golperenziano/3647264/> (access: 30.09.2017).

side.¹⁷ It is significant within the context of imminent parliamentary elections of 2018 in which 81-year-old Berlusconi was going to participate, stating on his Facebook account, that to govern Italy one cannot improvise, the essential thing is experience.¹⁸

Paradoxically, in the opposition camp, the most zealous supporters of the media freedom are the populists led by Beppe Grillo who is reasonably accused of the lack of democracy within his organisation which is being governed arbitrarily. The leader of the Five Star Movement, contesting the changes in the RAI, that “no-men omen” made him popular satirist, consequently builds his image in social media. Grillo’s mode of action shows his political hypocrisy. Trying to make himself look a promoter of democracy, he himself poses a serious threat to it.

It is particularly relevant, in terms of the present Italian media policy, the role of the present prime minister who already held in the past various positions in the RAI’s political control authorities. Between 2005 and 2006, Gentiloni, as a member of Parliament was, among others, chairman of the Broadcasting Services Watchdog Committee (Commissione Vigilanza RAI). At that time, he has criticised the then Berlusconi’s government very often as far as its media policy is concerned.¹⁹ Subsequently, as the Minister for Communications in Prodi’s second government from 2006 to 2008 he was calling for implementation of legal provisions that could limit Berlusconi’s control over Italian media.²⁰ After the parliamentary elections in 2008 and formation of the 4th government of Silvio Berlusconi, Gentiloni participated in the activities of the Broadcasting Services Watchdog Committee (CPIV – Commissione parlamentare per l’indirizzo generale e la vigilanza dei servizi radiotelevisivi).

As a result of enactment of the new media law in Italy on 28th December 2015, the Five Star Movement has requested European Union, during the plenary session of the European Parliament in Strasbourg, to launch an infringement proceeding against Poland for breaches of EU law.²¹ Concerns of the opposition has raised the fact that political control over the RAI was significantly strengthened. In fact, the government has delegated to the RAI a chief executive officer granting him wide responsibilities, such as influence on allocation of essential posts and signing contracts up to 10 million euro.²²

¹⁷ *Santanchè (Forza Italia): RAI, nomina Orfeo meritata, lazienda torna ai suoi obiettivi di servizio pubblico*, [online:] <http://mm-com.it/2017/06/09/santanche-forza-italia-rai-nomina-orfeo-meritata-lazienda-torna-ai-suoioibiettivi-servizio-pubblico/#.Wc9m4mi0M2w> (access: 30.09.2017).

¹⁸ <https://www.facebook.com/SilvioBerlusconi/photos/a.744267892273985.1073741825.116716651695782/1695038247196940/?type=3&theater> (access: 30.09.2017).

¹⁹ *Riforma tv, via libera al decreto Gentiloni*, [online:] http://www.corriere.it/Primo_Piano/Politica/2006/10_Ottobre/12/gentiloni.shtml (access: 17.12.2016).

²⁰ <https://www.polityka.pl/tygodnikpolityka/swiat/1686694,1,kim-jest-paolo-gentiloni-nowy-premier-wloch.read> (access: 17.12.2016).

²¹ http://www.beppegrillo.it/2016/02/conferenza_stamp_a_denunciamolarai_in_ue.html (access: 24.09.2016).

²² Art. 2, p. 10 della legge 28 dicembre 2015, n. 220 Riforma della RAI e del servizio pubblico radiotelevisivo (Gazzetta Ufficiale n. 11 del 15-1-2016), [online:] <http://www.normattiva.it/uri-res/N2Ls?urn:nir:stato:legge:2015;220> (access: 22.10.2016).

Moreover, the new procedures for nominating the RAI's management board members have generated controversies. Two members of the management board are henceafter elected by the Chamber of Deputies, two by the Senate, two by the government and one by company's workers. Thus, the RAI's management board's composition will reflect the parliamentary majority supporting the government.²³

The term of office of the current management board expires in August 2018. After that date, the RAI's management board will be elected according to new regulations. Thereby, it will not be nominated anymore, as it was before, by the parliamentary committee – Broadcasting Services Watchdog Committee, which used to nominate so far seven of nine members of the RAI's management board according to political parity formule.²⁴ What is more, it had a real influence on the CEO's and the management board chairman's nomination. Therefore, the role of the parliamentary committee in the procedure of nominating members of the management board will be omitted, which automatically deprives the opposition of any possibility to co-decide a composition of the company's management board. The chairman of the RAI, nominated by the new management board and approved by the parliamentary committee (CPIV), with 2/3 majority was actually deprived of any real power in the company.²⁵

Many trade unions of journalists have protested against the statute, such as for example: Associazione Stampa Romana, as well as social organisations: Libertà e Giustizia, Liberacittadinanza, Sindacato Lavoratori Comunicazione CGIL, as well as many persons of recognised standing in the field of Italian media, such as Roberto Zaccaria (RAI's chairman between 1998 and 2002), Antonio Di Pietro or Gustavo Zagrebelsky. They have sent an open letter concerning the RAI's reform in the European context, addressed to President of Italy, Sergio Mattarella.²⁶

In this open letter from 30th December 2015, the signatories have emphasized the fact that after many years of trying to reform the RAI, an opportunity to succeed has finally appeared. The reform was supposed to consist in re-definition of public service in the broadcasting sector. That service ought to guarantee freedom of independent and pluralistic information, having regard for the full transparency in public debate. It ought to fulfill citizens' right to freedom of expression which is constitutionally guaranteed.²⁷

The signatories of the letter have reminded President of Italy that the priority values for Italy that, moreover, he himself emphasized during his inauguration

²³ Ibidem.

²⁴ Art. 20, p. 3 della legge 3 maggio 2004, n. 112 "Norme di principio in materia di assetto del sistema radiotelevisivo e della RAI-Radiotelevisione italiana S.p.a." (Gazzetta Ufficiale n. 104 del 5 maggio 2004 – Supplemento Ordinario n. 82).

²⁵ *La nuova riforma Rai: legge n. 220/2015 e il confronto europeo*, [online:] <http://www.camera.it/temiap/allegati/2016/11/22/OCD177-2519.pdf> (access: 30.09.2017).

²⁶ <http://www.indignerai.it/presidente-mattarella-rinvii-alle-camere-la-non-riforma-rai/> (access: 22.10.2016).

²⁷ L. Bianchi, *Libertà di espressione radiotelevisiva e servizio pubblico*, Torino: Giappichelli, 2012.

speech on the 3rd February 2015 are pluralism, and freedom and independence of information which remain a stronghold of democracy.²⁸ The authors of the letter have accentuated that the RAI requires changes, as never before, in order to preserve its particular role in the process of communication as a forum for public debate. The RAI ought to stand in defence of democracy, supporting the Republic. That reform requires therefore a reorganisation of the whole system of public broadcasting. It shall put an end to destructive activities that have contributed to degradation of the broadcasting system.

According to the letter's signatories, nowadays the major threats to the system are: political control of information content, poor governance, lack of financial autonomy which is due to public media, lack of strategy in human resources management, loss of credibility in the eyes of the citizens, nepotism and increasing number of incompetent people, however very well-paid, recommended to hold editorial as well as administrative posts by political parties, including those representing the opposition. Moreover, such situation has been present for many decades, to begin with the Christian democracy's domination, tripartite division of public television by three major parties in the eighties (Christian democracy, comunists and socialists), through Berlusconi's era, till nowadays.²⁹

Meanwhile, analysing the act reforming the RAI, implemented regulations bear a remarkable resemblance to legislator's intention from 2004 when the Gasparri's law was enacted. At that time, this act was vetoed and, as a consequence, sent to the parliament for reconsideration by the then president Carlo Azeglio Ciampi. In fact, the Gasparri's law strenghtened significantly a dominant position of Silvio Berlusconi in the broadcasting sector.³⁰

The authors of the open letter concluded that the concerned RAI's reform not only preserve a harmful political practice, but also opens a new chapter heading for a full centralisation of the political information's flow. They state that Italy got into a particular historical moment, in which an activity of public media is determined by the pression of political parties. They also claim that the statute is contrary to the article 21 of the Constitution of the Italian Republic.³¹ Its content confirms and protects in fact the guarantees of freedom, independence and pluralism of the public information.³²

²⁸ <http://www.ilfattoquotidiano.it/2015/02/03/sergio-mattarella-testo-integrale-discorso-inse-diamentomontecitorio/1392714/> (access: 22.10.2016).

²⁹ F. Monteleone, *Storia della radio e della televisione in Italia*, Venezia: Marsilio, 2004.

³⁰ Legge 3 maggio 2004, n. 112 "Norme di principio in materia di assetto del sistema radiotelevisivo e della RAI-Radiotelevisione italiana S.p.a." (Gazzetta Ufficiale n. 104 del 5 maggio 2004 – Supplemento Ordinario n. 82), [online:] <http://www.camera.it/parlam/leggi/04112l.htm> (access: 22.10.2016).

³¹ Costituzione della Repubblica Italiana (Gazzetta Ufficiale n. 298 del 27-12-1947), [online:] http://www.gazzettaufficiale.it/anteprema/codici/constituzione;jsessionid=D1U54Kgn50DGnYwTi-a2pqA__ntcas1-guri2a (access: 22.10.2016).

³² L'art. 21 Cost. e i principi costituzionali sulla libertà di informazione, [in:] R. Zaccaria, *Diritto dell'informazione e della comunicazione*, Padova: CEDAM, 2002.

What is more, provisions of the new law are contrary to the judgment of the Constitutional Court no 225 from 25th July 1974³³, which was the legal base of pluralism in Italian media, introducing the rule of political responsibility of the RAI to the parliament, instead as it used to be – to the government.³⁴ However, regardless of the then intention of the Constitutional Court, Italian broadcasting system did not become actually pluralistic but, which was proved by the crisis in the beginning of the 90s, became a kind of a “prey” for parliamentary parties (those ruling, as well as those representing the opposition). Such situation hindered a real autonomy of the Italian system of political information and enabled a phenomenon called “particracy”.³⁵

In addition, the signatories claim that the statute is contrary to the Recommendation of the Committee of Ministers of the Council of Europe from 15th February 2012 calling the member states to revise legislation in the field of public media in order to release them from a direct impact of the government.³⁶

The main objectives of the RAI’s reform and its political consequences

Thus far, in accordance with regulation from 31th July 2005, the political control over RAI was exercised by a special parliamentary committee, Commissione Vigilanza RAI (Commissione parlamentare per l’indirizzo generale e la vigilanza dei servizi radiotelevisivi) composed of 40 members which was reflection of a structure of political powers in Italian parliament.³⁷ This committee chose seven of nine members of the RAI’s management board, therefore the opposition parties could have their representatives there.³⁸ The two remaining members were being chosen by the the Minister for Economic Affairs. The chairman needed a support of two thirds of the management board, that is five of the eight remaining members. The

³³ Sentenza 225/1974 della Corte Costituzionale (Gazzetta Ufficiale, n. 187, 17.07.1974.) [online:] <http://www.giurcost.org/decisioni/1974/0225s-74.html> (access: 22.10.2016).

³⁴ G. Malinconico, *La politica in televisione: il difficile ruolo del Parlamento*, “Federalismi.it” 2012, no. 2, pp. 1–20.

³⁵ R. Zaccaria, A. Valastro, E. Albaniesi, *Diritto dell’informazione e della comunicazione*, VIII ed., Padova: CEDAM, 2013.

³⁶ Declaration of the Committee of Ministers on Public Service Media Governance adopted on 15 February 2012, [online:] <https://www.ebu.ch/files/live/sites/ebu/files/Publications/Reference%20texts/CoE%20%20PSM/COE%20REF%20-%20CM%20Decl%20PSM%20governance.pdf> (access: 1.10.2016).

³⁷ Decreto Legislativo 31 luglio 2005, n. 177 “Testo unico della radiotelevisione” (Gazzetta Ufficiale n. 208 del 7 settembre 2005), [online:] <http://www.camera.it/parlam/leggi/deleghe/05177dl.htm> (access: 22.10.2016).

³⁸ Art. 49, p. 9. del decreto Legislativo 31 luglio 2005, n. 177 “Testo unico della radiotelevisione” (Gazzetta Ufficiale n. 208 del 7 settembre 2005), [online:] <http://www.camera.it/parlam/leggi/deleghe/05177dl.htm> (access: 22.10.2016).

CEO was being elected by the management board.³⁹ Although he participated in deliberations of the management board, he did not have the voting rights.⁴⁰ The public television was actually owned by political parties which were represented in the RAI's management board.⁴¹

According to the legislative solution in force before the RAI's reform, successive governments in Italy had to seek compromise with the opposition in parliamentary committee as far as election of the RAI's chairman and the management board are concerned. A political agreement was essential as well within the management board. It concerned election of the CEO and allocation of the most important posts. The compromise required in fact two thirds in favour in parliamentary committee as well as in the RAI's management board.⁴²

The term of office of the current RAI's management board, elected in accordance with the Gasparri's law, expired in August 2018.⁴³ Conform to the new law, enacted by the Parliament on 28th December 2015, the new management board will be composed of seven members.⁴⁴ Two members will be elected by the Senate, two by the Chamber of Deputies (each Senator and Deputy will be able to vote only for one candidate), other two will be elected by the government on request of the Minister for Economic Affairs and Finance (Ministro dell'economia e delle finanze), according to criteria regulating the procedures for the election of members of organs managing the companies supervised by the government. The last, seventh member of the RAI's management board will be elected by the company's workers.

Conform to the procedure regulating the manner of choosing the management board's members, the application process will be held through official Internet websites of two houses of the Italian Parliament and the website of the public broadcaster RAI, at least 30 days before scheduled date of elections. On these websites will appear then curricula vitae of the candidates.⁴⁵

The seventh member of the RAI's management board will be elected by the general meeting of all employees of the company according to procedures established by the previous management board. Individual applications can be submitted by trade union organisations which are signatories of the RAI's collective agreement

³⁹ Ibidem, art. 49, p. 12b.

⁴⁰ Ibidem, art. 49, p. 11.

⁴¹ R. Borrello, *Par condicio e radiotelevisione. Analisi dei principali ordinamenti europei*, vol. I, Torino: Giappichelli, 2007.

⁴² F. Anania, *Breve storia della televisione*, Roma: Carocci, 2004.

⁴³ Legge 3 maggio 2004, n. 112 "Norme di principio in materia di assetto del sistema radiotelevisivo e della RAI-Radiotelevisione italiana S.p.a." (Gazzetta Ufficiale n. 104 del 5 maggio 2004 – Supplemento Ordinario n. 82), [online:] <http://www.camera.it/parlam/leggi/04112l.htm> (access: 29.10.2016).

⁴⁴ Art. 2, p. 6, Legge 28 dicembre 2015, n. 220 Riforma della RAI e del servizio pubblico radiotelevisivo (Gazzetta Ufficiale, n. 11 del 15-1-2016), [online:] <http://www.gazzettaufficiale.it/eli/id/2016/1/15/16G00007/sg> (access: 22.10.2016).

⁴⁵ Ibidem.

and groups of at least 150 RAI's workers. The deadline for submission of applications expires 30 days before the scheduled election.⁴⁶

A person who comply with the requirements for the judges of The Constitutional Court, defined by the article 135 of the Constitution of Italian Republic may be elected a member of the RAI's management board.⁴⁷ This office may be held by a full professor, judge (including retired judges), barrister and person of recognised standing in all areas of public life following the principles of independence and impartiality. The candidates shall distinguish themselves by activity in the field of economy, science, law, humanistic disciplines and communication science. They ought to be experienced in management.⁴⁸

The term of office of the RAI's management board's member is three years and he may be re-elected only once. The composition of the management board has regard to gender parity and maintains balance as far as professional competence's profile of the members is concerned. The statute excludes any possibility of cooperation of a member of the RAI's management board with other actors of communication sector in order to avoid a conflict of interests. It establishes incompatibility of holding the post of the management boards's member with political posts of – minister, deputy minister, undersecretary – in office and 12 months before the nomination. The management board will be responsible for approving a business plan, estimating the costs on a full-year basis and multiannual investments, above 10 million euro threshold.⁴⁹

The chairman of the RAI's management board will be nominated by the management board itself and approved by the parliamentary committee (Commissione parlamentare per l'indirizzo generale e la vigilanza dei servizi radiotelevisivi) with two-thirds majority.⁵⁰

Nevertheless, in the light of the new statute, the chairman will be deprived of real power. In fact, the minister for economic affairs and finance (Ministro dell'Economia e delle Finanze) indicates the CEO who is provided with wide responsibilities. Amongst others he has got right to vote in the RAI's management board although formally he is not a member of it. He also decides on allocation of the most important posts in the RAI. A political consequence of the enacted statute will be strengthening of the role of the CEO as the government's representative.

⁴⁶ Ibidem, art. 2, p. 6.

⁴⁷ Costituzione della Repubblica Italiana (Gazzetta Ufficiale n. 298 del 27-12-1947), [online:] http://www.gazzettaufficiale.it/anteprema/codici/costituzione;jsessionid=D1U54Kgn50DGnYwTi-a2pqA__ntcas1-guri2a (access: 29.10.2016).

⁴⁸ Note all'art. 2, p. 6, Legge 28 dicembre 2015, n. 220 Riforma della RAI e del servizio pubblico radiotelevisivo (Gazzetta Ufficiale, n. 11 del 15-1-2016), [online:] <http://www.gazzettaufficiale.it/eli/id/2016/1/15/16G00007/sg> (access: 29.10.2016).

⁴⁹ Note all'art. 2, p. 9, Legge 28 dicembre 2015, n. 220 Riforma della RAI e del servizio pubblico radiotelevisivo (Gazzetta Ufficiale, n. 11 del 15-1-2016), [online:] <http://www.gazzettaufficiale.it/eli/id/2016/1/15/16G00007/sg> (access: 29.10.2016).

⁵⁰ Ibidem, art. 2, p. 5.

Therefore, the Italian media law in its present form allows the parliamentary majority to elect four members of the management board and the minister for economic affairs and finance other two. Along with the CEO also nominated by the minister, these provisions make the RAI fully obedient to the government's will. It means that a party which will win the parliamentary elections in Italy scheduled for February 2018 will take the full control over the public broadcaster RAI. The current RAI's management board was elected in August 2015 for a term of three years, according to the rules requiring a political compromise. The statute which entered into force on the 30th January 2016, not only abolishes the necessity of a political consensus in the management board's election, weakening the opposition influence, but also amplifies responsibilities of the RAI's CEO who remains fully subordinated to the government.

The European Commission's standpoint concerning the RAI's reform

The opposition party, Five Star Movement of Beppe Grillo discerns parallels in the governments' actions in Italy and Poland aiming at full subordination of the public media to the executive power, which perceives as a serious threat to democracy.

The quality of pluralism in media, as an essential element of every democratic system, has significantly declined in both countries which is being emphasized in the comments of the Italian opposition politicians.⁵¹ They claim that the public television which is fully subordinated to the government, operates in both countries according to similar rules, having purely instrumental function for the ruling parties.

Nevertheless, the cases of Italy and Poland were treated by the European Commission in two different ways. Whilst against Poland an infringement proceeding for breaches of EU law was launched, similar step was not taken against Italy.⁵² In the opposition's view, the public broadcaster RAI is used nowadays as the main information channel of the government. It weakens the health of Italian democracy and is contrary to the idea of media pluralism. The effect of the RAI's reform is loss of parliamentary control over the public broadcaster and passing it at the government's exclusive disposal.⁵³

This is because the minister for economy affairs and finance designates the CEO of the RAI who nominates the channel controllers and heads of television news. This mechanism guarantees, as a consequence, the government's impact on

⁵¹ *Blog Grillo: Rai fascista, riforma Renzi come quella di tv polacca*, [online:] http://www.askanews.it/politica/blog-grillo-rai-fascista-riforma-renzi-come-quella-di-tv-polacca_711714700.htm (access: 6.11.2016).

⁵² *Italia come la Polonia: Colpo di stato del governo nella TV pubblica*, [online:] <http://www.davidborrelli.net/blog/post.php?idn=28> (access: 6.11.2016).

⁵³ *Rai, Fico: Italia come Polonia. Bruxelles vigili*, [online:] <http://www.affaritaliani.it/affari-europei/rai-ficoitalia-come-polonia-bruxelles-vigili-404829.html> (access: 6.11.2016).

the most opinion-forming programmes of the public broadcaster. The Italian opposition refers to the case of Poland, where the government has adopted similar solutions passing to the Ministry of the Treasury the responsibilities for nomination of management and supervisory boards, which results in deterioration of the quality of pluralism.

The member of the European Parliament from the Five Star Movement, Dario Tamburrano, provides, in this context, a statement of the first vice-president of the European Commission, Frans Timmermans who declared in the forum of the European Parliament that “the freedom of media and their pluralism form an integral part of the fundamental rights, with the constitutional guarantee of freedom of expression in the forefront.”⁵⁴

A group of members of the European Parliament from the Five Star Movement, Dario Tamburrano, Isabella Adinolfi and Fabio Massimo Castaldo have presented their official position on the RAI’s reform sending a parliamentary question to the European Commission.⁵⁵ The question concerns a new management model and funding mechanism of the public broadcaster RAI and calls on the Commission to account on this issue. The MEPs indicate contradiction of the new media law with the article 11 of The Charter of Fundamental Rights of the European Union. It guarantees the right to freedom of expression to everyone and include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers.⁵⁶ The Charter emphasizes that the freedom and pluralism of the media shall be respected.⁵⁷

Moreover, the MEPs indicate a problem of the funding mechanism of the RAI consisting of inclusion of the license fee in the bill for electricity as a new tax.⁵⁸ The MEPs claim that it is contrary to the article 21 of The Charter of Fundamental Rights of the European Union that prohibits any discrimination.

In reply to the parliamentary question, Günther Oettinger in the European Commission’s Communication of 11th March 2016 has stated that in accordance to the protocol no 29 annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, Italian authorities are completely autonomous in defining conditions, forms and ways of providing of the RAI’s broadcasting services. The authorities of all EU countries have similar autonomy as far

⁵⁴ *Pluralismo? All’UE va bene una RAI ridotta a TeleRenzi*, [online:] http://www.dariotamburrano.it/riforma_rai_tv_di_stato_italia_polonia/ (access: 15.10.2016).

⁵⁵ *Riforma della governance e del canone della RAI-Radiotelevisione Italiana S.p.A.*, [online:] <http://www.europarl.europa.eu/sides/getDoc.do?type=WQ&reference=E-2016-000091&language=IT> (access: 15.10.2016).

⁵⁶ M. Miżejewski, *Ochrona pluralizmu w polityce medialnej Włoch*, Kraków: Księgarnia Akademicka, 2013, pp. 44–46.

⁵⁷ Karta Praw Podstawowych Unii Europejskiej (2010/C 83/02) (Dziennik Urzędowy Unii Europejskiej C83/389), [online:] https://bip.ms.gov.pl/Data/Files/_public/bip/prawa_czlowieka/onz/karta.pdf (access: 15.10.2016).

⁵⁸ F. Donati, *Lordinamento amministrativo delle comunicazioni*, Torino: Giappichelli, 2007.

as defining of a model of management and strategy of public broadcasters' activity in EU countries. Thus, it does not belong to the field of competence of the European Commission to examine funding mechanism of public broadcasters of the EU countries, unless they are contrary to the principle of free competition in force in the common market.⁵⁹

The Commission's task is to ensure respect for media freedom and pluralism, enshrined in the Charter of Fundamental Rights of the European Union, within its competences. On this basis the Commission would not be in a position to make specific recommendations regarding the funding or the governance of a public service broadcaster.⁶⁰ The Commission may only contribute to the goal of enhancing the level of media freedom and pluralism in the EU, for example by funding independent projects in the field of media freedom and pluralism.⁶¹

In another parliamentary question to the European Commission from 21st March 2016 regarding the case of treating Italy and Poland in two different ways, the MEPs of Italian opposition have referred to the Polish reform of the governance model of public radio and television broadcasters, which consisted of establishing that directors are appointed directly by the government. They emphasized the fact that the Polish Prime Minister has declared that the reform is practically based on the same principles of Italian legislation. Meanwhile the Commission has opened a structured dialogue to protect the rule of law only due to the public broadcaster's reform only in case of Poland. Hence, the MEPs of the Italian opposition have asked the European Commission to give the reason for such decision.⁶²

In the reply from 2nd June 2016, the Commission has only stated that the situations in Italy and Poland are not identical. Actually, at the European Parliament's plenary sitting of 19th January 2016 on the situation in Poland, the Commission has requested information from the Polish government regarding the situation of the Constitutional Tribunal and changes adopted in the Radio and Television Broadcasting Act.

Despite such a standpoint of the European Commission, Italian politicians, with Beppe Grillo and Roberto Fico from the Five Star Movement at the forefront, consequently claimed that the RAI's reform was a "coup d'état". In their view,

⁵⁹ F. Bassan, *Diritto delle comunicazioni elettroniche. Telecomunicazioni e televisione dopo la terza riforma comunitaria del 2009*, Milano: Giuffrè, 2010; F. Bruno, G. Nava, *Il nuovo ordinamento delle comunicazioni. Radiotelevisione, comunicazioni elettroniche, editoria*, Milano: Giuffrè, 2006.

⁶⁰ A Camilleri, *Profili del sistema radiotelevisivo nella fase di transizione sul digitale terrestre*, Napoli: Edizioni scientifiche italiane, 2010; F. Cardarelli, V. Zeno-Zencovich, *Il diritto delle telecomunicazioni. Principi, normativa, giurisprudenza*, Roma-Bari: Laterza, 1997.

⁶¹ *Risposta di Günther Oettinger a nome della Commissione*, [online:] <http://www.europarl.europa.eu/sides/getAllAnswers.do?reference=E-2016-000091&language=IT> (access: 15.10.2016).

⁶² *Riforma RAI, pluralismo informativo radio-televisivo, Italia e Polonia*, [online:] <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+WQ+E-2016002343+0+DOC+XML+V0//IT> (access: 6.11.2016).

ensorship of information has caused a loss of credibility of the public broadcaster.⁶³ In their public speeches, they often emphasized the fact that, because of the reform, the RAI does not monitor the activity of the organs of government anymore, but has become a channel of political indoctrination of the ruling party.⁶⁴

Conclusion

Even before the resignation of the Renzi's cabinet, Italian opposition parties: the Five Star Movement and the Northern League (Lega Nord) were criticizing the new media law which was aimed to fully subordination of the public service broadcasting sector to the executive power. They claim that such construction of the law prevents the public broadcaster from the fulfilment of a public service mission in an independent and fully professional way, according to the rule of monitoring of the power exercised by media. Meanwhile, the public broadcaster RAI, remaining in a structure of dependence to the executive power, contributes only to consolidation of already existing social divides, limiting significantly the right to access to information.⁶⁵

The opinions of Italian political commentator says the new media law is concerned are divided. Many of them emphasize the fact that in the RAI television, the period of political parties' influence called "particracy" is over. They are going to be replaced by the government which poses a serious threat to democracy. Antonella Piperno states in her feuilleton that it is a hazardous swap which, in the opposition's opinion, undermines a constitutional freedom of information and citizens' right to freedom of expression.⁶⁶

On the other hand, Antonello Giacomelli from the Democratic Party (Partito Democratico), which began the reform, declares that owing to it, the Italian public broadcaster will become modern organisation of the public service which is effectively and transparently governed. For it will be administered by the manager and the management board elected by two houses of the Parliament on the basis of publically appointed candidatures. It will not be elected, as it used to be in the past, by the parliamentary committee. Therefore, institutional link between the public

⁶³ P. Kowalczyk, *Telewizja RAI pod kontrolą*, [online]: <http://www.rp.pl/Polityka/302099876-Telewizja-RAI-pod-kontrola.html#ap-1> (access: 24.09.2016).

⁶⁴ *Il piano per la trasparenza in Rai proposta del M5S*, [online]: <http://www.robertofico.it/il-piano-per-latrasparenza-in-rai-proposta-del-m5s/> (access: 12.11.2016).

⁶⁵ http://www.beppegrillo.it/2016/02/conferenza_stamp_a_denunciamolarai_in_ue.html (access: 10.12.2016).

⁶⁶ *TeleRenzi, la riforma Rai è in onda*, [online]: <http://www.panorama.it/news/politica/telerenzi-la-riforma-rai-e-onda/> (access: 9.10.2016).

broadcaster and citizens, as the real representatives of the society, instead of political parties, will be significantly strengthened.⁶⁷

The opposition remains deeply pessimistic about political consequences of modifications of Italian media law. It is proved by a verbatim report of the parliamentary committee's proceedings (CPIV). One of the leaders of the Five Star Movement, Roberto Fico has declared that this is the worst law that could be enacted for the public broadcaster RAI. He warns about possible threats for pluralism and freedom of information and, as a consequence, for stability of democracy. In his view, the former prime minister Renzi wanted to strengthen political control over the RAI by the governmental nomination of an administrator with unlimited powers. Under the terms of each other democracy it would be impossible.⁶⁸

The crisis of the public broadcaster RAI has caused apprehension among Italian trade unions as well: Federazione Nazionale della Stampa Italiana (FNSI, Italian National Press Federation) and USIGRai, Unione Sindacale Giornalisti RAI (trade union of the RAI's journalists). Commenting on the RAI's reform the trade union leaders: Vittorio di Trapani (secretary of the USIGRai), Raffaele Lorusso (secretary-general of the FNSI) oraz Giuseppe Giulietti (president of FNSI) have emphasized the fact that Italy for a long time ranks very low in regard to realisation of the citizens' right to information. The RAI's reform only increases the risk of its further deterioration. Pursuant to the statute the government of Italy usurps actually a full financial, personal, and programme control over the public broadcaster RAI, which determines the way of providing of this particular public service that is a realisation of the mission.⁶⁹

Adopted by the centre-left legislative measures have created a situation that poses a threat to the media pluralism providing fertile ground for the government on its way to the full subordination of the public broadcaster. An important test for the quality of Italian pluralism will be undoubtedly the parliamentary campaign scheduled for the spring of 2018.

Meanwhile in Poland, the modification of the media law from 2015 has increased control of the current government over the public media sector which was noticed by the Italian opposition.⁷⁰ A key element of the new Polish statute

⁶⁷ *Resoconto stenografico della seduta n. 495 del 31/07/2015 del Senato*, [online:] https://www.senato.it/japp/bgt/showdoc/frame.jsp?tipodoc=Resaula&leg=17&id=00937280&part=doc_dcessten_rs-ddltit_sddeacmddd1880rdredspr&parse=no (access: 10.12.2016).

⁶⁸ *Resoconto stenografico della Commissione parlamentare per l'indirizzo generale e la vigilanza dei servizi radiotelevisivi, seduta n. 78 di Mercoledì 10 febbraio 2016*, [online:] http://documenti.camera.it/leg17/resoconti/commissioni/stenografici/html/21/audiz2/audizione/2016/02/10/indic_e_stenografico.0078.html (access: 10.12.2016).

⁶⁹ *Riforma RAI, FNSI e Usigrai: "Doppio colpo all'autonomia della RAI servizio pubblico"*, [online:] <http://www.usigrai.it/riforma-rai-fnsi-e-usigrai-doppio-colpo-allautonomia-della-rai-servizio-pubblico/> (access: 10.12.2016).

⁷⁰ *Italia come la Polonia: Colpo di stato del governo nella TV pubblica*, [online:] <http://www.davidborrelli.net/blog/post.php?idn=28> (access: 6.11.2016).

was passing of the right to nominate and dismiss the management and supervisory boards to the exclusive responsibility of the minister of Treasury.⁷¹ From its entry into force, the terms of office of the Polish radio and television's management and supervisory boards were shortened.⁷² Pursuant to the previous media law, the members of the management and supervisory boards were being nominated by the National Broadcasting Council.⁷³

This competence was a result of the legal position of the National Broadcasting Council as a constitutional organ which guarantees freedom of expression, the right to information and the public interest in radio and television.⁷⁴ The appointment mode's modification regarding to the members of management and supervisory boards, implemented with the new statute, gave the executive power a possibility to choose its own candidates for the key positions which may pose a threat to media pluralism and constitutional freedom of expression.⁷⁵

The Italian opposition, referring to the Polish model, has emphasized that the concept of change was the same in both countries. The public media were supposed to become an exclusive attribute of power and to remain fully subordinated to it. The legitimization of power in Italy and Poland, hereafter was supposed to take place, first of all in all channels of the public radio and television. The subject-matter and a form of the public debate was supposed to be defined by journalists implementing a mission of the public broadcaster in a new political dimension. A function of monitoring the power, as a one of principals tasks of media in general, was significantly weakened in Italy, as well as in Poland.

⁷¹ Art. 27, ust. 3 Ustawy z dnia 29 grudnia 1992 roku o radiofonii i telewizji (Dz.U. 2015 r., poz. 1531, 978 i 1830).

⁷² <http://www.krrit.gov.pl/krrit/aktualnosci/news,2191,wchodzi-w-zycie-nowelizacja-ustawy-o-radiofonii-i-telewizji.html> (access: 16.02.2017).

⁷³ Art. 27, ust. 2 i 28 ust. 1 Ustawy z dnia 29 grudnia 1992 roku o radiofonii i telewizji (Dz.U. 1993 r. Nr 7, poz. 34). See also: I. Dobosz, *Prawo prasowe*, Warszawa: Wolters Kluwer, 2011, pp. 125–126; M. Miżejewski, *Transformacja telewizji w Polsce po roku 1989 na tle zmian politycznych*, Przemysł: PWSZ w Przemysłu, 2005, pp. 239–241; M. Miżejewski, *Krajowa Rada Radiofonii i Telewizji organem politycznej kontroli nadawców w Polsce*, "Politeja" 2014, no. 6(32), pp. 203–222.

⁷⁴ Art. 213 Konstytucji Rzeczypospolitej Polskiej z dnia 2 kwietnia 1997 r. (Dz.U. 2009 r. Nr 114, poz. 946). See: Art. 5–12 Ustawy z dnia 29 grudnia 1992 r. o radiofonii i telewizji (Dz.U. 1993 r. Nr 7, poz. 34); I. Dobosz, *Prawo prasowe*, p. 118; P. Sarnecki, *Regulacja problematyki społecznych środków przekazu w Konstytucji RP*, [in:] J. Barta, R. Markiewicz, A. Matlak (eds.), *Prawo mediów*, Warszawa: LexisNexis, 2005, p. 31; R. Chruściak, *Konstytucjonalizacja wolności mediów, wolności wypowiedzi oraz Krajowej Rady Radiofonii i Telewizji. Kształtowanie przepisów konstytucyjnych i ustawowych*, Warszawa: Uniwersytet Warszawski, 2004, pp. 27–141; A. Matlak, *Radiofonia i telewizja*, [in:] J. Barta, R. Markiewicz, A. Matlak (eds.), *Prawo mediów...*, op. cit., p. 137.

⁷⁵ *Ibidem*, art. 14 and 54; see also: J. Barta, R. Markiewicz, A. Matlak (eds.), *Prawo mediów...*, op. cit., pp. 17–22, 137–141.

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