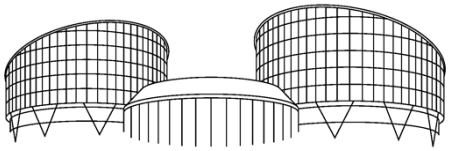

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

CASE OF EUROPA WAY S.R.L. v. ITALY

(Application no. 64356/19)

JUDGMENT

Art 10 • Freedom of expression • Freedom to impart information and ideas • Suspension by ministerial decree and subsequent annulment by legislation of a bidding procedure for the allocation of frequencies for digital terrestrial television broadcasting which were set out in regulations by the appropriate regulatory authority • Annulment of procedure and replacement by a substantially different one interfered with the applicant company's ability to obtain use rights over digital terrestrial frequencies • Legal ground of interference found by the national courts to be incompatible with both domestic and European Union law, following the Court of Justice of the European Union's preliminary ruling, and reapplied by regulatory authority in its reassessment and confirmation of the annulment of the bidding process • Important role of regulatory authorities in upholding and promoting freedom and pluralism of the media • Need to ensure their independence given the delicate and complex nature of their role • Interference with the exercise of the regulatory authority's functions undermined its independence • Objective of restoring independent exercise of functions not achieved • Relevant legal framework not foreseeable and not providing sufficient safeguards against arbitrariness • Interference did not meet lawfulness nor "quality of law" requirements

Prepared by the Registry. Does not bind the Court.

STRASBOURG

27 November 2025

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Europa Way S.r.l. v. Italy,

The European Court of Human Rights (First Section), sitting as a Chamber composed of:

Ivana Jelić*, President*,
Erik Wennerström,
Raffaele Sabato,
Frédéric Krenc,
Davor Derenčinović,
Alain Chablais,
Artūrs Kučs*, judges*,

and Ilse Freiwirth, *Section Registrar,*

Having regard to:

the application (no. 64356/19) against the Italian Republic lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a limited liability company registered in Italy, Europa Way S.r.l. ("the applicant company"), on 12 December 2019;

the decision to give notice to the Italian Government ("the Government") of the complaint under Article 10 of the Convention concerning the suspension and subsequent annulment of a competitive bidding procedure for the allocation of frequencies for digital terrestrial television broadcasting, and to declare the remainder of the application inadmissible;

the parties' observations;

Having deliberated in private on 4 November 2025,

Delivers the following judgment, which was adopted on that date:

INTRODUCTION

1. The case concerns the suspension by ministerial decree and the subsequent annulment by legislation of a bidding procedure for the allocation of frequencies for digital terrestrial television broadcasting which had been set out in regulations by the appropriate regulatory authority. The applicant company raises complaints under Article 10 of the Convention.

THE FACTS

2. The applicant company is a limited liability company operating in the television-broadcasting sector. It has its registered office in Rome. It was represented by Mr F. Ferraro, a lawyer practising in Rome.

3. The Government were represented by their Agent, Mr L. D'Ascia.

4. The facts of the case may be summarised as follows.

I. THE "DIGITAL SWITCHOVER" FROM 2004 TO 2009

5. To regulate the transition from analogue to digital terrestrial television ("the digital switchover"), section 23 of Law no. 112 of 3 May 2004 (known as the "Gasparri Law") allowed operators engaged in analogue broadcasting to conduct digital television trials while the networks were being converted. To have access to digital terrestrial broadcasting, analogue operators had to show that they had attained coverage of at least 50% of the national population or of the local catchment area. Section 25(12) of the Gasparri Law required operators to continue to be authorised under individual licences until the conversion of the networks had been completed.

6. On 18 July 2007 the European Commission gave a reasoned opinion in infringement proceedings no. 2005/5086. It found that when granting access to the digital terrestrial broadcasting market the Gasparri Law had given unjustified advantage to existing analogue operators, in breach of several EU rules on competition in the electronic communications networks and services markets and in breach of the EU regulatory framework for electronic communications.

7. The issues raised by the European Commission were dealt with by section 8 *novies* of the Decree-Law no. 59 of 8 April 2008, converted with amendments into Law no. 101 of 6 June 2008. This Law repealed section 25(12) of the Gasparri Law and made the activities of network operators of digital terrestrial frequencies subject to a requirement of general authorisation. Rights to use certain frequencies had to be allocated according to procedures laid down by the Communications Regulatory Authority (*Autorità per le garanzie nelle comunicazioni* – AGCOM) in compliance with the principles set out in EU law and based on objective, proportionate, transparent and non-discriminatory criteria.

8. On 7 April 2009 AGCOM issued its Resolution no. 181/09/CONS. This set out the criteria for the complete digitalisation of terrestrial networks. AGCOM specified that, in line with European best practice, the allocation of digital frequencies would be organised on a so-called "beauty contest" bidding model (that is, frequencies would be allocated free of charge to operators who fulfilled the conditions listed in the selection procedure) similar to that used in other EU member States. The aim of the process would be to ensure an efficient use of the available digital terrestrial frequencies and to promote technological innovation and the distribution of quality content to as much of the population as possible.

9. Section 45 of Law no. 88 of 7 July 2009 amended section 8 *novies* of Decree-Law no. 59 of 8 April 2008 to specify that the allocation of digital terrestrial frequencies had to be carried out in compliance with the criteria established in AGCOM Resolution no. 181/09/CONS. The Government explained that the rules set out in Resolution no. 181/09/CONS were

incorporated into domestic law at the request of the European Commission to ensure a more solid legal basis for the opening of the market to new operators.

II. THE BIDDING PROCESS, ITS SUSPENSION AND ANNULMENT

10. On 23 September 2010 AGCOM issued Resolution no. 497/10/CONS, which set out detailed procedural rules for the allocation of digital terrestrial frequencies free of charge. The Resolution provided for the allocation of a certain number of frequencies which could be operated by multiplexes (broadcasting systems enabling the transmission of several digital terrestrial television services simultaneously). These frequencies were divided into three groups and were to be allocated according to different criteria. The first group included three frequencies (A1, A2 and A3) which were reserved to new entrants and small operators. The second group included two frequencies (B1 and B2) and the third one only one frequency (C1). Applicants were required to identify the frequencies they wished to compete for. A commission was appointed by the Ministry of Economic Development to assess applications and rate them on the basis of criteria such as the suitability of infrastructure, the business plan and entrepreneurial reliability. Successful bidders were to be identified in separate lists for each frequency. Each list was made up of applicants that had obtained an overall mark of at least 51 points out of 100.

11. On 8 July 2011 the Ministry of Economic Development invited bids for the allocation of digital frequencies in accordance with AGCOM Resolution no. 497/10/CONS (the "beauty contest" or "bidding process").

12. On 6 September 2011 the applicant company expressed an interest in participating in the bidding process to compete for one of the frequencies reserved to new entrants and small operators.

13. On 13 October 2011 the Commission published a list of those who were allowed to bid. The applicant company was the only bidder for the A1 frequency.

14. During parliamentary debates on 16 December 2011, several members of the Chamber of Deputies objected to the allocation of the digital terrestrial frequencies free of charge. They called on the Government to annul the existing bidding process and instead to put in place a selection procedure by which frequencies would be allocated in return for payment.

15. On 20 January 2012 the Ministry of Economic Development suspended the call for bids by decree for 90 days to carry out an assessment of the technical, legal and policy issues involved in the bidding process.

16. On 29 April 2012 Article 3 *quinquies* of Decree-Law no. 16 of 2 March 2012, converted into Law no. 44 of 26 April 2012, entered into force. The relevant part of it set out "urgent measures for the efficient use and economic exploitation of the radio spectrum ...", and read as follows:

"1. In order to ensure the efficient use and the economic exploitation of the radio spectrum, the rights to use the television broadcasting frequencies referred to in the [bidding process] shall be assigned by means of a call for bids issued within 120 days of the entry into force of this section by the Ministry of Economic Development on the basis of the procedures laid down by [AGCOM].

2. [AGCOM] shall lay down ... the necessary procedures on the basis of the following guiding principles and criteria:

a) the allocation of frequencies to network operators by lots, using fee-based procedures and making the award to the highest economic bidder by means of competitive bidding ...;

b) the composition of each lot will be specified on the basis of the degree of coverage...;

(c) the duration of the use rights for each lot is to be modulated so as to ensure the timely allocation of frequencies for the purposes established by the European Commission ...

3. [AGCOM] and the Ministry of Economic Development shall promote all practicable action to ensure effective competition and technological innovation in the use of the radio spectrum and to ensure its efficient use and economic exploitation ...

...

6 ... The call for bids published in the Official Gazette of the Italian Republic, 5th special series, No. 80 of 8 July 2011 and related bidding specifications are annulled ..."

17. Article 3 *quinquies* of Decree-Law no. 16 of 2012 also amended section 8 *novies* of Decree-Law no. 59 of 2008 (see paragraph 9 above) by eliminating all reference to the rules set out in AGCOM Resolution no. 181/09/CONS, which allowed the allocation of digital terrestrial frequencies free of charge and defined the number of available frequencies and the criteria for their allocation.

18. The amendments also provided for compensation ("*indennizzo*") for those who had taken part in the original bidding process. A total of 600,000 euros (EUR) was distributed to the bidders in proportion to the number of frequencies they had applied for (decree of the Minister of Economic Development of 6 November 2015). Since the applicant company had applied for only one frequency, it received EUR 46,153,85 (decree of the Minister of Economic Development of 4 January 2016).

III. THE FEE-BASED SELECTION PROCEDURE

19. Following a public consultation, on 11 April 2013 AGCOM issued Resolution no. 277/13/CONS approving rules for the allocation of digital terrestrial frequencies in accordance with Article 3 *quinquies* of Decree-Law no. 16 of 2012 (see paragraph 16 above). The multiplexes referred to in AGCOM Resolution no. 497/10/CONS were reorganised into two groups (L and U) and only the first of them was made available for allocation. In particular, the new procedure concerned three multiplexes (L1, L2 and L3)

for which only new entrants and small operators were allowed to bid. The Resolution required frequencies to be awarded to the highest bidder. The Government specified that an opening bid of approximately EUR 30 million was set for each of the three multiplexes.

20. On 12 February 2014 the Ministry of Economic Development published a new call for bids under the rules set out in AGCOM Resolution no. 277/13/CONS (the "fee-based selection procedure").

21. There was only one bidder in the fee-based selection procedure, namely C.N. s.r.l., which offered EUR 31,626,000 for multiplex L3. On 31 July 2014 it was allocated those use rights.

IV. ADMINISTRATIVE COURT PROCEEDINGS

A. Proceedings in the Regional Administrative Court

22. On 19 March 2012 the applicant company challenged the suspension of the bidding process in the Lazio Regional Administrative Court (*Tribunale Amministrativo Regionale,* "the TAR").

23. Following the entry into force of Article 3 *quinquies* of Decree-Law no. 16 of 2012, the applicant company also challenged the annulment of the bidding process and its replacement by the fee-based selection procedure. It asked the TAR to order the national authorities to resume the original bidding process and to compensate those whose bids had been annulled.

24. On 25 September 2014 in judgment no. 9982 the TAR joined the applicant company's applications and dismissed them. With regard to the complaint that by annulling the bidding process and imposing principles and operational criteria for a fee-based selection procedure Article 3 *quinquies* of Decree-Law no. 16 of 2012 had encroached on the regulatory powers of AGCOM, the TAR held that the contested law regulated the procedure for the allocation of digital frequencies only in general terms, and that AGCOM remained free to set the detailed procedure for the allocation of frequencies. Moreover, the fee-based selection procedure was not in breach of EU law, since the European Commission did not require national authorities to allocate digital frequencies free of charge, but only specified that the allocation must be made on the basis of objective, transparent, non-discriminatory and proportionate criteria.

25. The TAR further dismissed the argument that Article 3 *quinquies* of Decree-Law no. 16 of 2012 was in breach of the Italian Constitution and of Article 10 of the Convention in so far as it interfered with the exercise of administrative powers. It held that legislative provisions that were in substance administrative (the "*leggi-provvedimento*") were not necessarily contrary to the Constitution. Moreover, in the specific circumstances of the case, the legislative intervention was not arbitrary, unreasonable or discriminatory towards new entrants into the digital television market. It was

justified by the need to reorganise the frequencies available for television broadcasting to free up frequencies for other forms of telecommunications, and to secure economic resources to ensure the financial stability of the State. Moreover, since the allocation by means of a bidding process had been incorporated into law by section 8 *novies* of the Decree-Law no. 59 of 2008 (see paragraph 9 above), only a legislative provision could have repealed it.

B. Appeal to the *Consiglio di Stato* and request for preliminary ruling from the Court of Justice of the European Union (CJEU)

26. The applicant company challenged TAR judgment no. 9982/2014 in the *Consiglio di Stato*.

27. Following a public hearing on 11 June 2015, the *Consiglio di Stato*

(i) dismissed, *inter alia*, the applicant company's complaint that Article 3 *quinquies* of Decree-Law no. 16 of 2012 was in breach of the Italian Constitution and of Article 10 of the Convention (partial judgment no. 4678, deposited at the registry on 9 October 2015); and

(ii) stayed the proceedings and asked the CJEU to give a preliminary ruling on the interpretation of several provisions of Directive 2002/21/EC of the European Parliament and of the Council of 7 March 2002 on a common regulatory framework for electronic communications networks and services, OJ 2002 L 108, p. 33 ("the Framework Directive"), Directive 2002/20/EC of the European Parliament and of the Council of 7 March 2002 on the authorisation of electronic communications networks and services, OJ 2002 L 108, p. 21 ("the Authorisation Directive") and Commission Directive 2002/77/EC of 16 September 2002 on competition in the markets for electronic communications networks and services, OJ 2002 L 249, p. 21 ("the Competition Directive"), and EU principles, including information pluralism and the protection of legitimate expectations (order no. 4774, deposited at the registry on 16 October 2015).

C. Judgment of the CJEU

28. On 26 July 2017 the CJEU delivered its judgment in *Europa Way and Persidera* (C-560/15, EU:C:2017:593). On the annulment by legislation of an on-going selection procedure being conducted by a national regulatory authority ("NRA"), the CJEU stated as follows:

> "... in accordance with Article 3(2) and (3) of the Framework Directive, read in the light of recital 11 thereof, the Member States must guarantee the independence of the NRAs so that they may exercise their powers impartially, transparently and in a timely manner ...
>
> While, in its initial version, the aim of Article 3 of the Framework Directive was essentially, as stated in recital 11 thereof, to guarantee the independence and impartiality of NRAs by ensuring that regulation and operation are functionally separate, the intention of the EU legislature was, by means of Directive 2009/140 and

as stated in recital 13 thereof, to strengthen the independence of NRAs in order to ensure a more effective application of the regulatory framework and to increase their authority and the predictability of their decisions. ...

Recital 13 of Directive 2009/140 states, to that end, that express provision should be made in national law to ensure that, in the exercise of its tasks, an NRA responsible for ex-ante market regulation or for resolution of disputes between undertakings is protected against external intervention or political pressure liable to jeopardise its independent assessment of matters coming before it.

... In accordance with the first paragraph of [Article 3(3a) of the Framework Directive] ... the NRAs responsible for ex-ante market regulation or for resolution of disputes between undertakings must act independently and cannot seek or take instructions from any other body in relation to the exercise of the tasks assigned to them.

... In accordance with the first paragraph of Article 9(1) of the [Framework Directive], it is for those authorities to allocate the spectrum used for electronic communications services and to issue general authorisations or individual rights of use of such radio frequencies.

Consequently, the conduct of a selection procedure for the allocation of digital radio frequencies, such as the 'beauty contest' at issue in the main proceedings, falls within the scope of the exercise of a regulatory task, within the meaning of the Framework Directive, for which an NRA is competent.

The independence of such an authority would be jeopardised if external bodies, such as the Minister for Economic Development and the Italian legislature in the case in the main proceedings, were permitted to suspend, or even annul, an on-going selection procedure for the allocation of radio frequencies conducted under the auspices of that authority ..."

29. The CJEU therefore reached the following conclusions:

"... Article 3(3a) of the Framework Directive must be interpreted as precluding the annulment, by a national legislature, of an on-going selection procedure for the allocation of radio frequencies conducted by the competent NRA in circumstances such as those of the case in the main proceedings which was suspended by ministerial order."

30. The CJEU also addressed the issue of replacing a selection procedure operated free of charge with a fee-based procedure. It held that the Member States enjoy unfettered discretion as to how competitive or comparative procedures are run and whether they are free of charge or fee-based, provided that they are based on objective, transparent, non-discriminatory and proportionate criteria. It also said that it was for the referring court to ascertain whether the conditions set out in the fee-based selection procedure genuinely allowed new operators to enter the digital television market without unduly favouring analogue or digital operators who were already in place.

31. A question was raised as to whether the principle of legitimate expectations meant that the bidding process should not have been annulled. The CJEU observed that in the present case the applicant company had not yet been awarded any frequencies, nor had it received any precise, unconditional assurances that it would be awarded them in future. The principle of legitimate expectations therefore did not preclude the annulment

of the bidding process on the sole ground that the applicant company had been invited to bid and, as the only bidder, would have been granted use rights to use digital terrestrial frequencies had the procedure not been annulled.

D. Resumption of proceedings in the *Consiglio di Stato*

32. On 16 October 2018 in judgment no. 5929 the *Consiglio di Stato* found in part for the applicant company. It referred to the judgment of the CJEU of 26 July 2017 and declined to apply Article 3 *quinquies* of Decree-Law no. 16 of 2012 because it was in breach of Article 3(3a) of the Framework Directive. It also observed that there are matters that it is not for political authorities to regulate but which are reserved to independent authorities ("*riserva di amministrazione indipendente*") so that they can ensure that regulatory functions are exercised independently and result in predictable decisions. It also referred to other domestic statutory provisions that strengthened the independence of AGCOM (see paragraph 51 below).

33. On that basis, the *Consiglio di Stato* annulled the administrative acts which – applying Article 3 *quinquies* – had brought about the replacement of the original bidding process with a fee-based selection procedure without allowing the AGCOM to carry out its own assessment. It did not however annul the call for bids in the fee-based selection procedure or the subsequent acts, including the final award to C.N. s.r.l. (see paragraph 21 above). In that regard, in judgment no. 5929 of 2018 the *Consiglio di Stato* held that the administrative acts in the fee-based selection procedure should be annulled only in so far as they were linked to the unlawful annulment of the original bidding process. By contrast, the applicant company's complaints about other alleged violations of law committed in the fee-based selection procedure – for example, alleged breaches of procedural rules or the alleged unlawfulness of selection criteria – were inadmissible as the applicant company had deliberately chosen not to participate in that procedure and therefore had no interest in its details, in particular since those provisions had in no way prevented it from participating.

34. As to the effects of its judgment, the *Consiglio di Stato* observed the following:

> "The finding that the annulment of the original bidding process was unlawful ... has the effect of requiring AGCOM to reassess, this time completely autonomously and independently, the replacement of the original bidding process with a fee-based selection procedure, which was imposed on it inappropriately by the unlawful intervention by the legislature.
>
> That replacement, as the [CJEU] made clear in its judgment of 26 July 2017 in the case C-560/15, was not in itself illegitimate, but it should have been carried out independently, without undue influence, by the NRA on the basis of its own technical assessments. Therefore the annulment ... does not give AGCOM an unconditional obligation to necessarily reactivate the original bidding process, but means it has to re-examine the entire regulatory framework retroactively ("*ora per allora*"), and to assess

whether ... to retain the original process or ... to replace it with the fee-based selection procedure ...

Such an assessment must necessarily be carried out by [AGCOM] as a preliminary step, since the national court may not substitute its own assessment ... for an assessment which, as the [CJEU] made clear in the present dispute, would have been one for [AGCOM] and [AGCOM] only to carry out, subject, of course, to any subsequent judicial review."

35. The applicant company had complained that it had not been compensated for the damage it had suffered because of the unlawful annulment of the original bidding process. The *Consiglio di Stato* rejected that complaint on the following grounds.

36. As to possible compensation for failure to allocate the frequencies, in judgment no. 5929 of 2018, the *Consiglio di Stato* said that it could not decide in advance whether the applicant company would have had a right to an allocation, and so could not say whether it had suffered any loss of opportunity, since the decision on how to allocate the frequencies fell within the powers of AGCOM. It concluded therefore:

"either:

- the [frequencies] which were the subject of the original bidding process will be allocated to the applicant company by [AGCOM] at the outcome of its re-assessment ... and therefore [the applicant company] will have obtained specific redress through that allocation and may also be awarded compensation for the delay suffered as well as ... for not having been able to legitimately use [the frequencies] from the outset for all those years; or

- the replacement of the original bidding process with the fee-based procedure, properly re-assessed by [AGCOM] ..., will be found to have been legitimate ...; [in that case] [the applicant company] will have suffered no damage that it could claim for with respect to [frequencies] to which, in the end, it turned out to have no entitlement, not even from the point of view of a loss of opportunity, since the annulment of the original bidding process, once it was confirmed by [AGCOM] in the proper exercise of its powers, would mean that they would never have been awarded [anything]."

37. With regard to compensation for the expenses the applicant company had incurred by taking part in the original bidding process, the *Consiglio di Stato* concurred with the judgment of the CJEU of 26 July 2017 that when that process was annulled the applicant company had not received any precise, unconditional assurances that it would be allocated any frequencies in future. There was therefore "no legitimate expectation to be protected nor breach of the principle of good faith in civil matters under Article 1337 of the civil code, irrespective of whether the annulment of the original bidding process turns out to be lawful or unlawful at the end of the reassessment by [AGCOM]".

38. On 16 April 2019 judgment no. 5929 of 2018 of the *Consiglio di Stato* became final.

V. REASSESSMENT BY AGCOM AND SUBSEQUENT PROCEEDINGS IN THE *CONSIGLIO DI STATO*

39. AGCOM reacted to the *Consiglio di Stato*'s judgment no. 5929 of 2018 by confirming the replacement of the original bidding process with the fee-based procedure in its Resolution no. 136/19/CONS of 24 April 2019. The Resolution said that AGCOM "[could] not disregard ("*non può non tener conto*") the spectrum management policy directions provided by [Article 3 *quinquies* of Decree-Law no. 16 of 2012]" and that the original bidding process could not be retained "given the specific public finance objective set by the legislature in the exercise of its legitimate prerogatives".

40. AGCOM also said that this conclusion took into consideration the readjustment of the frequencies to be allocated under Resolution no. 277/13/CONS, reducing their number from six to three. According to AGCOM, the fee-based procedure would moreover ensure the fulfilment of the competition objectives of the measures agreed on with the European Commission to bring infringement procedure no. 2005/5086 to an end (see paragraph 6 above). Moreover, it was based on objective, transparent, non-discriminatory and proportionate criteria, and offered a way in for new entrants into the digital television market.

41. The applicant company brought enforcement proceedings (*giudizio di ottemperanza*) in the *Consiglio di Stato* to challenge AGCOM Resolution no. 136/19/CONS.

42. On 3 October 2019, the *Consiglio di Stato* dismissed the company's complaints in its judgment no. 6622. It observed that AGCOM had taken the financial interests of the State into consideration in its assessment of whether to retain the original bidding process or confirm the fee-based procedure, and that it had done so not because the legislature had required it to but because it had itself found that those interests were objectively justified and should be taken into consideration. It also stated that sufficient reasons had been given in Resolution no. 136/19/CONS as to how the fee-based procedure complied with the criteria set out in EU law.

43. On 14 May 2020 the European Commission discontinued the infringement procedure no. 2005/5086.

VI. OTHER RELEVANT DEVELOPMENTS

44. Article 1(1026)-(1038) of Law no. 205 of 27 December 2017 (the 2018 Budget Law) provided for the reconfiguration of the use rights for digital terrestrial television frequencies (the so-called "refarming of frequencies"). This followed on the one hand the reallocation of the 694-790 MHz frequency band to the fifth-generation telecommunications network (known as "the 5G network"), and, on the other hand, the transition of the

remaining frequencies available for broadcasting from the DVB-T transmission system to the (more advanced) DVB-T2 transmission system.

45. A particularly important provision of the legislation was the power given to AGCOM to adopt a new national plan for the allocation of frequencies for the digital terrestrial television service. AGCOM was required to define the criteria (i) for the conversion of use rights over frequencies existing at the date of entry into force of the law into use rights relating to transmission capacity ("*diritti d'uso di capacità trasmissiva*") in the national multiplexes in the new DVB-T2 transmission system, and (ii) for the allocation of the use rights over the new frequencies planned for the digital terrestrial television service.

46. AGCOM made its Resolutions nos. 290/18/CONS and 182/18/CONS under those provisions.

47. By Law no. 145 of 30 December 2018 (the 2019 Budget Law) the legislature added Article 1(1031-*bis*) to the 2018 Budget Law. This provided that the additional transmission capacity that was available at the national level and the terrestrial frequencies which were additional to those intended for the conversion of existing use rights had to be allocated by a fee-based procedure without further invitations to submit bids. That procedure was to be carried through by the Ministry of Economic Development by 30 November 2019, using the process that AGCOM would have set up by 30 September 2019, which itself would be based on certain principles and criteria.

48. Several sets of proceedings were brought in the administrative court by companies operating digital terrestrial television networks (including the applicant company) about AGCOM's proposals for implementing those provisions. The *Consiglio di Stato* decided to ask the CJEU for a preliminary ruling on the interpretation of several EU laws. The *Consiglio di Stato* asked, *inter alia*, whether Articles 3(3) and (3a), and 8 and 9 of the Framework Directive, and Articles 5, 6, 8, 9 and 45 of Directive (EU) 2018/1972 of the European Parliament and of the Council of 11 December 2018 establishing the European Electronic Communications Code (Recast), OJ 2018 L 321, p. 36 ("the European Electronic Communications Code") precluded a system of the kind provided by Article 1(1031-*bis*) of the 2018 Budget Law as amended by the 2019 Budget Law, "which deprives the independent administrative authority of its regulatory functions, or at least significantly limits them, by providing for the award of additional transmission capacity by means of a fee-based procedure which includes those who currently hold the rights to the frequencies, with that award being granted to the highest offeror" (orders no. 10415, 10416 and 10419, deposited at the registry on 1 December 2023).

49. On 11 September 2025 in its judgment in *Cairo Network*, C-764/23, C-765/23 and C-766/23, EU:C:2025:691, the CJEU reiterated that when regulating how rights to use radio frequencies should be allocated NRAs

should be free of outside interference (see paragraph 28 above). It distinguished the questions addressed in its judgment of 26 July 2017 from those currently before it. The present issue was not legislative intervention that might call into question a process after it had begun but rather the definition in advance of certain requirements with which the NRA had to comply when organising and implementing that process. It reiterated that Member States enjoy a margin of appreciation in deciding whether a selection procedure should be operated free of charge or whether it should be fee-based. It also held that it was the States' responsibility (and not specifically the responsibility of NRAs) to ensure that allocation was based on objective, transparent, non-discriminatory and proportionate criteria (see above paragraph 30). Given the roles of NRAs and the political bodies of Member States, the principles governing the organisation of procedures for the allocation of use rights could be defined by a national legislature, provided that it "confine[d] itself to defining principles which d[id] not have the effect of depriving the national regulatory authority of a substantial margin of discretion in defining the technical details of the procedure for allocating those rights and which require[d] it merely to implement a procedure defined by that legislature".

RELEVANT LEGAL FRAMEWORK AND PRACTICE

I. RELEVANT DOMESTIC LAW

50. The main developments in the Italian television broadcasting sector, from its origins to the beginning of the digital switchover, are described in *Centro Europa 7 S.r.l. and Di Stefano v. Italy* [GC], no. 38433/09, §§ 49-68, ECHR 2012.

51. Article 7 of Legislative Decree no. 259 of 1 August 2003 ("Electronic Communications Code") as amended by Legislative Decree no. 70 of 28 May 2012 and as in force at the material time, read as follows:

> "... 3 *bis*. The [AGCOM] shall exercise its powers in an impartial, transparent and timely manner.
>
> 3 *ter*. The [AGCOM] shall have adequate financial and human resources to carry out the tasks assigned to it.
>
> The Authority shall operate independently and shall not solicit or accept instructions from any other body in the performance of its functions ..."

52. Article 1337 of the Civil Code provides that in pre-contractual relations the parties must act in good faith.

II. EUROPEAN UNION LAW AND PRACTICE

A. Relevant European Union law

53. Recitals 11 and 21 of the Framework Directive as in force at the relevant time were worded as follows:

> "(11) In accordance with the principle of the separation of regulatory and operational functions, Member States should guarantee the independence of the national regulatory authority or authorities with a view to ensuring the impartiality of their decisions. This requirement of independence is without prejudice to the institutional autonomy and constitutional obligations of the Member States or to the principle of neutrality with regard to the rules in Member States governing the system of property ownership laid down in Article [345 TFEU]. ...
>
> ...
>
> (21) Member States may use, *inter alia*, competitive or comparative selection procedures for the assignment of radio frequencies as well as numbers with exceptional economic value. In administering such schemes, national regulatory authorities should take into account the provisions of Article 8 [of the Framework Directive].'

54. The Framework Directive was amended by Directive 2009/140/EC of the European Parliament and of the Council of 25 November 2009, which also amended Directive 2002/19/EC on access to, and interconnection of, electronic communications networks and associated facilities, and the Authorisation Directive. Recital 13 of that Directive, as in force at the relevant time, stated:

> "(13) The independence of the national regulatory authorities should be strengthened in order to ensure a more effective application of the regulatory framework and to increase their authority and the predictability of their decisions. To this end, express provision should be made in national law to ensure that, in the exercise of its tasks, a national regulatory authority responsible for ex-ante market regulation or for resolution of disputes between undertakings is protected against external intervention or political pressure liable to jeopardise its independent assessment of matters coming before it. Such outside influence makes a national legislative body unsuited to act as a national regulatory authority under the regulatory framework ..."

55. Article 3 of the Framework Directive, as amended by Directive 2009/140/EC and in force at the relevant time, provided:

> "1. Member States shall ensure that each of the tasks assigned to national regulatory authorities in this Directive and the Specific Directives is undertaken by a competent body.
>
> 2. Member States shall guarantee the independence of national regulatory authorities by ensuring that they are legally distinct from and functionally independent of all organisations providing electronic communications networks, equipment or services. Member States that retain ownership or control of undertakings providing electronic communications networks and/or services shall ensure effective structural separation of the regulatory function from activities associated with ownership or control.

3. Member States shall ensure that national regulatory authorities exercise their powers impartially, transparently and in a timely manner. Member States shall ensure that national regulatory authorities have adequate financial and human resources to carry out the task assigned to them.

3a. Without prejudice to the provisions of paragraphs 4 and 5, national regulatory authorities responsible for ex-ante market regulation or for the resolution of disputes between undertakings in accordance with Article 20 or 21 of this Directive shall act independently and shall not seek or take instructions from any other body in relation to the exercise of these tasks assigned to them under national law implementing Community law. This shall not prevent supervision in accordance with national constitutional law. Only appeal bodies set up in accordance with Article 4 shall have the power to suspend or overturn decisions by the national regulatory authorities ..."

56. The Framework Directive and the Authorisation Directive were repealed by the European Electronic Communications Code with effect from 21 December 2020. The relevant articles of the European Electronic Communications Code read as follows.

"Article 5 - **National regulatory and other competent authorities**

1. Member States shall ensure that each of the tasks laid down in this Directive is undertaken by a competent authority.

Within the scope of this Directive, the national regulatory authorities shall be responsible at least for the following tasks:

(a) implementing ex ante market regulation, including the imposition of access and interconnection obligations;

...

(c) carrying out radio spectrum management and decisions or, where those tasks are assigned to other competent authorities, providing advice regarding the market-shaping and competition elements of national processes related to the rights of use for radio spectrum for electronic communications networks and services;

...

Article 6

Independence of national regulatory and other competent authorities

1. Member States shall guarantee the independence of national regulatory authorities and of other competent authorities by ensuring that they are legally distinct from, and functionally independent of, any natural or legal person providing electronic communications networks, equipment or services ...

2. Member States shall ensure that national regulatory and other competent authorities exercise their powers impartially, transparently and in a timely manner.

...

Article 8

Political independence and accountability of the national regulatory authorities

1. ... national regulatory authorities shall act independently and objectively, including in the development of internal procedures and the organisation of staff, shall

operate in a transparent and accountable manner in accordance with Union law, and shall not seek or take instructions from any other body in relation to the exercise of the tasks assigned to them under national law implementing Union law. This shall not prevent supervision in accordance with national constitutional law. Only appeal bodies set up in accordance with Article 31 shall have the power to suspend or overturn decisions of the national regulatory authorities.

...

Article 9

Regulatory capacity of national regulatory authorities

1. Member States shall ensure that national regulatory authorities have separate annual budgets and have autonomy in the implementation of the allocated budget. Those budgets shall be made public.

..."

57. Article 45 (1) of the European Electronic Communications Code establishes, *inter alia*, that rights to use the radio spectrum for electronic communications networks and services must be allocated on the basis of objective, transparent, pro-competitive, non-discriminatory and proportionate criteria.

B. The European Commission's Rule of Law Report of 24 July 2024

58. The 2024 Rule of Law Report of the European Commission (COM/2024/800 final) stated:

"A free and pluralistic media environment is essential for the rule of law, with free and independent media playing an important role as watchdogs of democracy and holding power to account. Pressure or control over the media from politicians or the state undermines media freedom, as well as people's freedom to seek, receive and impart information ...

National media regulators play an essential role in upholding media pluralism when they are functionally and effectively independent and exercise their powers in an impartial and transparent way, with sufficient resources."

III. COUNCIL OF EUROPE MATERIALS

A. Recommendation Rec(2000)23 of the Committee of Ministers to member States on the independence and functions of regulatory authorities for the broadcasting sector

59. On 20 December 2000 the Committee of Ministers adopted Recommendation Rec(2000)23 on the independence and functions of regulatory authorities for the broadcasting sector, which recommended, *inter alia*, that States should:

"a. establish, if they have not already done so, independent regulatory authorities for the broadcasting sector;

b. include provisions in their legislation and measures in their policies entrusting the regulatory authorities for the broadcasting sector with powers which enable them to fulfil their missions, as prescribed by national law, in an effective, independent and transparent manner, in accordance with the guidelines set out in the appendix to this recommendation;

c. ensur[e] the effective respect of the independence of the regulatory authorities with regard to any interference in their activities."

60. The relevant sections of the Appendix to Recommendation Rec(2000)23 read as follows:

"Guidelines concerning the independence and functions of regulatory authorities for the broadcasting sector

I. General legislative framework

1. Member states should ensure the establishment and unimpeded functioning of regulatory authorities for the broadcasting sector by devising an appropriate legislative framework for this purpose. The rules and procedures governing or affecting the functioning of regulatory authorities should clearly affirm and protect their independence.

...

IV. Powers and competence

Regulatory powers

12. Subject to clearly defined delegation by the legislator, regulatory authorities should have the power to adopt regulations and guidelines concerning broadcasting activities ...

Granting of licences

13. One of the essential tasks of regulatory authorities in the broadcasting sector is normally the granting of broadcasting licences. The basic conditions and criteria governing the granting and renewal of broadcasting licences should be clearly defined in the law.

14. The regulations governing the broadcasting licensing procedure should be clear and precise and should be applied in an open, transparent and impartial manner. The decisions made by the regulatory authorities in this context should be subject to adequate publicity.

...

16. Once a list of frequencies has been drawn up, a call for tenders should be made public in appropriate ways by regulatory authorities. Calls for tender should define a number of specifications, such as type of service, minimum duration of programmes, geographical coverage, type of funding, any licensing fees and, as far as necessary for those tenders, technical parameters to be met by the applicants ...

17. Calls for tender should also specify the content of the licence application and the documents to be submitted by candidates. In particular, candidates should indicate their company's structure, owners and capital, and the content and duration of the programmes they are proposing."

B. Recommendation Rec(2003)9 of the Committee of Ministers to member States on measures to promote the democratic and social contribution of digital broadcasting

61. On 23 May 2003 the Committee of Ministers adopted Recommendation Rec(2003)9 on measures to promote the democratic and social contribution of digital broadcasting, which recommended, *inter alia*, that States should:

> "a. create adequate legal and economic conditions for the development of digital broadcasting that guarantee the pluralism of broadcasting services and public access to an enlarged choice and variety of quality programmes, including the maintenance and, where possible, extension of the availability of transfrontier services;
>
> b. protect and, if necessary, take positive measures to safeguard and promote media pluralism, in order to counterbalance the increasing concentration in this sector ..."

62. The relevant sections of the Appendix to Recommendation Rec(2003)9 read as follows:

> "Basic principles for digital broadcasting
>
> General principles
>
> 1. Given that, from a technological point of view, the development of digital broadcasting is inevitable, it would be advantageous if, before proceeding with the transition to digital environment, member states, in consultation with the various industries involved and the public, were to draw up a well-defined strategy that would ensure a carefully thought-out transition, which would maximise its benefits and minimise its possible negative effects.
>
> 2. Such a strategy, which is particularly necessary for digital terrestrial television, should seek to promote co-operation between operators, complementarity between platforms, the interoperability of decoders, the availability of a wide variety of content, including free-to-air radio and television services, and the widest exploitation of the unique opportunities which digital technology can offer following the necessary reallocation of frequencies.
>
> 3. Given that simultaneous analogue and digital broadcasting is costly, member states should seek ways of encouraging a rapid changeover to digital broadcasting while making sure that the interests of the public as well as the interests and constraints of all categories of broadcasters, particularly non-commercial and regional/local broadcasters, are taken into account. In this respect, an appropriate legal framework and favourable economic and technical conditions must be provided.
>
> 4. When awarding digital broadcasting licences, the relevant public authorities should ensure that the services on offer are many and varied, and encourage the establishment of regional/local services that meet the public's expectations at these levels".

C. Declaration of the Committee of Ministers on the independence and functions of regulatory authorities for the broadcasting sector

63. On 26 March 2008 the Committee of Ministers adopted the Declaration on the independence and functions of regulatory authorities for the broadcasting sector. It stated its position as follows:

> "The Committee of Ministers of the Council of Europe
>
> ...
>
> I. Affirms that the 'culture of independence' should be preserved and, where they are in place, independent broadcasting regulatory authorities in member states need to be effective, transparent and accountable and therefore;
>
> II. Declares its firm attachment to the objectives of the independent functioning of broadcasting regulatory authorities in member states;
>
> III. Calls on member states to:
>
> – implement, if they have not yet done so, Recommendation Rec(2000)23 on the independence and functions of regulatory authorities for the broadcasting sector, with particular reference to the guidelines appended thereto, and having regard to the opportunities and challenges brought about by political, economic and technological changes in Europe;
>
> – provide the legal, political, financial, technical and other means necessary to ensure the independent functioning of broadcasting regulatory authorities, so as to remove risks of political or economic interference ..."

D. Recommendation CM/Rec(2018)1 of the Committee of Ministers to member States on media pluralism and transparency of media ownership

64. On 7 March 2018 the Committee of Ministers adopted the Recommendation CM/Rec(2018)1 on media pluralism and transparency of media ownership. The Appendix to the recommendation stated, *inter alia*:

> "1.5. In a favourable environment for freedom of expression, media regulatory authorities and other bodies entrusted with responsibility for regulating, monitoring other (media) service providers or media pluralism, or having any of the other functions set out in this Recommendation, should be able to carry out their remit in an effective, transparent and accountable manner. A prerequisite for them to be able to do so is that they themselves enjoy independence that is guaranteed by law and borne out in practice.
>
> 1.6. The independence of the authorities and bodies referred to in the previous paragraph should be guaranteed by ensuring that they have open and transparent appointment and dismissal procedures; have adequate human and financial resources and autonomous budget allocation; function according to transparent procedures and decision making; are open to communication with the public; have the power to take autonomous, proportionate decisions and enforce them effectively and that their decisions are subject to appeal."

E. "The independence of media regulatory authorities in Europe: IRIS Special": a document published by the European Audiovisual Observatory (Council of Europe)

65. The European Audiovisual Observatory (Council of Europe) published "The independence of media regulatory authorities in Europe: IRIS Special" in September 2019. This document focuses on the independence of regulatory authorities and bodies in the broadcasting and audiovisual media sector in Europe and underlines, among other things, that:

> "These entities have proliferated according to the different legal traditions of the respective countries they belong to. They do not, therefore, conform [to] one, single model. Nonetheless, they reflect a common approach of sorts with regard to the institutional set-up of regulatory governance. The independence of these entities is particularly important because it contributes to the broader objective of media independence, which is in itself an essential component of democracy.
>
> ...
>
> ... Whereas demands of freedom of speech and freedom of the media on the one hand require states to refrain from interference with media production and to protect the independence of media organisations, it is widely accepted that states at the same time are required to set a normative framework in order to guarantee the existence of a diversified and pluralistic media landscape. The concept and institution of an independent regulatory authority is seen as the default choice for the regulatory governance of the audiovisual media sector, to ensure that interventions with the media are impartial and at arm's length from government and stakeholder interests.
>
> ...
>
> Independent regulatory authorities ... have virtually become the natural institutional form for regulatory governance in the broadcasting and audiovisual media sector. As an institutional set-up, they can contribute to two aspects that are specific to the audiovisual media sector:
>
> 1. the objective of regulation in the media sector to guarantee media freedoms; and
>
> 2. the specific and at times sensitive relationship between the media sector and elected as well as non-elected politicians ...
>
> ... this is however not to say that independence is the same concept as freedom, but that there are specific links between the two. ..."

66. With specific regard to the independence of the regulatory authority in Italy, the document reports the following:

> "AGCOM is a public entity formally independent from the government, since its organisational, financial and accounting autonomy are guaranteed by the primary law. However, independent regulatory authorities are not explicitly mentioned in the Italian constitution, which, on the contrary, establishes the principle of unity of the political and administrative direction of the government, which the constitution attributes to the President of the Council of Ministers, as well as the principle of ministerial responsibility of the public administration.
>
> Nevertheless, legal doctrine has sustained the concept that independent authorities gain (part of) their legitimacy in consideration of the high technical complexity of the

sectors they must supervise and the corresponding high-level expertise they provide, to the benefit of both the government and the entities under supervision."

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 10 OF THE CONVENTION

67. The applicant company complained that the suspension and subsequent annulment of the original bidding process had breached its right to freedom of expression under Article 10 of the Convention, which reads as follows:

"1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This Article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.

2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary."

A. Admissibility

1. Compliance with the six-month time-limit[1]

(a) The parties' submissions

(i) The Government

68. The Government submitted that the judgment of the *Consiglio di Stato* no. 5929 of 2018 was the domestic "final decision" in respect of the complaint which the applicant company had then raised before the Court. In that judgment it was held that replacing the original bidding process with a fee-based selection procedure was not unlawful in substance but was a choice that it was open to AGCOM to make in the exercise of its autonomy and independence.

69. Subsequent enforcement proceedings against the decision of AGCOM to confirm the fee-based selection procedure could not put that judgment into question and, therefore, were not a remedy for the replacement of the original procedure with the new allocation method.

[1] Protocol No. 15 to the Convention has shortened to four months from the final domestic decision the time-limit provided for by Article 35 § 1 of the Convention. However, in the present case the six-month period still applies, given that the final domestic decision was taken prior to 1 February 2022, date of entry into force of the new rule (pursuant to Article 8 § 3 of Protocol No. 15 to the Convention).

70. Since the judgment no. 5929 of 2018 had become final on 16 April 2019, the applicant company had failed to comply with the then six-month time-limit.

(ii) The applicant company

71. The applicant company submitted that it would be unreasonable to expect it to have lodged an application before the Court immediately after the delivery of judgment no. 5929 of 2018, since that judgment was favourable to it. It recognised that by suspending and then annulling the original bidding process the national authorities had unlawfully impinged on the regulatory power of AGCOM. Moreover, at that time, the outcome of the case was still unclear, as judgment no. 5929 of 2018 required AGCOM to decide, without undue political interference, whether to retain the original bidding process or to replace it with the fee-based selection procedure. If the applicant company had lodged an application with the Court immediately it would have been inadmissible as at that time the matter was still being considered by the national authorities.

(b) The Court's assessment

72. As a rule, the six-month period runs from the date of the final decision in the process of exhaustion of domestic remedies (see *Lekić v. Slovenia* [GC], no. 36480/07, § 65, 11 December 2018).

73. The Court notes that the applicant company challenged the suspension and subsequent annulment of the original bidding process in the domestic administrative courts. During appeals in the proceedings, the *Consiglio di Stato* asked the CJEU to give a preliminary ruling on the interpretation of several provisions of EU law. Following the ruling of the CJEU of 26 July 2017, in its judgment no. 5929 of 2018 the *Consiglio di Stato* declined to apply Article 3 *quinquies* of Decree-Law no. 16 of 2012 because it was contrary to Article 3(3a) of the Framework Directive (see paragraph 32 above). It did not however rule on the question of whether the replacement of the original bidding process with the fee-based selection procedure should stand, as it found that this decision entailed an assessment of the public interest which it was primarily for AGCOM to make. The *Consiglio di Stato* left it to the regulatory authority to decide whether the allocation of the digital terrestrial frequencies should be carried out by resuming and finalising the original bidding process or by confirming the results of the fee-based selection procedure. It also highlighted that, once this reassessment had taken place, the decision could be reviewed by a court (see paragraphs 33-34 above).

74. The Court further notes that, while the applicant company's claims for compensation were dismissed in judgment no. 5929 of 2018, the *Consiglio di Stato* observed that, at the end of the reassessment to be carried out by

AGCOM, the applicant company could obtain redress for the annulment of the original bidding process by having the frequencies it had applied for allocated to it and by obtaining compensation for the delay and its inability to operate for several years (see paragraphs 35-36 above).

75. In these circumstances, the Court finds that judgment no. 5929 of 2018 did not finally decide the matter because important aspects of the alleged breach of Article 10 of the Convention remained open for reassessment by AGCOM and subject to further judicial review. In particular, the applicant company could challenge – as it did – the reassessment by the regulatory authority, even though that review was limited to issues which had not been decided in the *Consiglio di Stato*'s judgement no. 5929 of 2018.

76. The Court reiterates that Article 35 § 1 cannot be interpreted so as to require applicants to inform the Court of their complaint before their position has been finalised at the domestic level: otherwise the principle of subsidiarity would be breached (see, among many others, *Lekić*, cited above, *ibid.*). It therefore finds it reasonable for the applicant company to have waited for AGCOM's reassessment and for the final resolution of the complaint filed with the *Consiglio di Stato*, before submitting its application to the Court.

77. The application therefore cannot be rejected for failure to comply with the six-month time-limit.

2. *Objection on the grounds of the lack of victim status and no significant disadvantage*

(a) The parties' submissions

(i) The Government

78. The Government objected that the applicant company could not claim to be a victim of the violation complained of, since following the annulment of the original bidding process it had received compensation under Article 3 *quinquies* of Decree-Law no. 16 of 2012.

79. The Government further argued that, in any event, the applicant company had not suffered a significant disadvantage within the meaning of Article 35 § 3 (b) of the Convention. They submitted that between 2012 and 2022 it had had other opportunities to exercise use rights over digital frequencies but had failed to take them up for its own business reasons. In particular

(i) it had deliberately decided not to take part in the fee-based procedure, even though no legal, technical or financial barrier prevented it from doing so;

(ii) in June 2012 it had been awarded the use rights for a frequency without its having had to take part to any selection procedure, but it had failed to submit the technical project whose approval was necessary to exercise that right; and

(iii) since 2019 it could have obtained specific use rights for other frequencies by putting in place commercial agreements with other operators, by taking part in a further fee-based procedure which had been carried out in 2020 or by taking part in a new bidding procedure in 2022. However, it deliberately decided to not pursue either of the first two options and it was excluded from the third one for failing to submit the required bank guarantee.

(ii) The applicant company

80. The applicant company disagreed with the Government's objections. It argued that the compensation it had received under Article 3 *quinquies* of Decree-Law no. 16 of 2012 was purely symbolic, did not redress the damage caused by the contested measures and covered only a small part of the expenses it had incurred by taking part in the original bidding process.

81. As to its decision not to participate in the fee-based procedure, the applicant company argued that it considered the procedure unlawful and unfair, particularly because the frequencies available for allocation to new operators had been reduced whereas those who already held frequencies had obtained theirs directly and free of charge.

82. The applicant company claimed that it had not been able to operate the frequencies that, according to the Government, it had held since 2012, because of the national authorities' failure to comply with their obligations.

83. It also claimed that the procedures set up for the allocation of new frequencies from 2020 onwards repeated earlier violations of EU and national law and continued to discriminate against it and to favour operators who already held use rights.

(b) The Court's assessment

(i) Regarding the alleged lack of victim status

84. It is the settled case-law of the Court that the word "victim" in the context of Article 34 of the Convention denotes a person directly affected by the act or omission at issue, the existence of a violation of the Convention being conceivable even in the absence of prejudice; prejudice is relevant only in the context of Article 41. Consequently, a decision or measure favourable to an applicant is not in principle sufficient to deprive him of his status as a "victim" unless the national authorities have acknowledged, either expressly or in substance, and then afforded redress for, the breach of the Convention (see, for example, *Nada v. Switzerland* [GC], no. 10593/08, § 128, ECHR 2012, with further references).

85. Turning to the present case, the Court observes that the applicant company complains about the suspension and annulment of the original bidding process. Quite apart from the issue of whether the sum awarded under Article 3 *quinquies* of Decree-Law no. 16 of 2012 (see paragraph 18 above) was sufficient and appropriate, the domestic authorities have never

acknowledged, either expressly or in substance, the violation of the Convention alleged by the applicant company. The administrative courts dismissed the applicant company's complaint of a breach of Article 10 of the Convention at two levels. The Court further observes that, while the *Consiglio di Stato* recognised in its judgment no. 5929 of 16 October 2018 that Article 3 *quinquies* of Decree-Law no. 16 of 2012 constituted an undue political interference in the exercise of AGCOM's independent functions (see paragraph 32 above), when the Authority undertook the reassessment ordered in that judgment, it confirmed the annulment of the original bidding process, and referred in its reasoning to the need to comply with the contested legislative provision (see paragraph 39 above).

86. Lastly, before the Court the Government did not acknowledge that there had been any violation of the Convention. In those circumstances, and in the absence of any such acknowledgment, the Court considers that the applicant company can still claim to be a "victim" of a breach of its rights under Article 10 of the Convention.

87. The Government's objection in this regard must be dismissed.

(ii) Regarding the alleged lack of significant disadvantage

88. General principles with regard to the admissibility criterion of "significant disadvantage" may be found in *Sieć Obywatelska Watchdog Polska v. Poland*, no. 10103/20, § 24, 21 March 2024. In cases concerning freedom of expression the Court has reiterated that in applying this admissibility criterion due account should be taken of the importance of that freedom and its treatment should be subjected to careful scrutiny by the Court. That scrutiny should, among other things, contribute to a debate of general interest and consider whether a case involves the press or other news media (ibid., § 25, with further references).

89. The Court finds the alleged violation to be important to the applicant company. It is a network operator in the television-broadcasting sector and access to the digital terrestrial television market constituted a relevant aspect of its business. The suspension and subsequent annulment of the original bidding process therefore damaged the core of its activity. At the more general level, the Court observes that the allocation of digital terrestrial frequencies in Italy has been the object of an infringement procedure carried out by the European Commission and several sets of proceedings before national courts and the CJEU (see paragraphs 6, 48 and 49 above).

90. As to whether respect for human rights as defined in the Convention and the Protocols thereto requires an examination of the application on the merits, the Court observes that the existence of an appropriate legislative and administrative framework governing access to the audiovisual broadcasting sector is essential to guarantee effective media pluralism (see for example, with specific regard to the development of digital broadcasting, the recommendation Rec(2003)9 of the Committee of Ministers; paragraph 61

above). Therefore, irrespective of whether after the annulment of the original bidding process the applicant company had any fair opportunities to acquire and/or exercise use rights over broadcasting frequencies (which is disputed between the parties; see paragraphs 79 and 81-83 above), the application raises an issue that is not insignificant, either at the national level or in Convention terms.

91. Accordingly, the Court does not find it appropriate to reject this complaint with reference to Article 35 § 3 (b) of the Convention, and dismisses the Government's objection regarding the alleged lack of a significant disadvantage.

(iii) Conclusion as to admissibility

92. The Court further notes that this complaint is neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. It must therefore be declared admissible.

B. Merits

1. The parties' submissions

(a) The applicant company

93. The applicant company complained that it would have been awarded the A1 frequency had the original bidding process not been annulled since

(i) it was the only participant allowed to submit a bid, and

(ii) its application had complied with the criteria set out in the call for bids.

It submitted an expert technical report to support its claim that, if the commission had completed the technical assessment required by the original process, its application would have been given the 51 points necessary to be allocated the frequency (see paragraph 10 above).

94. The applicant company further argued that by repeatedly interfering with AGCOM's independent decisions on the allocation of digital terrestrial frequencies and by failing to put in place a foreseeable regulatory framework, the national authorities did not ensure adequate protection against arbitrary interference with the right to freedom of expression and undermined the principle of pluralism in television broadcasting and the rule of law.

95. The applicant company also complained that after the judgment of the *Consiglio di Stato* no. 5929 of 2018 AGCOM should have carried out an independent and autonomous assessment of what would be in the public interest but had failed to do so. AGCOM's decision to confirm the fee-based selection procedure was based on the same criteria and objectives which Article 3 *quinquies* of Decree-Law no. 16 of 2012 had previously unlawfully imposed on it.

(b) The Government

96. The Government contested the claim that the suspension and subsequent annulment of the original bidding process had constituted an interference with the applicant company's right to freedom of expression under Article 10 § 1 of the Convention. They argued that participation in the original bidding process did not guarantee any allocation of frequencies. When the original bidding process was annulled, the necessary technical assessment of the applications had not yet taken place and, even if it had, the applicant company would have been unlikely to be positively rated. They also disputed the applicant company's victim status on the same basis and asserted that the complaint was inadmissible under Article 35 § 3 (b) of the Convention.

97. The Government further argued that the national regulatory framework did not lack clarity and precision. They asserted that it had allowed the applicant company to foresee the conditions under which it was taking part in the procedure for allocation of digital frequencies with a sufficient degree of certainty. Those conditions had also been clarified by the CJEU.

98. The Government contested the applicant company's assertion that there had been a violation of the principle of pluralism in television broadcasting. On the one hand, both free and fee-based selection procedures were generally permitted under EU law, as had been confirmed by the judgment of the CJEU of 26 July 2017 (see paragraph 28 above) and by the fact that on 14 May 2020 the European Commission had formally discontinued infringement procedure no. 2005/5086**.** On the other hand, the fee-based selection procedure did allow the entry of new operators into the market, as demonstrated by the allocation of frequencies to C.N.

99. As to AGCOM's decision to confirm the replacement of the original bidding process with the fee-based procedure, the Government argued that it fell within the powers of the legislature to give AGCOM specific economic objectives to pursue in the allocation of use rights over frequencies. Moreover AGCOM had considered not only the financial interests of the State in allocating frequencies in return for payment but also other relevant factors, such as the advantages to be gained by selecting financially reliable companies which would be able to build high-coverage networks and the need to reduce the number of multiplexes available for digital television broadcasting in order to solve problems of interference and issues of international coordination.

2. The Court's assessment

(a) Whether there was an interference

100. The Government objected that the applicant company had not suffered any prejudice since it had had no legitimate expectation of being

awarded use rights over any frequencies when the original bidding process was annulled. Having considered their submissions, the Court finds that although the Government also relied on Articles 34 and 35 § 3 (b) of the Convention, this objection should be seen as disputing the applicant company's claim that the contested measures constituted an interference with its right to freedom of expression. It will consequently be examined under that head only.

101. The Court observes that the present case differs from *Centro Europa 7 S.r.l. and Di Stefano v. Italy* [GC], no. 38433/09, § 137, ECHR 2012, where the applicant company was granted a licence for analogue terrestrial television broadcasting but was *de facto* unable to transmit programmes since it was not allocated any broadcasting frequencies. In the present case, the rules governing the digital switchover did not require operators to obtain an individual licence to broadcast. Any body with a general authorisation to carry out the activities of a network operator could bid for the allocation of use rights for digital terrestrial frequencies (see paragraph 7 above). As the CJEU observed (see paragraph 31 above), at the time of the annulment of the original bidding process the applicant company had not yet been awarded any frequencies, nor had it received any precise, unconditional assurances that it would be awarded them in future. The Court further notes that allocation was subject to, *inter alia*, a positive assessment by a commission against a certain number of technical and financial criteria. In these circumstances, the Court agrees with the Government that, pending that assessment, the applicant company could not claim to be entitled to the frequency it had applied for, even if it was the only participant allowed to bid.

102. The Court observes however that in several cases concerning the distribution of audiovisual resources it has found that limitations on the ability to apply for, or the refusal of an application for, a broadcasting licence may also constitute an interference with the exercise of the rights guaranteed by Article 10 § 1 of the Convention (see, for example, *Informationsverein Lentia and Others v. Austria*, 24 November 1993, § 27, Series A no. 276, and *United Christian Broadcasters Ltd v. the United Kingdom* (dec.), no. 44802/98, 7 November 2000; *Meltex Ltd and Movsesyan v. Armenia*, no. 32283/04, § 74, 17 June 2008, and, more recently, *Objective Television and Radio Broadcasting Company and Others v. Azerbaijan*, no. 257/12, § 70, 18 February 2025).

103. In the present case the contested measures prevented the applicant company from receiving a final decision on the merits of its application for allocation of use rights over frequencies. The rules which governed the allocation of frequencies when it asked to take part in the original bidding process were revoked and the call for bids was annulled and replaced with a new procedure with significantly different conditions and criteria for allocation, including a reduced number of multiplexes available for

competition and the introduction of a financial barrier to bid (see paragraphs 19 and 21 above).

104. Irrespective of whether the new procedure was *per se* compatible with the principle of pluralism in television broadcasting – an issue which falls outside the scope of the Court's review in this case – the Court finds that the annulment of the procedure to which the applicant company had participated and its replacement by a substantially different one undermined the applicant company's ability to obtain use rights over digital terrestrial frequencies and therefore constituted an interference with its freedom to impart information and ideas.

105. It must therefore be determined whether this interference was "prescribed by law", pursued one or more of the legitimate aims under the third sentence of paragraph 1 of Article 10 or under paragraph 2 thereof, and was "necessary in a democratic society".

106. The Court observes that under the third sentence of Article 10 § 1 States are permitted to regulate the way in which broadcasting is organised in their own territories – particularly in respect of its technical aspects - by means of a licensing system. The granting of a licence – or, as in the present case, the award of use rights over frequencies – may also be made conditional on such matters as the nature and objectives of a proposed station, its potential audience at the national, regional or local level, the rights and needs of a specific audience or the obligations deriving from international legal instruments. However, the compatibility of such interferences with Convention rights must be assessed in the light of the requirements of paragraph 2 of Article 10 (see *Objective Television and Radio Broadcasting Company and Others*, cited above, §§ 71-72, and case-law cited therein).

107. The Court observes that the applicant company not only asserted that the suspension and annulment of the original bidding process had unlawfully undermined its right to impart information and ideas but also complained that the regulatory framework was unforeseeable, unable to guarantee pluralism in television broadcasting and in contrast with the rule of law.

108. The Court is of the opinion that, in the present case, the negative obligation of the State not to interfere is linked to the question as to whether the State complied with its positive obligation to put in place a proper legal and administrative framework guaranteeing media pluralism (see, *mutatis mutandis*, *NIT S.R.L. v. the Republic of Moldova* [GC], no. 28470/12, §§ 147-48, 5 April 2022; see also *Centro Europa 7 S.r.l. and Di Stefano*, cited above, § 134).

(b) Whether the interference was prescribed by law

(i) General principles

109. The first step in the Court's examination is to determine whether the contested measures were "prescribed by law" within the meaning of

Article 10. The general principles in this regard were recently summarised in *NIT S.R.L.* (cited above, §§ 157-61).

110. The Court reiterates that "law" must be understood to include both statute law – also encompassing enactments of lower ranking statutes and regulations made by professional regulatory bodies under independent rule-making powers delegated to them by Parliament – and judge-made "law" (ibid., § 157). It may also include rules of international law (*Groppera Radio AG and Others v. Switzerland*, 28 March 1990, § 68, Series A no. 173; *Autronic AG v. Switzerland*, 22 May 1990, § 57, Series A no. 178).

111. No interference can be considered to be "prescribed by law" unless it complies with the relevant domestic law. It is firstly for the national authorities, notably the courts, to interpret and apply domestic law, even in those fields where the Convention "incorporates" the rules of that law, since the national authorities are, in the nature of things, particularly qualified to settle the issues arising in this connection. Unless their interpretation is arbitrary or manifestly unreasonable, the Court's role is confined to ascertaining the effects of that interpretation and its compatibility with the Convention (see *Almeida Arroja v. Portugal*, no. 47238/19, § 52, 19 March 2024, and *Rovshan Hajiyev v. Azerbaijan*, nos. 19925/12 and 47532/13, § 57, 9 December 2021; see also, in the context of Article 8, *Mustafa Sezgin Tanrıkulu v. Turkey*, no. 27473/06, § 53, 18 July 2017).

112. The Court reiterates further that the expression "prescribed by law" in the second paragraph of Article 10 also refers to the quality of the law in question, which should be accessible to the person concerned and foreseeable as to its effects (*NIT S.R.L.*, cited above, § 158).

113. The notion of "quality of the law" requires, as a corollary of the foreseeability test, that the law be compatible with the rule of law. It thus implies that there must be adequate safeguards in domestic law against arbitrary interferences by public authorities. In matters affecting fundamental rights it would be contrary to the rule of law, one of the basic principles of a democratic society enshrined in the Convention, for a legal discretion granted to the executive to be expressed in terms of an unfettered power. Consequently, the law must indicate with sufficient clarity the scope of any such discretion conferred on the competent authorities and the manner of its exercise (see *Selahattin Demirtaş v. Turkey (no. 2)* [GC], no. 14305/17, § 249, 22 December 2020; *Unifaun Theatre Productions Limited and Others v. Malta*, no. 37326/13, § 78, 15 May 2018, and, more recently, *Objective Television and Radio Broadcasting Company and Others*, cited above, § 74).

114. As regards licensing procedures in particular, the Court reiterates that the manner in which licensing criteria are applied in the licensing process must provide sufficient guarantees against arbitrariness – including a requirement that the licensing authority give reasons if it refuses to grant a broadcasting licence (ibid., § 75).

(ii) Application of these principles in the present case

115. The Court observes that the annulment of the original bidding process has a clear basis in Article 3 *quinquies* of Decree-Law no. 16 of 2012. However, Italy being a Member State of the European Union, in the course of the domestic proceedings, the CJEU gave a preliminary ruling under Art. 267 TFEU on the interpretation of the Framework Directive and clarified that its Article 3(3a) precluded "the annulment, by a national legislature, of an on-going selection procedure for the allocation of radio frequencies conducted by the competent NRA in circumstances such as those of the case in the main proceedings which was suspended by ministerial order" (judgment of 26 July 2017; see paragraph 29 above).

116. On the basis of those findings, in its judgment no. 5929/2018 the *Consiglio di Stato* declined to apply Article 3 *quinquies* of Decree-Law no. 16 of 2012 as incompatible with EU law. The Court observes that in the judgment it was also suggested that there was a principle preventing political authorities from interfering with the exercise of regulatory authorities' functions in purely domestic law (see paragraph 32 above; see also paragraph 66 above).

117. It is therefore clear that domestic law, as interpreted by the *Consiglio di Stato* in the light of the judgment of the CJEU, prevented the suspension by ministerial decree and the subsequent annulment by the legislature of the original bidding process. Moreover, even after the *Consiglio di Stato* had declined to apply Article 3 *quinquies* of Decree-Law no. 16 of 2012, the annulment of the original bidding process was confirmed by AGCOM on the basis of the same legislative provision. The contested measures therefore cannot be considered as prescribed by the law within the meaning of Article 10 of the Convention.

118. That finding that there was a failure to comply with domestic law is sufficient to conclude that the interference in the present case did not meet the Convention requirement of lawfulness.

119. However, given the particular circumstances of the present case and having regard to the parties' submissions on the law and the facts, the Court considers that it should examine further the applicant company's arguments concerning the foreseeability of the relevant legal framework and the adequacy of any safeguards against arbitrariness.

120. The Court observes that in the audiovisual media sector, and particularly in the context of the allocation of audiovisual resources, regulatory governance by an independent authority exercising clearly defined powers delegated by the legislature constitutes one of the main safeguards against arbitrary interference with the right to impart information and ideas (see also paragraphs 58 and 65 above).

121. The Court has stressed the important role which regulatory authorities play in upholding and promoting the freedom and pluralism of the media, and the need to ensure their independence given the delicate and

complex nature of this role (*NIT S.R.L.*, cited above, § 205). In this regard, the Court further observes that in Recommendation Rec(2000)23, the Committee of Ministers recommended that member States ensure "the effective respect of the independence of the regulatory authorities with regard to any interference in their activities", and their "unimpeded functioning ... by devising an appropriate legislative framework for this purpose" (see paragraph 60 above). The importance of independent regulatory authorities was reaffirmed in the Declaration of 26 March 2008, in which the Committee of Ministers called on member States to preserve a "culture of independence" among members of regulatory authorities, public authorities and other relevant stakeholders, and to provide "the legal, political, financial, technical and other means necessary to ensure the independent functioning of broadcasting regulatory authorities, so as to remove risks of political or economic interference" (see paragraph 63 above). More recently, in Recommendation CM/Rec(2018)1 the Committee of Ministers stressed that independence should be equally "guaranteed by law and borne out in practice" (see paragraph 64 above).

122. Turning to the facts of the present case, the Court observes that in order to overcome the objections raised by the European Commission during infringement procedure no. 2005/5086, AGCOM was given the task of laying down procedures for the allocation of use rights over digital terrestrial frequencies under section 8 *novies* of the Decree-Law no. 59 of 2008 (see paragraph 7 above). AGCOM decided on the criteria and opted for an allocation of digital terrestrial frequencies free of charge, on the original "beauty contest" bidding model (Resolution no. 181/09/CONS - see paragraph 8 above). The Court takes note of the Government's submission that the rules made by AGCOM were incorporated into law to provide them with a more solid legal basis (see paragraph 9 above). AGCOM issued Resolution no. 497/10/CONS, which gave detailed rules for the procedure for selecting who would be allocated use rights over digital terrestrial frequencies, in that framework. The call for bids was published on 8 July 2011 (see paragraphs 10-11 above).

123. The Italian legislature had therefore given AGCOM power to regulate the procedures for allocating digital terrestrial frequencies and the regulatory authority – in the exercise of that power – had laid down detailed criteria for the allocation. Those criteria were even incorporated into law to provide them with a more solid legal basis. The Court therefore finds that when the applicant company asked to take part in the bidding process (6 September 2011) and was allowed to do so (13 October 2011), it could reasonably expect that its application would be assessed according to the regulatory framework in force at that time (see paragraphs 12-13 above).

124. Against this background, the Court observes that the contested measures derived from political concerns raised in parliamentary debates about the opportunity to allocate digital terrestrial frequencies free of charge

(see paragraph 14 above). They specifically targeted the selection procedure after it had been launched and participants had been allowed to bid. It aimed at modifying the rules and criteria that AGCOM had legitimately decided in the exercise of its regulatory powers. The Court holds that the suspension by ministerial decree and the subsequent annulment by legislation of the original bidding process clearly amounted to an interference with the exercise of AGCOM's functions which undermined its independence.

125. The Court further observes that, after stating that Article 3 *quinquies* of Decree-Law no. 16 of 2012 did not apply because it was contrary to Article 3(3a) of the Framework Directive, in judgment no. 5929/2018 the *Consiglio di Stato* gave AGCOM the task of re-examining the regulatory framework retroactively to assess whether to retain the original bidding process or replace it with a fee-based selection procedure (see paragraph 34 above).

126. At the end of this reassessment, AGCOM confirmed the annulment of the original bidding process (Resolution no. 136/19/CONS). The Court observes that according to judgment no. 6622/2019 of the *Consiglio di Stato*, this decision was taken in full autonomy and independence (see paragraph 42 above). It is clear however that in its Resolution AGCOM expressly referred to Article 3 *quinquies* of Decree-Law no. 16 of 2012 and said it considered itself bound to comply with its policy directions (see paragraph 39 above).

127. Given that the annulment of the original bidding process was confirmed by AGCOM on the basis of the same legislative provision which the *Consiglio di Stato* had declined to apply because it would unlawfully undermine AGCOM's regulatory powers, the Court is not convinced that objective of restoring the independent exercise of AGCOM's functions was achieved in the present case.

128. In view of the foregoing considerations, the Court concludes that the legislative and administrative framework on the allocation of digital terrestrial frequencies was not foreseeable and did not provide adequate safeguards against arbitrariness required by the rule of law in a democratic society.

129. Accordingly, the interference with the applicant company's freedom of expression did not meet the Convention requirement of lawfulness since it did not comply with the relevant domestic law (see paragraph 118 above) nor with the "quality of the law" requirement under Article 10 of the Convention (paragraph 128 above). That being so, the Court is not required to determine whether the interference pursued a legitimate aim and, if so, whether it was proportionate to the aim sought to be attained.

130. There has therefore been a violation of Article 10 of the Convention.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

131. Article 41 of the Convention provides:

> "If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party."

A. Damage

132. The applicant company made the following claims in respect of pecuniary damage.

133. Firstly, it claimed 594,174,855.52 euros (EUR) for loss of the profit it would have derived from the broadcasting activities that it could not carry out because of the failure of the national authorities to allocate it frequencies. It also asked the Court to award a sum in equity for loss of the profit it could have made in other related segments of the audiovisual market.

134. Secondly, it claimed EUR 159,982 compensation for the costs of financing its participation in the original bidding process (EUR 69,232) and developing the plans for a television network for use in that process (EUR 90,750).

135. The applicant company also claimed EUR 10,000,000 in respect of non-pecuniary damage. It submitted that the Court should consider the conditions of prolonged uncertainty in which the applicant company had to carry out its business and the fact that the national legislature unlawfully interfered with an on-going selection procedure to overturn its outcome without awarding any actual redress.

136. The Government contested the applicant company's claims for loss of profit, arguing that at the time the original bidding process was annulled it had no legitimate expectation to be awarded any frequencies. They also submitted that the applicant company received compensation under Article 3 *quinquies* of Decree-Law no. 16 of 2012. As to the claims concerning the expenses incurred to take part in the procedure, the Government argued that the applicant company did not demonstrate that such expenses directly derived from its participation in the original bidding process.

137. The Court holds that where a loss of profit is alleged, it must be shown conclusively and must not be based on mere conjecture or probability. The Court has already observed that, pending the technical assessment by the commission, the applicant company had no claim to be allocated the frequency it had applied for (see paragraph 101 above; compare and contrast *Centro Europa 7 S.r.l. and Di Stefano*, cited above, §§ 219-20). In the present case, the Court does not discern any causal link between the violation found and the pecuniary damage alleged in respect of loss of profit; it therefore rejects the first part of the applicant company's claim.

138. The Government's objection in relation to the second part of the claim (financing and projecting costs) consisted of arguing that no causal connection between the expenses claimed and the violations alleged had been proved. However, having examined the documentary evidence submitted by

the applicant company, the Court finds that the unlawful annulment of the bidding process resulted in the costs to participate therein being sustained in vain. The Court finds that a causal nexus between the expenses in question and the violation found has been established and will apply the principle of *restitutio in integrum*. In determining the amount of the award under this head, the Court must take into account the fact that the applicant company was awarded some compensation at the domestic level under Article 3 *quinquies* of Decree-Law no. 16 of 2012.

139. The Court further considers that the violation of Article 10 of the Convention found in the present case must have caused the applicant company prolonged uncertainty in the conduct of its business and feelings of helplessness and frustration (see, *mutatis mutandis*, *Centro Europa 7 S.r.l. and Di Stefano*, cited above, § 221).

140. Having regard to the documents in its possession, the Court awards the applicant company EUR 113,828 in respect of pecuniary damage, plus any tax that may be chargeable. Bearing in mind the finding of a violation and ruling on an equitable basis, the Court also awards the applicant company EUR 12,000 in respect of non-pecuniary damage, plus any tax that may be chargeable. It dismisses the remainder of the applicant company' claims for compensation.

B. Costs and expenses

141. The applicant also claimed EUR 194,938.6 for the costs and expenses incurred before the domestic courts and EUR 217,560.45 for those incurred before the Court.

142. The Government contested the claims.

143. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these were actually and necessarily incurred and are reasonable as to quantum. That is to say, the applicant must have paid them, or be bound to pay them, pursuant to a legal or contractual obligation, and they must have been unavoidable in order to prevent the breaches found or to obtain redress. The Court requires itemised bills and invoices that are sufficiently detailed to enable it to determine to what extent the above requirements have been met (see *Ališić and Others v. Bosnia and Herzegovina, Croatia, Serbia, Slovenia and the former Yugoslav Republic of Macedonia* [GC], no. 60642/08, § 158, ECHR 2014).

144. With regard to the costs incurred in the domestic proceedings, the Court observes that, before applying to the Court, the applicant company exhausted the domestic remedies available to it under Italian law, since it instituted proceedings in the administrative courts, took part in the request to the CJEU for a preliminary ruling, and issued enforcement proceedings in the *Consiglio di Stato* to challenge AGCOM's Resolution no. 136/19/CONS. The

complexity and length of those proceedings must be emphasised. The Court therefore accepts that the applicant company incurred expenses in seeking redress for the violation of the Convention through the domestic legal system (see, *mutatis mutandis*, *Centro Europa 7 S.r.l. and Di Stefano*, cited above, § 224). Regard being had to the documents in its possession and the above criteria, the Court considers it reasonable to award the sum of EUR 35,000 for costs and expenses in the domestic proceedings, plus any tax that may be chargeable to the applicant company.

145. With regard to the costs and expenses relating to the proceedings before it, the Court notes that the applicant company submitted only a schedule of estimated legal fees ("*ipotesi di compenso liquidabile*"). The costs and expenses claimed were said to have been calculated in accordance with the domestic official Lawyers' Tariff (Decree of the Ministry of Justice no. 147 of 2022). The Court observes that no documentary evidence (bills or invoices) was submitted by the applicant company to show that the costs and expenses claimed by it were actually incurred nor did they submit any evidence that it was legally or contractually obliged to pay them. This claim must therefore be rejected because it has not been proved.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the application admissible;

2. *Holds* that there has been a violation of Article 10 of the Convention;

3. *Holds*
   (a) that the respondent State is to pay the applicant company, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts:
      (i) EUR 113,828 (one hundred thirteen thousand eight hundred twenty eight euros), plus any tax that may be chargeable, in respect of pecuniary damage;
      (ii) EUR 12,000 (twelve thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
      (iii) EUR 35,000 (thirty five thousand euros), plus any tax that may be chargeable to the applicant company, in respect of costs and expenses;
   (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

4. *Dismisses* the remainder of the applicant company's claim for just satisfaction.

Done in English, and notified in writing on 27 November 2025, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Ilse Freiwirth Registrar	Ivana Jelić President