



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

FIFTH SECTION

CASE OF SIGMA RADIO TELEVISION LTD. v. CYPRUS

(Applications nos. 32181/04 and 35122/05)

JUDGMENT

STRASBOURG

21 July 2011

FINAL

21/10/2011

This judgment has become final under Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Sigma Radio Television Ltd v. Cyprus,
The European Court of Human Rights (Fifth Section), sitting as a
Chamber composed of:

Dean Spielmann, *President*,
Elisabet Fura,
Karel Jungwiert,
Mark Villiger,
Ann Power,
Ganna Yudkivska, *judges*,
Stelios Nathanael, *ad hoc judge*,
and Claudia Westerdiek, *Section Registrar*,
Having deliberated in private on 21 June 2011,
Delivers the following judgment, which was adopted on that date:

PROCEDURE

1. The case originated in two applications (nos. 32181/04 and 35122/05) against the Republic of Cyprus lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by Sigma Radio Television Ltd, a company registered in Cyprus (“the applicant”), on 13 August 2004 and 13 September 2005 respectively.

2. The applicant was represented by Mr A. S. Angelides, a lawyer practising in Nicosia. The Cypriot Government (“the Government”) were represented by their Agent, Mr P. Clerides, Attorney-General of the Republic of Cyprus.

3. The applicant alleged a violation of Articles 6 § 1, 10, 13 and 14 of the Convention, Article 1 of Protocol No. 1 and Article No. 1 of Protocol No. 12 with regard to (i) the proceedings before and various decisions of the Cyprus Radio and Television Authority (“CRTA”) concerning a number of broadcasts transmitted by its television and radio stations; (ii) the relevant domestic court proceedings; and (iii) the allegedly different treatment it received vis-à-vis the public service broadcaster CyBC.

4. On 18 and 19 October 2006 respectively the Court decided to communicate to the Government the complaints concerning Article 10 of the Convention, Article 1 of Protocol No. 1 and Article 14 taken together with the former two provisions, as well as the complaint raised in application no. 32181/04 under Article 6 § 1 of the Convention as to the objective impartiality of one of the Supreme Court judges.

5. On 13 October 2008 the Court decided to communicate to the Government the complaint under Article 6 § 1 of the Convention as to the

fairness of the proceedings before the CRTA and the alleged insufficiency of the scope of jurisdiction of the domestic courts, and to invite the parties to submit further written observations in respect of the complaints under Article 14 of the Convention taken together with Article 10 of the Convention and Article 1 of Protocol No. 1. It was also decided to examine the merits of the applications at the same time as their admissibility.

6. Mr George Nicolaou, the judge elected in respect of Cyprus, was exempted from sitting in the case (Rule 28 of the Rules of Court). The Government accordingly appointed Mr Stelios Nathanael to sit as an *ad hoc* judge (Article 27 § 2 of the Convention and Rule 29 § 1 as in force at the time).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

A. Background to the case: proceedings before the Cyprus Radio and Television Authority

7. The applicant company operates a television station, “Sigma TV”, and a radio station, “Radio Proto”, in Cyprus.

8. As follows from the materials submitted by the parties, between 2000 and 2002, the CRTA, exercising the functions attributed to it by the Radio and Television Stations Law (Law 7(I)/1998, as amended; hereinafter “the Law”) and the Radio and Television Stations Regulations of 2000 (Regulatory Act 10/2000; hereinafter “the Regulations”), examined a number of different broadcasts (advertisements, various programmes, films, trailers and news reports) transmitted by the applicant’s television and radio stations. In some of the cases the CRTA was acting on complaints and in others *ex proprio motu*, pursuant to section 3(1) of the Law. The applicant was informed of the possibility of contraventions on its part and was invited by the CRTA to make written and/or oral submissions if it so wished. Hearings were held in all cases¹. The applicant did not make written and/or oral submissions in all the cases, however.

9. During the abovementioned period the CRTA issued twenty-seven separate decisions finding the applicant in violation of one or more provisions of the Law and/or the Regulations². The CRTA imposed fines in

¹ See footnote no. 4

² CRTA cases nos. 18/2000(3), 75/2000(3), 88/2000(3), 98/2000(3), 113/2000(3), 117/2000(3), 141/2000(3), 129/2000(3), 152/2000(3), 148/2000(3), 1/2001(12), 9/2001(3),

all the cases. In certain cases separate decisions were taken as to the merits and the fine. In these cases, following notification of the decisions, the applicant was given the opportunity to make submissions as to the imposition of a fine.

10. The applicant paid all the fines between 2001 and 2008.

11. Furthermore, in January 1999, the CRTA called upon the applicant to pay the licence fee due for operating its television station³.

12. Administrative and/or civil proceedings resulted from the above decisions.

13. A list with details of the relevant broadcasts and the CRTA proceedings is annexed to the present judgment.

1. Summary of the CRTA's decisions concerning various broadcasts on "Sigma TV" and "Radio-Proto"

(a) Advertisements for children's toys by "Sigma TV" [CRTA cases nos. 129/2000(3); 148/2000(3); 135/2001(3) and 3/2002(3)]

14. The CRTA found in a number of cases that the applicant had breached the provisions of the Law. In some cases the applicant admitted the violations in the submissions it made before the CRTA.

15. In all the cases the CRTA held that "Sigma TV" had broadcast advertisements for children's toys at times prohibited by section 34 of the Law. The CRTA also found that some of the advertisements exploited children's inexperience and credulity by directly inciting them to purchase the products advertised, in violation of section 33(7)(a)(i) of the Law, and that some of the advertisements contained exaggerated or unfounded claims, in violation of paragraph B.1 of appendix IX of the Regulations. Moreover, the CRTA held that in some of the advertisements the products aimed at children had been promoted by offering gifts, in violation of paragraph D.10(o) of appendix IX of the Regulations.

16. In two of its decisions (cases nos. 135/2001(1) and 3/2002(3)) the CRTA stressed that it had repeatedly indicated in the past, through its decisions, circulars and directives to stations, the significance of protecting minors from the messages they received through advertising, and had underlined the seriousness of such violations. Further, the CRTA noted that advertisements for children's toys were not completely prohibited by the legislation but were subject to limitations (concerning broadcasting times, approach, methods of promotion, techniques employed, visual and audio

10/2001(3), 11/2001(3), 13/2001(3), 19/2001(3), 43/2001(3), 44/2001(3), 60/2001(3), 108/2001(3), 125/2001(3), 133/2001(3), 135/2001(3), 143/2001(3), 173/2001(3), 3/2002(3) and 5/2002(3).

³ CRTA case no. 8.1.09; see paragraph 38 below

material used) as children were vulnerable and credulous consumers because of their lack of experience and judgment.

(b) Interruption of programmes for the broadcasting of advertisements [CRTA cases nos. 173/2001(3) and 19/2001(3)], promotion of sponsors during news bulletins [CRTA case no. 19/2001 (3)] and surreptitious advertising [CRTA case nos. 18/2000(3) and 113/2000(3)]

17. In case no. 173/2001(3) the CRTA found that on 22 occasions the times at which “Sigma TV” had interrupted programmes to broadcast advertisements had not been in accordance with section 33(2)(g) of the Law. Furthermore, the CRTA found that on 325 occasions the duration of the advertising breaks within programmes had been longer than three and a half minutes, in violation of paragraph F.3 of appendix IX of the Regulations. In its decision the CRTA held that the need to regulate the frequency and duration of television breaks derived both from the right of a viewer to watch a programme unhampered, without long and frequent interruptions, and from the need to show respect for the programme, which should be broadcast in its entirety as a human creation. The applicant admitted the violations in the submissions it made before the CRTA.

18. In case no. 19/2001(3) the CRTA found that “Sigma TV” had interrupted a news bulletin twice in order to broadcast advertisements, in violation of section 33(2)(i) of the Law. The CRTA also found that during certain news items concerning the stock exchange and the exchange rate, transmitted as part of the news programmes, the names and logos of the sponsors of the bulletins had been shown on the screen for promotion purposes, in violation of paragraph E.3 of appendix IX of the Regulations. Lastly, the CRTA held that there had been surreptitious advertising in violation of section 33(2)(d) during a sports bulletin transmitted as part of the main news programme. The applicant admitted a violation of the Law on that account.

19. In cases nos. 18/2000(3) and 113/2000(3)⁴ the CRTA found that the transmission of clear images of various products of real brands in a comedy series had been done in a provocative manner and had clearly been for advertising purposes, contrary to section 33(2)(d) of the Law. Further, the CRTA considered that the images used had not been a necessary part of the set of the series, as the applicant maintained. When imposing the fines the CRTA took into account the fact that in spite of previous decisions finding similar violations and imposing fines, the applicant had shown no willingness to comply. In spite of previous findings of violations, for example, the applicant had broadcast repeats of some episodes of the series.

⁴ In CRTA case no. 113/2000(3) the procedure differed in that the hearing was held before a committee on the basis of section 9(7) of the Law, which confers power on the CRTA to transfer its competence, and of Regulation 42(1).

(c) News reports included in news bulletins [CRTA case nos. 75/2000(3), 98/2000(3), 152/2000(3), 9/2001(3), 43/2001(3), 44/2001(3) and 108/001(3)]

20. In seven cases the CRTA found that the applicant had infringed a number of provisions of the Law and/or the Regulations with regard to items broadcast during news bulletins.

(i) Case no. 75/2000(3)

21. “Sigma TV” broadcast a report in a news bulletin concerning the arrest of a teacher for photographing naked minors. The CRTA found a violation of Regulations 21(3), 24(1)(a) and paragraph 10 of Part II of appendix VIII of the Regulations in that insufficient measures had been taken to conceal the suspect’s identity, the information given concerning the reasons for the suspect’s arrest had not been accurate and certain statements which had been made during the report ran contrary to the principle of presumption of innocence.

(i) Case no. 98/2000(3)

22. “Sigma TV” broadcast a news bulletin that included a report on the drug problem of a Cypriot family. The CRTA noted that the report included scenes which were taken possibly from a film or documentary and illustrated in detail the procedure of preparing and consuming drugs. The CRTA considered that the images shown had not been suitable for transmission during the “family zone” (see definition in paragraph 88 below) and had possibly been dangerous for minors. It found a violation of Regulations 21(6), 24(1)(a) and 24(2)(d) as the applicant had not ensured that the material shown was suitable for minors, had not prepared and aired the particular news report with accuracy and had not issued a visual and/or verbal warning for viewers. The CRTA drew attention to the fact that minors tended to imitate acts out of curiosity and an inclination to experiment. It stressed that it was its duty to take due steps to protect minors from programmes that could cause them any mental or physical harm. In its submissions before the CRTA the applicant claimed that the purpose of the images had been to accompany the news story with visual material.

(iii) Case no. 152/2000(3)

23. In one of its news bulletins “Sigma TV” aired a news report concerning two murders. The CRTA noted that the report contained close-ups of the dead body of the victim covered in blood and of the grieving relatives. Furthermore, no visual or verbal warning had been given to viewers. It found a violation of Regulations 24(2)(a)–(d) and of paragraph 6 of part II of appendix VIII of the Regulations.

(iv) *Case no. 9/2001(3)*

24. “Sigma TV” broadcast a report in a news bulletin about the transfer to court of three young men suspected of drug use. The CRTA considered that the news story had lacked objectivity, impartiality, accuracy and pluralism, in violation of Regulation 24(1)(a). It noted in this regard that although the allegations made over the phone by the mother of one of the accused as to the effectiveness of the relevant institutions and the attitude of the competent medical authorities towards drug addicts had been transmitted, the institutions and medical authorities concerned had not been given the opportunity to express their views. In this connection, the applicant had argued, *inter alia*, that the issues in question concerned society and that the report should have been evaluated on the basis of the data and information the station had had at its disposal. The applicant further admitted that it did not have a delay unit allowing live telephone conversations to be interrupted when something unsuitable was said.

25. In addition, the CRTA found that the news report had gone beyond the scope of information as comments, conclusions and information concerning private matters of the suspects had been broadcast, without the appropriate sensitivity towards human pain or respect for the suspects’ personality, honour, reputation and private lives, in violation of Regulation 21(3) and paragraph 8(2), of part I of appendix VIII of the Regulations. The CRTA did not accept the station’s allegations that the suspects had turned towards the cameras seeking help, as certain shots showed the suspects covering up their faces and making every effort to avoid the cameras. Even if the suspects had chosen to publicise their problem, the CRTA considered that the applicant should have taken into account that they had not been fully aware of their actions and had been in despair, vulnerable and under the influence of strong substances. In addition, the CRTA noted that the disclosure of the identity of the persons involved, their media exposure as well as the extensive coverage of their private lives, could stigmatise them in a society such as that of Cyprus. In the CRTA’s view the promulgation of the drug problem could have been accomplished without revealing the suspects’ identity and without disclosing information about their private lives.

(v) *Case no. 43/2001(3)*

26. The CRTA found that during a news bulletin broadcast on “Sigma TV” the name of the victim of a car accident had been mentioned before it had been ascertained whether the victim’s parents had been informed, in violation of Regulation 24(3). The applicant submitted before the CRTA that it was standard practice to obtain confirmation by the police and this case had not been an exception.

(vi) Case no. 44/2001(3)

27. The CRTA held that an interview aired during a news bulletin on “Sigma TV”, with a female witness for the prosecution in pending criminal proceedings, advocating the innocence of a man under criminal charges, had lacked accuracy, objectivity, impartiality and pluralism. It was noted that although the interviewee had testified against the suspect in court, in the interview she had given information that pointed to the suspect’s innocence. The CRTA held that the manner in which the interview had been presented essentially exonerated the defendant in the proceedings. The CRTA found that the broadcasting of such information violated paragraph 10 of part II of appendix VIII of the Regulations. Further, the CRTA pointed out that during the interview the interviewee had claimed that the investigating authorities had used her to put pressure on the arrested man to give them information. However, the views of authorities involved had not been stated, in violation of Regulation 24(1)(a), and no mention had been made in the interview of any attempts by the applicant to secure them.

(vii) Case no. 108/2001(3)

28. In another news bulletin “Sigma TV” broadcast a news report concerning a car accident, as well as a trailer for the report. The CRTA considered that the report contained an inappropriate and unnecessary description of the circumstances of the accident. In particular the CRTA held that the applicant had not shown due respect for the personality, honour, reputation and privacy of the female driver of the car involved in the accident as it had overstepped the bounds of information and transmitted unnecessary details, comments and conclusions about the accident, in violation of Regulation 21(3). In addition, the CRTA found that remarks had been made in the news report that were an insult to the personality, the reputation and the privacy of the driver, in violation of section 26(1)(e) of the Law, and that a clear distinction had not been drawn between fact, comment and speculation, in violation of paragraph 1(2) of part II of appendix VIII of the Regulations. In respect of the above, the CRTA, noted *inter alia*, that it had been stated in the news report that a young lady had been found injured and half-naked in the driver’s seat wearing only underwear on the lower part of her body, that eye-witnesses had claimed that they had seen two young men, fleeing from the accident scene and heading towards the fields and that two doors of the young woman’s car, and more specifically the front passenger door and the rear door, were open. The CRTA further pointed out that the information given in the report, which included video footage of the cars involved in the accident and reference to the place and time the accident occurred, had been sufficient to enable recognition, in particular, of the identity of the female driver. In its

submissions before the CRTA, the applicant claimed that there was only a slender possibility of recognising the persons involved. In reaching its decision, the CRTA also took into account the unpleasant consequences the report had had on the driver's personal, family and social life, and that the persons involved in the case had not been public figures or public officials and the publication of information concerning their private lives had not served the public interest.

(d) Films, series, programmes and trailers [CRTA cases nos. 88/2000(3), 117/2000(3), 141/2000(3), 1/2001(12), 13/2001(3), 125/2001(3), 133/2001(3), 143/2001(3) and 5/2002(3)]

(i) Violent scenes [CRTA cases nos. 88/2000(3), 141/2000(3), 13/2001(3), 125/2001(3), 133/2001(3), 143/2001(3) and 5/2002(3)]

29. The CRTA found in a number of cases that the applicant had breached the provisions of the Law and/or the Regulations by broadcasting on "Sigma TV", within or partly within family viewing hours, certain films and series and trailers thereof which included scenes of violence unsuitable for children. The CRTA held that the scenes in question were likely to impair the physical, mental or moral development of minors, in violation of Regulation 32(3)(a). In one of the cases the CRTA found that the film in question contained scenes of humiliation and cruel treatment, in violation of regulation 32(2) (a rape scene). Furthermore, the CRTA found in these cases either that the viewers had not been informed of the true content of the programmes as the acoustic and visual warnings given did not correspond to their content, in violation of Regulation 21(5) and (b), with a rating of "15" and "18" had been shown during the family zone, in violation of Regulation 22(2) (see paragraph 90 below). The CRTA held that the applicant had not ensured that programmes transmitted during the family zone had been suitable for all ages, in violation of Regulation 21(6).

30. The applicant admitted the violations in two of the cases.

31. In its decisions concerning cases nos. 125/2001(3), 133/2001(3), 143/2001(3) and 5/2002(3) the CRTA noted, *inter alia*, that the content of all broadcasts during the family zone had to be suitable for the whole family. It stressed that the protection of minors was the primary concern of everyone, including the European Community and the Council of Europe, and that the Cypriot legislator had set limitations as to the content of programmes which could be transmitted for family viewing in order to protect children from programmes that were unsuitable for them because they contained violent or erotic scenes, or verbal material or subject matter unsuitable for minors. The CRTA pointed out that it attached great weight to the above matters and to compliance with the relevant legal provisions.

(ii) *Offensive remarks and inappropriate language [CRTA case nos. 117/2000(3) and 1/2001(12)]*

32. In case no. 117/2000(3), following a complaint, the CRTA found, in respect of an episode of an entertainment series, “Prison Bars” (“Tis Filakis ta Sidera”) produced and broadcast by “Sigma TV”, (i) that it included offensive remarks for various social groups which did not comply with the generally accepted rules of decency and good taste in language and behaviour, in violation of Regulation 21(4); (ii) that the applicant had not ensured that the honour, the reputation and the professional and social lives of people as individuals or as members of a specific group (in particular, the residents of the towns of Paphos and Limassol, Arabs, Russian women and women in general) were respected, in violation of Regulation 21(3); and (iii) that the programme contained offensive material for the dignity of both genders, in violation of Regulation 26(1). The CRTA noted that in the episode in question it had been stated in the context of a dialogue between characters of the series, *inter alia*, that “according to recent excavations in Paphos, it was probable that the town had a lot of brothels, not for the locals, of course, but for foreigners”, “during the 50’s, 60’s and part of the 70’s most of the whores were from the town of Paphos”, “in the old times, in Limassol it was all Arabs, phoenicians, houllou, ya habibi, all of them. Most of them were darker than chocolate and some of them were very snobbish”, “the town of Paphos was a whores’ town, with thousands of whores. All of them Greek (“καλαμαρούδες”), which we imported then, like we import Russian women nowadays”. The CRTA noted that following the broadcast of the episode a Paphos newspaper had criticised the series as being crudely offensive to people from Paphos and completely unacceptable. The repeated violations by the applicant in other episodes of the same series were taken into account when imposing the fine.

33. In case no. 1/2001(12) the CRTA found that “Radio Proto” had broadcast a programme containing inappropriate language unsuitable for minors. More specifically, it noted that the presenters had used sexually explicit Greek slang. The CRTA found that the programme contained remarks that did not comply with the generally accepted rules of decency and good taste in language and behaviour, in violation of Regulation 21(4) and that the applicant had failed, in violation of Regulation 21(6), to ensure that the programme, transmitted during family listening hours, was suitable for children.

(e) **“Social documentaries” [CRTA cases nos. 10/2001(3), 11/2001(3) and 60/2001(3)]**

(i) *Documentary about drug use*

34. In cases nos. 10/2001(3) and 11(2001)(3) the CRTA found that during the family zone “Sigma TV” had broadcast and shown a repeat of a

“social documentary” concerning the drug problem in Cyprus, as well as a trailer for the programme, containing visual and audio material unsuitable for children under the age of fifteen, in violation of Regulation 21(6), and which could seriously impair the physical mental or moral development of minors, in violation of Regulation 32(3)(a). In particular, the programme included scenes showing, *inter alia*, the consumption and trading of illegal drugs and statements made by drug addicts concerning the consumption of drugs. Moreover, the CRTA held that the trailer for the documentary contained visual and audio material that might offend the sensitivity of viewers, in violation of Regulation 24(2)(d). It further found that the visual and acoustic warning that had been given did not correspond to the actual content of the trailer and documentary, in violation of Regulations 21 (5) and 22, and that information transmitted about one of the drug addicts had not shown the appropriate sensitivity towards human suffering, in violation of paragraph 8(2) of part I of appendix VIII of the Regulations.

35. The CRTA also noted that the personal information concerning the drug addicts in the documentary had been broadcast without due respect for their personality, honour, reputation and private lives, in violation of Regulation 21(3). For example, the identity of a caller, a light drug user, had been displayed on screen, despite his wish to remain anonymous. The CRTA considered that the drug addicts who had participated in the programme did not appear to have been fully aware of their actions, and that their free consent and decision should therefore not have been taken into full account because they had been in a state of despair, vulnerable and under the influence of strong substances that had affected their judgment. In any event, the disclosure of their identity, the media exposure and the extensive coverage of their private lives was likely to have numerous negative consequences for them. The CRTA stated that it was also concerned about the personalisation of the drug problem through the disclosure of the identity of certain drug addicts, as this might lead to their becoming role models or even “heroes” for vulnerable people who would like to identify with them. According to the CRTA the documentary had also lacked objectivity and pluralism, as criticisms and negative comments had been made against the medical authorities, the police drug squad, the Minister of Health and the Director of a Psychiatric Clinic, without them having been given the opportunity to present their position on the matter, in violation of section 26(2) of the Law.

36. The applicant argued before the CRTA that the social content of the documentary was of interest to families. It admitted that a mistake had been made with regard to the disclosure of the identity of one of the callers in question and informed the CRTA that measures had been taken to restore the name and honour of a nurse in respect of whom allegations had been made in the programme.

(ii) Other documentary

37. In case no. 60/2001(3) the CRTA found that a “social documentary” broadcast by “Sigma TV” had not been characterised by objectivity and pluralism, as opinions and allegations had been voiced against doctors and officials working in an institution that had a bone marrow bank, without a complete picture or opposing views being presented, in violation of section 26(2) of the Law. The CRTA considered that the discussion, the direction it had taken and the manner in which it had developed indicated that it had been orchestrated to favour the views of the presenter and, more broadly, the station’s views on the issues raised, to the disadvantage of participants with opposing views.

2. Unpaid licence fee: CRTA case no. 8.1.09

38. By a letter dated 15 January 1999, the CRTA requested the applicant to pay the licence fee due for operating “Sigma TV” between 13 November 1998 and 31 January 1999, as required by section 24 of the Law. The fee amounted to 6,416.65 Cyprus pounds (CYP) for the period in question. The applicant paid the licence fee on 5 August 1999.

B. Legal proceedings*1. Judicial Review proceedings (Application no. 32181/04)*

39. The applicant brought separate recourses (appeals for judicial review) before the Supreme Court, seeking the annulment of twenty-five of the above decisions (recourses nos. 809/00, 299/01, 300/01, 301/01, 302/01, 303/01, 304/01, 348/01, 448/01, 912/01, 913/01, 914/01, 922/01, 966/01, 1097/01, 279/02, 328/02, 330/02, 331/02, 445/02, 663/02, 803/02, 815/02, 817/02 and 819/02)⁵. It further lodged a recourse challenging the licence fee requested by the CRTA for the period 13 November 1998 to 31 January 1999 (recourse no. 320/99)⁶.

40. Although the recourses concerned different decisions of the CRTA, the applicant relied on the same main points, including the same constitutional issues. These may be summarised as follows:

(a) The applicant alleged a breach of the rules of natural justice on the ground that in the proceedings the CRTA had acted in many capacities,

⁵ Decisions in CRTA cases nos. 18/2000(3), 98/2000(3), 113/2000(3), 117/2000(3), 141/2000(3), 129/2000(3), 152/2000(3), 148/2000(3), 1/2001(12), 9/2001(3), 10/2001(3), 11/2001(3), 13/2001(3), 19/2001(3), 43/2001(3), 44/2001(3), 60/2001(3), 108/2001(3), 125/2001(3), 133/2001(3), 135/2001(3), 143/2001(3), 173/2001(3), 3/2002(3) and 5/2002(3).

⁶ CRTA case no. 8.1.09

namely, as prosecutor, investigator-witness and, at the same time, judge. The CRTA had then imposed fines, which were paid into its own Fund.

(b) The applicant claimed that the applicable Law, and by extension the Regulations, were contrary to the Constitution. In this respect it alleged a breach of Articles 12, 19, 25, 26, 28 and 35 of the Constitution. The main body of its arguments, however, was based on Articles 12 and 19 of the Constitution and, in particular, on the imposition of pecuniary sanctions/fines by an administrative body and the exercise of regulatory authority under Article 19 by a public authority other than the State itself. The applicant also argued that the applicable Law interfered with its right to enter into contracts freely with producers and directors (Article 26). Further, in recourse no. 320/99 the applicant alleged a violation of Article 23 of the Constitution and complained of discriminatory treatment vis-à-vis the Cyprus Broadcasting Corporation (“CyBC”), which was not burdened with the same charges.

(c) The applicant raised a number of points concerning the interpretation of the relevant legal provisions relating to the imposition of sanctions for the infringement of the Regulations.

(d) Lastly, the applicant challenged the decisions of the CRTA on a number of other grounds, claiming, for example, that the procedure had not been followed in accordance with the law because there had been no proper inquiry, and insufficient reasoning had been given.

41. In view of the fact that issues as to constitutionality, natural justice and the interpretation of the provisions of the applicable Law were raised in all the recourses and because of their significance, the Supreme Court decided that they should be heard in priority, together and by the Full Bench (that is, all thirteen judges of the Supreme Court).

42. The hearing took place on 5 November 2003. Judgment was then reserved.

43. On 10 February 2004 the applicant applied for the reopening of the hearing of the recourses for the purpose, firstly, of submitting further arguments concerning its claim for the annulment of the decisions in question in the light of the Court’s judgment in the case of *Kyprianou v. Cyprus* (no. 73797/01, 27 January 2004)⁷ and, secondly, in order to request the exclusion of one of the judges from the bench on the ground that he had given a first-instance judgment, following reservation of the judgment by the Full Bench, in another recourse brought by the applicant raising similar issues⁸.

44. On 24 February 2004 the Supreme Court dismissed the application. The court first noted that in accordance with its settled case-law it could

⁷ The case was referred to the Grand Chamber, which delivered judgment on 15 December 2005 (*Kyprianou v. Cyprus* [GC], no. 73797/01, ECHR 2005-XIII).

⁸ Recourse no. 818/02 – judgment of 30 January 2004.

order the reopening of a recourse or an appeal only in exceptional cases and, in particular, only where it decided that it was necessary in the interest of justice in the light of facts which came to light after judgment had been reserved. In the present case no new fact had been put forward which could justify the re-opening of the recourses. A new fact might be an event which touched on the elements which composed the dispute. The putting forward of further arguments with reference to jurisprudence subsequent to the reservation of the judgment was not such an event. With regard to the request for the exclusion of one of the judges, the Supreme Court held that in accordance with its settled case-law the solution of a legal question at first instance or on appeal did not exclude the participation of a judge in the composition of the court who had heard the same, or a similar or closely related legal question in the context of other proceedings. The Supreme Court therefore concluded, unanimously, that no reason had been shown which could justify contemplating reopening the hearing in cases before it in which its judgment had already been reserved.

45. On the same date, the Supreme Court gave judgment dismissing, by a majority (11 to 2), twenty-four of the twenty-six recourses. The CRTA's decisions challenged in recourses nos. 809/00 and 304/01 were annulled.

46. First of all, with regard to the joining of the recourses, the Supreme Court noted:

“Matters which were put forward in a number of recourses against decisions of the Radio and Television Authority of Cyprus, in compliance with the Radio and Television Stations Law of 1998 (Law 7(1)/98, as amended), were examined at first instance by different judges, the result in each case being a dismissal. Appeals were filed which because of similarity we finally fixed to be heard together. In their course before the Court it was ascertained that many recourses on similar matters of constitutionality, natural justice and interpretation of provisions of the Law were pending and were ready for hearing. Whereupon, because of their significance, it was decided that the proper course was that they should be heard, in priority, by the Full Bench of the Court since in the Revisionary Appeals the participation of all judges would be impossible. Therefore the list was prepared of the 26 recourses heard together to which this judgment relates.”

47. The Supreme Court then noted that, with the exception of recourse 320/99, which concerned the payment of a licence fee under section 24 of the Law, the disputed CRTA decision in each recourse had found the applicants⁹ guilty of infringement of one or more provisions of the Law and/or the Regulations. After referring to the relevant legal provisions and Regulations, the Supreme Court proceeded to divide the issues that arose in the recourses into (a) general matters which broke down into three groups, and (b) specific matters. The relevant excerpt of the Supreme Court's judgment reads as follows:

⁹ The domestic courts (see also paragraph 71 below) refer to the applicant company in the plural

“The more general matters are classified in three groups. The first includes matters of interpretation of provisions which relate to the imposition of sanctions for the infringement of regulations. It is the case of the applicants that section 3(2)(f) of the Law, whereby power is conferred on the Authority to impose sanctions/penalties as the applicants describe them, restricts that power solely to cases where there is an infringement of the Law itself and the terms of the operating licence and not of the Regulations “... which cannot by themselves (outside the authority of the Law) define infringements and sanctions”. In this connection reference is made to section 51(2)(n) of the Law – which confers authority to issue Regulations – as well as to relevant provisions of the Regulations.

The second group concerns matters of natural justice. It is argued that in the proceedings which resulted in the imposition of a fine the necessary distinction of roles did not exist, with the result that the Authority was all at once prosecutor, investigator-witness and at the same time judge. It is added that the possibility of *ex proprio motu* examination conferred by section 3(1)(c) of the Law intensifies the objection. Furthermore, according to the applicants, the Authority cannot be regarded as impartial because it has an economic interest since, according to section 38(1)(d) of the Law, the fine is deposited in its own Fund.

In the third group there are matters which concern the constitutionality of the Law, and by extension the Regulations which were issued in accordance with the Law. It is submitted that the following provisions of the Constitution are violated: (a) Article 19, by which the right to freedom of speech and expression in any form is safeguarded; (b) Article 12.2, in accordance with which a person cannot be tried or punished twice for the same offence – but for one exception which does not apply here; (c) Article 26, which refers to the right to enter into a contract; (d) Article 24, which refers to taxation; (e) Article 25, which refers to the right to employment, *inter alia*; (f) Article 28, which refers to equality, and (g) as regards Recourse No. 320/99, Article 23, which refers to property.

In the recourses, in addition to these more general matters of great importance, other, more specific matters are also raised, connected to the particularity of each case, namely (a) whether the procedure was carried out in accordance with the law, (b) whether a proper enquiry was conducted and (c) whether the decision was reasoned.”

48. Before examining the above issues, the Supreme Court dealt with and dismissed various additional points raised by the applicant in some of the recourses, concerning, *inter alia*, the composition of the CRTA.

49. In relation to the matters of natural justice, proper enquiry and reasoning, the Supreme Court considered it useful to refer to specific instances, so that the procedural course common to most of the recourses and the manner in which the CRTA dealt with the violations was indicatively outlined. It took recourse no. 913/01, the first of the three recourses, which, after agreement between counsel, formed the basis of the discussion before it. The Supreme Court noted that in that case, as in those at issue in sixteen other recourses, the CRTA had acted following a complaint, whereas in eight other cases it had acted *ex proprio motu* when the respective programmes had come to its notice. However, it distinguished

recourse no. 320/99, which did not concern a violation, and recourse no. 304/01, in which a different procedure had been followed.

50. It also held, in respect of recourses nos. 809/00 and 304/01, that the procedure provided for in the relevant Regulations had not been complied with by the CRTA, and had therefore been defective. It accordingly found that the CRTA decisions challenged in these two recourses lacked the necessary legal basis.

51. The Supreme Court proceeded to look at the procedure followed by the CRTA, the proceedings before it and its decision in case no. 11/2001(3) challenged by recourse no. 913/01.

52. It then examined the specific matters and the general matters raised by the applicant in the recourses. With regard to the specific matters, it held as follows:

“With regard to the question of proper enquiry, with the exception of the two recourses which we have mentioned – nos. 809/00 and 304/01 – we have not ascertained a vacuum. On the contrary, it seems to us that the enquiry covered everything, indeed in detail. In some of the recourses the applicants submitted, in this connection, that a legal problem arose because the investigating official who conducted the enquiry put a second report before the Authority, whereas he should have submitted only one. They invoked Reg. 42(5) which provides that “the official states his conclusion to the Authority fully reasoned ...”. However, the second document contained no material as regards the alleged violations other than that which had already been brought to the notice of the applicants. He simply unified it for the convenience of the Authority. We do not consider this reprehensible. With regard to the question of reasoning, it seems to us that in each case, including those concerning the suitability of programmes or the definition of meanings – such as toy or game, surreptitious advertising, close-ups – adequate explanation was given to the applicants both as to the finding of the official (who conducted the enquiry) and as to the conclusions of the Authority, which, in our view, were all the result of a correct interpretative approach to the relevant provisions and reasonably arrived at, coming within the recognised boundaries of the essential appraisal of the administration, and in some cases, indeed, also unavoidable.”

53. With regard to the general matters, it held as follows:

“The first group

Section 3(2)(f) of the Law provides that the Authority has the power to:

... [provision set out]

We observe that while in the first part of the provision the legal basis of the violations for which sanctions are imposed is analysed on four legal grounds, in the part where the sanctions are set out, after the last one – which is the administrative fine – the violation is related not to the four legal grounds but only to two, namely the Law and the terms of the licence. In our opinion this is merely a drafting inadequacy which in this case does not subtract from the clear meaning of the provision which, interpreted in its entirety, leaves no doubt about the uniform range of the sanctions in all the violations.

Section 51(2)(n) to which the applicants referred confers power to issue Regulations

...

...

Counsel for the applicants suggested that in the abovementioned Section 51(2)(n) in the phrase “of (the) Law and the Regulations ...” the “and” is conjunctive, with the result that a violation of both the Law and the Regulations is required as a precondition for the imposition of a fine. We are of the contrary opinion. By the word “and” the whole is defined without the independence of the parts being affected. The “and” functions essentially as a disjunction. We note also Regulation 42(10), issued in consequence, by which it is provided that the Authority may impose “any of the sanctions which are provided by the Law” when it considers, in a procedure by virtue of Part III of the Law, that “the provisions of the Law and the Regulations” were not complied with. There again we see a reference to the Regulations as a legal basis for the imposition of sanctions.

The second group

We do not share the view that the stipulated procedure, which the Authority pursued, is in conflict with the rules of natural justice, which require (a) that the judge be impartial and (b) that the person judged be afforded the opportunity to be heard. We firstly note their embodiment in Article 6(1) of the European Convention on Human Rights, which was ratified by Cyprus by Law No. 39/62, and the essential reproduction of that provision in Article 30.2 of the Constitution. The relevant jurisprudence of the European Court of Human Rights (ECHR) was not invoked during the discussion of the recourses. This is explained, however, by the inherent difficulty in the evaluation of the factors on the basis of which the classification is made, since in the variform sphere of activity of the administrative organs it is sometimes difficult to decide, firstly, whether the case falls within article 6(1) of the European Convention and secondly, if it does, whether its provisions have been complied with. With regard to the first decision, bearing in mind the tendency of the ECHR to lay emphasis on rights under private law as opposed to factors of public law, which means beneficial interpretation in favour of the citizens, we are of the view that we must approach the recourses before us on the basis of the right to impartiality. This granted, we proceed to examine whether the procedure fulfilled the safeguards of impartiality. In our opinion the affirmative answer is justified. It appears to us that in all the cases, without exception, there has been a satisfactory distinction between the various stages, which consisted in the collection of the facts, their preliminary examination, the briefing of the applicants in relation to these, affording them the right to be heard, in writing or orally, and the final adjudication. The fact that according to section 38(1)(d) of the Law “... income which accrues from the imposition of administrative fines on the stations ...” is deposited with the Authority is not, in our view, inconsistent with impartiality. No private or personal financial interest is involved. The Authority, as a legal person under public law, acts impersonally to further the purposes of the Law. According to the same provision, other income also is deposited with the Authority, including fees from the grant of licences, the examination of applications, etc., as well as the State grant, which, in any event, ensures the financial sufficiency of the Authority so that it may carry out its work of particular significance in contemporary society.

Everything we have mentioned on the subject takes into account the fact that it is the procedure of an administrative organ and not a judicial one. Article 6 (1) of the

European Convention refers to a procedure before a court. What is needed in cases where decisions determining civil rights and obligations are issued by administrative organs is the possibility of access to a court to challenge the administrative decision: see *Albert and Le Compte v. Belgium* Series A Vol. 58 (1983). Where such possibility is offered, then the extent of the jurisdiction of the Court acquires significance. In cases concerning decisions by professional disciplinary bodies the ECHR has considered full jurisdiction of the National Court indispensable in relation to both factual and legal matters. Certain decisions of state administrative organs were approached in the same manner later, whereas in other decisions which, as it was held, belonged to a domain where the need for recognition of the state authority in the determination of policy ought to prevail, it was decided that judicial review was sufficient. Harris, O'Boyle and Warbrick deal with this aspect in their work "Law of the European Convention on Human Rights" (1995) page 194. We quote the following passages which have as a point of reference the judgment of the ECHR in the case of *Zumtobel v. Austria*, Series A Vol. 268 (1993):

"A problem with the application of Article 6 to administrative decision-making is that in some areas there are policy considerations that suggest that the final decision on the merits should rest with the executive, rather than a court, despite the impact upon an individual's civil rights and obligations that the decision may have. Decisions concerning the expropriation of land for a road or for public housing are obvious cases where this can be argued. Whereas the Court's jurisprudence concerning decisions on such matters as the disciplining of doctors, access to children and the dismissal of employees require a right of appeal to a tribunal with 'full jurisdiction', it is noticeable that in the *Zumtobel* case, concerning expropriation, the Court stated that Article 6 was complied with, regard being had, inter alia, 'to the respect which must be accorded to decisions taken by the administrative authorities on the grounds of expediency'... The *Zumtobel* case was interpreted in this sense in *Ikscon v. UK* ...The only judicial remedy then available to the applicant in respect of the resulting interference with their property rights was recourse to the English High Court 'on a point of law'; the High Court did not have a full right of appeal on the law and the facts. The Commission held that this limitation on the High Court's jurisdiction did not infringe Article 6. The applicant society had appealed to the High Court and had been able to put and have considered by the Court all of the arguments that it wished to make. Rejecting the applicant's, argument that the High Court had lacked the 'full jurisdiction' that Article 6 required, the Commission stated that it is 'not the role of Article 6 to give access to a level of jurisdiction which can substitute its opinion for that of the administrative authorities on questions of expediency and where the courts do not refuse to examine any of the points raised'."

We are of the view that in the case where the infringement of the regulatory provisions of the law is examined in the particularly sensitive and significant domain of radio and television, the decision in matters which by their nature may be characterised by subtle nuances and many gradations is justifiably left, as a matter of state policy, to a special independent Public Authority. We are of the view that the judicial review provided for in our system is adequate. We do not, therefore, discern a violation of the rules of natural justice which are embodied in Article 6 (1) of the European Convention and Article 30.2 of the Constitution.

The third group

With regard to Article 19 of the Constitution, the matter of constitutionality that is raised is centred on the position that the power conferred on the Republic, on the basis of paragraph 5, to require an operating licence in the field of radio and television broadcasting and cinema, comes within and is not outside everything included in paragraph 3 as regards the boundaries of the fundamental right to which paragraphs 1 and 2 refer.

...

According to the applicants, since paragraph 5 is subject to paragraph 3, the obligations which are imposed by the operating licence cannot depend on the judgment of the Administrative Authority. They arise only with reference to all that paragraph 3 subtracts from the fundamental right of paragraphs 1 and 2. Where a difference appears in relation to the observance of the limits, the matter is decided by the court. They add, with reference to paragraph 5, that the power to require a licence belongs to the Republic itself and cannot be transferred to a legal person of public law, such as the Radio and Television Authority. Their basic position however has as its core paragraph 3 and more specifically the part of it which refers to "... penalties prescribed by law ...". "Penalties", according to the applicants, are only sanctions which are imposed by a criminal Court. And since – they continue – the sanctions under consideration for violation of the Law and the Regulations can be viewed only by reference to the said part of paragraph 3, the entrusting of their imposition to an administrative organ is not conceivable.

In relation to the meaning of "penalty", learned counsel for the applicants referred to Article 12 of the Constitution, where reference is made to "penalty" in the context of criminal liability. He also referred to Articles 150 and 162 of the Constitution by which the power of imposing punishment for contempt is conferred on the court. The advocate contrasted the administrative fine which, according to his suggestion, "... is only the specific sum fixed by the Law, as an automatic consequence (without an administrative procedure and decision taken in accordance with any free discretionary power of the administrative organ)." He referred in this connection to the case *Director of Social Security v. Georgiades* (1988) 2 A.A.Δ. 74, which concerned delays in the payment of social security contributions. The advocate also referred to the judgment of the Full Bench in *The Republic v. Demand Shipping Co. Ltd.* (1994) 3 A.A.Δ. 460, which he characterised as another example of the automatic imposition of sanctions by law. At the same time, however, he suggested that if the decision in *Demand Shipping Co. Ltd.* cannot be viewed in this way, then the deviation from its reasoning is justified.

In relation to Article 12 a matter was raised from another angle as well, namely that of dual liability, disciplinary and criminal. In paragraph 2 of Article 12 it is stated that:

The position of the applicants on this is summarised in that while section 3(2) (f) of the Law, which is the basic provision from which the challenged decisions arise, provides for administrative sanctions for various violations, section 48(6) nevertheless establishes parallel criminal liability.

In the written addresses the advocate expressed criticism in relation to the said established system and raised a query with regard to how the Authority chooses one procedure or the other, and also about the consequences. This aspect, however, was not raised in the legal points of the recourses and cannot occupy us. We observe, in any case, from the standpoint of more general classification, that while the parallel criminalisation creates disharmony from which problems could arise, the characterisation of the cases as administrative is nevertheless not reversed. It is not necessary for us to go into the potential problems.

We consider that, subject to the scope of the exercise of the power conferred by paragraph 5 of Article 19 for the regulation of radio and television broadcasting, the said power comes within the boundaries of paragraph 3 and cannot exceed them."

54. The Supreme Court then referred, in connection with the third group of issues raised, to Article 10 of the Convention in the context of the regulation of radio and television broadcasting, with particular emphasis on the Court's judgments in the cases of *Informationsverein Lentia and Others v. Austria*, 24 November 1993, § 42, Series A no. 276, and *Vgt Verein gegen Tierfabriken v. Switzerland*, no. 24699/94, ECHR 2001-VI. It further referred to relevant European Community legislation and case-law, namely the 8th recital of the preamble of Council Directive 89/552/EEC of 3 October 1989 on the coordination of certain provisions laid down by Law, Regulation or Administrative Action in Member States concerning the pursuit of television broadcasting activities – specifically advertising, sponsors and telemarketing and the judgment of the European Court of Justice in *RTL Television GmbH v. Niedersächsische Landesmedienanstalt für privaten Rundfunk*, Case C-245/01, 23 October 2003.

55. It went on to hold as follows:

“... we do not share the opinion of the applicants that the supervisory prevalence of paragraph 3 of Article 19 over paragraph 5 excludes administrative sanctions for infringements of provisions in consequence of arrangements made on the basis of paragraph 5. By the Radio and Television Stations Law of 1998 and the Regulations issued in accordance with it, the domain to which paragraph 5 refers is regulated in a manner which in our opinion is not in conflict with paragraph 3. Because even if it is identified with the criminal meaning of Article 12 or the quasi-criminal meaning of Articles 150 and 162, the sanctions which are provided for by the Law and Regulations in question are related not to the possibility of penalties provided for in paragraph 3 but to non-compliance with the provisions of the Law and the Regulations, which constitute the basis for the issue of the broadcasting licence. And these provisions are in harmony with what paragraph 3 permits as terms and restrictions of the right to freedom of speech and expression in any form, with reference inter alia to the protection of the rights of others as well, as it was said also in *RTL Television GmbH* (supra).

As to the meaning of administrative sanctions, the case of *Demand Shipping Co. Ltd.* (supra), like the cases before us, shows clearly the latitude with which it is viewed. It is not confined to the financial charge which is automatically imposed by the Law for non-fulfilment of the stipulated obligation. In *Demand Shipping Co. Ltd.* (supra) as in the cases before us, a decision was issued by the competent Authority whereby a violation was found in relation to which the fine was imposed: an “administrative penalty” as the full bench described it there. We see no reason for divergence from that approach.

Nor do we share the view of the applicants that the regulatory powers conferred on the Republic by paragraph 5 of Article 19 cannot be exercised on behalf of the State by a public Authority established by Law. On the contrary, we are of the opinion that the role of the State is expressed more effectively and more objectively through such an Authority than through a government service. The same was done in Greece in 1989 with the establishment of the National Council of Radio and Television before Article 15.2 of the Greek Constitution was amended in 2001.

With reference to Article 26 of the Constitution, the position of the applicants, as their learned counsel explained in the written submissions, is basically as follows:

“Law 7(1)/98 is an unconstitutional intervention there where the applicants carry out their work, in the course of which they are entitled to deal freely (Article 26 of the Constitution) with producers and directors who provide information, familiarisation, entertainment through television to any television viewer who may watch their programme – free of charge –, with the obligation of course NOT to violate any of the “benefits” which Article 19(3) of the Constitution listed specifically, which alone could restrict the right to freedom of information.

It is, we believe, obvious that this position does not extend beyond what has been put forward in relation to Article 19, and in particular as regards the relationship between paragraphs 3 and 5. This we have already decided. The same is also valid for Article 25 (Employment), which has been included in the formulation of certain arguments. Article 26 (Equality) was argued in particular in recourse No. 320/99 in connection on the one hand with the said Articles 25 and 26 and on the other hand with Articles 23 (Property) and 24 (Taxation). However the same discussion has been included to some extent in other recourses also.”

56. Finally, with regard to recourse no. 320/99, the Supreme Court examined the applicant’s arguments concerning differential treatment vis-à-vis the CyBC. The Supreme Court held as follows:

“The applicants complain that the Cyprus Broadcasting Corporation, which is a State institution, is not burdened with the same charges and furthermore that it is supported financially. They present the charges as an unacceptable deprivation of property, as the imposition of tax and as an interference with their work and the contracts they enter into. We do not discern any unconstitutionality in the imposition of charges. Obviously this is not taxation. Next, objection to the co-existence of a public television station and private ones may not in principle be put forward since the right which is safeguarded by Article 19 may be promoted more fully and more effectively by this co-existence. In *Antenna T.V. Ltd and another v. 1. The Electricity Authority of Cyprus and 2. Cyprus Broadcasting Corporation*, A.E. 28th November 2002, the Full Bench, by the judgment of Kallis J., said the following in this connection:

“We therefore hold that the existence and operation in our country of public radio and television, which does not aim at profit, constitutes a form of indirect state control which also aims at guaranteeing the objectivity of private radio and television. Such a guarantee serves the public interest. Therefore the existence and operation of the CyBC., which is a public utility, serves the public interest. And as stated in the preamble of Law 14/79, the operation of the CyBC. fulfils an essential social function in the contemporary state. Consequently we hold that the need to secure income which will ensure its viability continues to exist even after the enactment of Law 120/90.”

Public and private radio and television differ in their nature and mission. This justifies different arrangements for each case concerning the viability and the adequacy of their operation and also the financial needs of the independent Authority which the Law established to safeguard the right referred to in Article 19 of the Constitution.”

57. In conclusion, the Supreme Court held that recourses nos. 809/00 and 304/01 were successful and annulled the corresponding CRTC decisions on the basis of Article 146 (4)(b) of the Constitution. The remaining recourses were however dismissed and the respective CRTC decisions were upheld on the basis of Article 146 (4)(a) of the Constitution.

58. Two judges delivered dissenting opinions in which they focused on the applicant's arguments concerning the impartiality of the CRTA in view of the different capacities in which it acted in the proceedings. The judges expressed the view that in the circumstances the disputed procedure violated Article 30 of the Constitution and Article 6 of the Convention and consequently should be annulled. In their opinion, the cumulative result of the convergence of so many different competences by the CRTA and especially the fact that the imposed fine was collected by the authority itself, might reasonably create doubts about its independence and impartiality. They noted that the whole climate was aggravated as the CRTA's decision was liable to nullification procedure without the right to dispute the substance. The recourse under Article 146 of the Constitution had only a nullifying character and the Supreme Court could not go into the essence of the case. For example, it could not examine the amount of the fine in terms of proportionality. The dissenting judges stressed, however, that the above conclusions had no bearing on the constitutionality of administrative fines.

59. Following the judgment, the applicant was reimbursed the sums it had paid in fines on the basis of the decisions in cases nos. 18/2000(3) and 113/2000(3) which were annulled by the Supreme Court¹⁰.

2. Civil proceedings (Application 35122/05)

(a) First-instance proceedings before the Nicosia District Court

60. On 20 May 2002 the CRTA brought civil proceedings against the applicant before the Nicosia District Court seeking payment of the fines it imposed by three of its abovementioned twenty-seven decisions, namely the decisions in CRTA cases nos. 18/2000(3), 75/2000(3) and 88/2000(3) (civil actions nos. 5197/2002, 5187/2002 and 5188/2002).

61. The applicant's recourse concerning case no. 18/2000(3) was still pending before the Supreme Court at the time (recourse no. 809/2000) whilst its recourse against the decision in case no. 75/2000 (recourse no. 1622/00) had been dismissed by the Supreme Court on 16 July 2001 as the applicant had failed to file written observations. The applicant did not bring a recourse against the decision taken in case no. 88/2000(3).

62. The applicant appeared and filed its defence in the actions on 27 May 2002. In its submissions the applicant raised pre-trial objections alleging that the claims, and consequently the actions, were based on an unconstitutional law. According to the applicant the legal provisions for the imposition of the administrative fines in question were unconstitutional. Further, the applicant claimed that the CRTA had imposed penalties and not administrative fines and that the imposition of such penalties infringed the

¹⁰ Recourses nos. 809/00 and 304/01

rules of natural justice and Article 12 of the Constitution as the plaintiffs had acted as prosecutors, witnesses and judges.

63. On 1 August 2002 the CRTA filed three separate applications for summary judgments.

64. On 21 October 2002 the applicant filed objections to these applications. It pleaded, amongst other things, that it had a good defence as (a) the dispensation of justice was complete only when the arguments of all the parties had been heard *in toto*; (b) the claims of the plaintiff were based on an unconstitutional law; (c) the legal provisions for the imposition of monetary penalties and the claims for the specific monetary penalties were based on an unconstitutional law; and (d) it was a penalty which was imposed on the appellants and not an administrative fine, in violation of the Constitution, which granted the power of imposing penalties only to the courts (Articles 12 and 19(3) of the Constitution). The applicant's objections were accompanied by affidavits from one of its directors stating, *inter alia*, that the matter of the constitutionality of the relevant law was pending before the Supreme Court.

65. The hearing of the applications for summary judgments took place on 29 January 2003.

66. On 21 August 2003 the District Court gave judgment in favour of the CRTA¹¹.

67. The District Court, having set out the principles governing summary proceedings and having referred to the relevant Cypriot and English jurisprudence, came to the conclusion that the plaintiff¹² had satisfied all three conditions set by Order 18 r. 1 of the civil procedure rules. Consequently, the burden of proof shifted to the defendant to put before the court such facts as would show that it was right and just to allow it to put forward its defence. It therefore proceeded to examine the main points raised by the applicant.

68. The District Court analysed the remit of the CRTA under section 3(2) of the Law by which it had been established and made reference to the relevant Regulations. Referring to the relevant case-law, the court emphasised that the decisions of the CRTA by which administrative fines had been imposed on the applicant were executory administrative acts which produced legal results until their annulment by the Supreme Court. Consequently, the fact that a recourse was pending before the Supreme Court did not constitute a good defence for an action for the collection of a pecuniary fine imposed by an administrative decision. The court also made reference to a number of first-instance judgments of the Supreme Court in recourses brought by the applicant against certain decisions of the CRTA in which the applicant's allegations as to a breach of the rules of natural justice

¹¹ Separate but identical judgments were given on the same date by the court in respect of each action.

¹² the CRTA

and the unconstitutionality of the Law had been rejected. In conclusion, the District Court decided, on the basis of the material relied upon by the applicant, that an arguable defence had not been made out.

(b) Appeal proceedings before the Supreme Court

69. On 2 September 2003 the applicant lodged appeals before the Supreme Court against the first-instance judgments (civil appeals nos. 11803, 11804 and 11805¹³).

70. The applicant claimed, *inter alia*, that it had been deprived of the right to a fair trial in violation of Articles 30 and 35 of the Constitution given, firstly, that the first-instance judgments had been given on the basis of Order 18 r. 1 (a) of the Rules of Civil Procedure, which circumvented its constitutional right to have recourse to a court and to present its defence in full, and secondly, that the first-instance court had wrongly decided that the applicant did not have a good defence despite the fact that matters concerning the constitutionality of Law 7(1)/98 were pending before the Supreme Court.

71. On 18 March 2005 the Supreme Court gave judgment dismissing the appeals. It concluded as follows:

“(a) The procedure for the issuance of a summary judgment which is provided for by Order 18 of the Rules of Civil Procedure secures the right to a fair trial and provides sufficient guarantee to the parties for the presentation of their case within a settled framework. In this connection, we observe that, according to the jurisprudence, only in cases where the defendant fails to show that he has an arguable defence is summary judgment given against him.

(b) The decisions of the respondents¹⁴ were for the imposition of administrative fines on the appellants by virtue of Law 7(1)/98 and constitute executory administrative acts, the legality of which may only be disputed according to Article 146 of the Constitution by recourse before the Supreme Court. Until an administrative act is annulled it remains in force and produces legal results. In this case the administrative acts were not annulled.

(c) The monetary claims of the appellants, in the aforementioned actions, were based completely on the aforementioned administrative acts. The appellants did not succeed in showing in sufficient detail, as they should have (since the respondents had satisfied the conditions of Order 18), that they had an arguable defence.

(d) With reference to the constitutionality of Law 7(1)/98 we observe that every law is presumed to be constitutional until the opposite is proved. This law has not been judged unconstitutional.

We consider the decisions of the Court of First Instance to be correct and the grounds of appeal unfounded. The respondents satisfied the conditions of Order 18 of

¹³ Appeal no. 11893 in respect of action no. 5188/02, appeal no. 11804 in respect of action no. 5197/02 and appeal no. 11805 in respect of action no. 5187/02

¹⁴ The Supreme Court refers to the CRTA in the plural

the Rules of Civil Procedure while the appellants failed to show that they had a good defence against the claims or to put before the Court such facts which would show that it was right and just to allow them to put forward their defence. Correctly, also, the Court of First Instance did not take into consideration the defence statements already filed by the appellants since in applications for summary judgment the facts which are taken into consideration are those which are set out, in the correct procedural form, in the application and the objection and the affidavits which accompany them. The filing of a defence by a defendant cannot deprive the plaintiff of his right to submit an application for summary judgment, in the appropriate case, as was this one.”

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. Revisional jurisdiction of the Supreme Court

72. Article 146 of the Constitution provides as follows:

“1. The Supreme Constitutional Court shall have exclusive jurisdiction to adjudicate finally on a recourse made to it on a complaint that a decision, an act or omission of any organ, authority or person, exercising any executive or administrative authority is contrary to any of the provisions of this Constitution or of any law or is made in excess or in abuse of powers vested in such organ or authority or person.

2. Such a recourse may be made by a person whose any existing legitimate interest, which he has either as a person or by virtue of being a member of a Community, is adversely and directly affected by such decision or act or omission.

3. Such a recourse shall be made within seventy-five days of the date when the decision or act was published or, if not published and in the case of an omission, when it came to the knowledge of the person making the recourse.

4. Upon such a recourse the Court may, by its decision:

(a) confirm, either in whole or in part, such decision or act or omission; or

(b) declare, either in whole or in part, such decision or act to be null and void and of no effect whatsoever, or

(c) declare that such omission, either in whole or in part, ought not to have been made and that whatever has been omitted should have been performed.

5. Any decision given under paragraph 4 of this Article shall be binding on all courts and all organs or authorities in the Republic and shall be given effect to and acted upon by the organ or authority or person concerned.

6. Any person aggrieved by any decision or act declared to be void under paragraph 4 of this Article or by any omission declared thereunder that it ought not to have been made shall be entitled, if his claim is not met to his satisfaction by the organ, authority or person concerned, to institute legal proceedings in a court for the recovery of damages or for being granted other remedy and to recover just and

equitable damages to be assessed by the court or to be granted such other just and equitable remedy as such court is empowered to grant.”

73. The jurisdiction of the Supreme Court under Article 146 is limited to review of the legality of the act, decision or omission in question on the basis of the facts and circumstances existing at the time the act, decision or omission occurred. Paragraph 1 of Article 146 sets out four grounds upon which annulment is justified: (i) failure to comply with the Constitution, (ii) failure to comply with the Law, (iii) acting in excess of or (iv) abuse of powers. Challenges for annulment under the first three headings include, *inter alia*, lack of competence or jurisdiction, errors or misconception of law or fact, lack of proper enquiry – that is, failure to ascertain the facts properly –, lack of due reasoning and failure to comply with the rules of natural justice and good administration. Challenges under the fourth head include the use of legal power to achieve a purpose not contemplated by the law. Should the recourse succeed, the power of the Supreme Court is confined to declaring an act or decision null or void, or, in the case of an omission, that it ought not to have occurred, so that what had not been done should now be done (Article 146.4). The Supreme Court will not go into the merits of the decision and substitute the decision of the administrative authority or organ concerned with its own decision; it will not decide the matter afresh. If the Supreme Court annuls the act or decision in question, the matter is automatically remitted to the appropriate administrative authority or organ for re-examination (see, amongst numerous authorities, *Papakyriakou v. the Public Service Commission*, (1999) 3 C.L.R. 720; *Yiannis Koursaros v. the Cyprus Ports Authority* (1999) 3 CLR 345; *Vrahimis Hatzihannas v. the Republic* (1999) 3 CLR 216; *Andreas Kamenos v. the Republic* (1998) 3 C.L.R. 25; *Stavros Loizides v. the Minister of Foreign Affairs* (1995) 3 CLR 233; *Eleourghia Petteimeridi Ltd v. the Republic* (1994) 3 C.L.R.199; *the Republic v. Theodolou Pantazi* (1991) 3 C.L.R 47; *G.& L. Galibers Ltd v. the Republic* (1990) 3 C.L.R 533; *Damianos and Another v. the CyBC* (1987) 3 C.L.R. 848; *Constantinos Ioannides v. the Republic* (1972) 3 C.L.R 318; *Pancyprian Federation of Labour v. the Board of Cinematograph Films Censors and the Minister of Interior*(1965) 3 CLR 27; *Yiallourides v. the Republic* (1969) 3 CLR 379; *Constantinou v. the Republic* (1966) 3 CLR 793; *Costas M. Pikis v. the Republic* (1965) 3 C.L.R. 131; *Morsis v. the Republic* (1965) 3 C.L.R. 1; *Photos Photiades and Co. v. the Republic* (1964) C.L.R. 102; *Stavros Rallis v. the Greek Communal Chamber* , 5 R.S.C.C.1; *Argiris Mikrommatis v. the Republic* 2 R.S.C.C. 123).

B. The relevant legal framework and administrative regulations concerning broadcasting

1. Constitutional provisions

74. Article 19 of the Constitution guarantees freedom of expression. It also stipulates that this right does not prevent the authorities from requiring licensing for audio, audiovisual and cinema enterprises. It provides as follows, in so far as relevant:

“1. Every person has the right to freedom of speech and expression in any form.

2. This right includes the freedom to hold opinions and receive and impart information and ideas without interference by any public authority and regardless of frontiers.

3. The exercise of the rights provided in paragraphs 1 and 2 of this Article may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary only in the interests of the security of the Republic or the constitutional order or the public safety or the public order or the public health or the public morals or for the protection of the reputation or rights of others or for preventing the disclosure of information received in confidence or for maintaining the authority and impartiality of the judiciary.

(...)

5. Nothing in this Article contained shall prevent the Republic from requiring the licensing of sound and vision broadcasting or cinema enterprises.”

2. The Radio and Television Stations Law of 1998 (Law 7(I)/1998) (Ο περί Ραδιοφωνικών και Τηλεοπτικών Σταθμών Νόμος του 1998) as applicable at the time

75. Law 7(I)/1998 on the establishment, installation and operation of radio and televisions stations amended and consolidated Laws 120/1990 and 29(I)/1992 on radio and television respectively. The Law incorporates basic provisions of the European Directive of 3 October 1989 on the coordination of certain provisions laid down by Law, Regulation or Administrative Action in Member States concerning the pursuit of television broadcasting activities, as amended by Directive 97/36 EC of 30 June 1997. These provisions concern procedures and criteria for, *inter alia*, granting broadcasting licences, protecting minors and restricting the duration and content of advertisements, telemarketing and sponsorship. Prior to the amendment of the Law in April 2004 by Amending Law 97(I)/2004 of 30 April 2004, Law 7(I)/1998 applied only to commercial/private broadcasting and not to the public service broadcaster CyBC. A dual public/private broadcasting system therefore existed before

this amendment. The provisions were also limited to broadcasters licensed by the CRTA.

76. Although Law 7(I)/1998 has been subject to a number of amendments since 2004, most recently in 2010 by Law 118(I)/2010 in order to incorporate provisions of the European Audiovisual Media Services Directive of 10 March 2010, the relevant legal provisions set out below are those which were applicable at the material time the relevant CRTA decisions were taken and do not, therefore, include these subsequent amendments.

(a) Relevant provisions concerning the establishment and remit of the CRTA

77. The CRTA was established under section 3 of Law 7(I)/1998 which sets out its functions. It provides, as follows, in so far as relevant:

“(1) An independent Authority, called the “Radio and Television Authority of Cyprus” is established.

(2) The Authority shall have the following powers:

(a) to grant, revoke, renew and amend licences for the purpose of serving the public interest;

(b) to issue circulars, instructions and recommendations for the observance of the principles of the press ethics code with which the stations should comply;

(c) to examine, *ex proprio motu* or following representations, matters concerning compliance with the principles set out in section 26;

...

(f) to impose sanctions, having heard the interested parties about a violation of :

(i) the provisions of this Law or the Regulations which are issued thereunder;

(ii) the journalistic code of conduct, following an application by the Media Complaints Commission;

(iii) the conditions of the licence;

(iv) circulars, directives or recommendations which are issued on the basis of paragraph (b) of this section.

For the purposes of the present paragraph the term “sanction” includes a recommendation, warning, temporary suspension of service of a station for a period not exceeding three months, revocation of the licence as set out in section 25 of the present law, as well as the imposition of an administrative fine for every day of violation by the station of this law or of the terms of its licence, as follows:

(i) not exceeding 5,000 Cypriot pounds in respect of a Cyprus-wide television station;

(ii) not exceeding 2,000 Cypriot pounds in respect of a radio station;

(iii) not exceeding 1,000 Cypriot pounds in respect of a local television or radio station;

(iv) not exceeding 500 Cypriot pounds in respect of a small local radio station.

...

(i) To exercise the powers and to carry out the duties entrusted to it by this Law and the Regulations issued under it.

(j) To deal with matters concerning improved implementation of the legislation governing stations and to submit relevant suggestions.

(k) To monitor compliance by the stations with the provisions of this Law and the Regulations issued under it, as well as with the circulars or recommendations issued by the Authority itself on the basis of paragraph (b) of this subsection.

3. The Authority may:

(a) Sue or be sued;

...

(d) take any step which is required for the fulfilment of its objectives under this Law or which contributes to the attainment of its objectives.”

78. Section 4 concerns the composition and appointment of the CRTA. It provides as follows, in so far as relevant:

“(1) The Authority consists of the president, vice-president and five members, appointed by the Council of Ministers.

(2) The president, vice-president and members of the Authority are appointed for a period of six years and come from the fields of literature, art, science or technology; or are persons with expertise in matters concerning the media, of a high professional and moral standard.

(3) No person shall be appointed as a member of the Authority, if he has a direct or indirect interest in any radio or television enterprise or in the Cyprus Broadcasting Corporation.

...”

79. Section 9 provides for the services of the CRTA. Paragraph 7 provides that the CRTA may transfer its functions to its director or to committees composed of its members and in which the director as well as other of its officials may participate.

80. Section 12 provides that the CRTA shall grant a licence for the establishment, installation and operation of a television or radio station.

81. Section 24 provides for the payment of fees for the grant of a licence and the creation, installation and operation of a radio or television station, and for the payment of a percentage of the income from advertisements:

“... ”

- (a) for a Cyprus-wide/pancyprian television station £30,000;
- (b) for a local television station £7,000;
- (c) for a pancyprian radio station £3,000; and
- (d) for a small local radio station £500.

0.5% of the income of the stations from advertisements which they broadcast in their programmes, shall also be paid to the Authority as a fee.”

82. Section 38 concerns the revenue of the CRTA and provides as follows:

“(1) The Authority shall have a separate Fund into which the following shall be deposited:

- (a) Fees from the issue of licences;
 - (b) Fees from the examination of applications for the issue, renewal or amendment of licences;
 - (c) Any grant or other revenue which is given to, or collected by, the Authority;
 - (d) Revenue from the imposition of administrative fines on stations in accordance with section 3 of this Law;
 - (e) All the revenue produced by the assets of the Authority;
 - (f) Any government grant;
- (2) The Fund of the Authority shall pay:
- (a) All the salaries of its staff and the remuneration of its members;
 - (b) The contributions of the Authority to other related organizations;
 - (c) The interest on any loan contracted by the Authority;
 - (d) Any other amount legally owed by the Authority.

(3) The monies of the Authority which are not immediately needed for its legal payments may be invested in any manner that may be decided by the Authority.”

(b) Provisions concerning broadcasting

83. Section 26 sets out the principles governing broadcasts. It provides as follows:

“(1) The broadcasts of every licensed station should be governed

(a) by the principles of objectivity, fullness and topicality of information. The fullness of the programme of a non-thematic station, is indicated:

(i) by the percentage of informative programmes, excluding news bulletins, which are broadcast between the hours of 12.00 to 24.00, which should not be lower than 7% of the total broadcasting time during one week;

(ii) by the percentage of the cultural programmes which are broadcast between the hours of 12.00 to 24.00, which should constitute of at least 2% of the broadcasting time excluding the time for news, sport events, television/radio games, advertisements or teleshopping services.

Provided that the above percentages shall apply also to encoded broadcast stations only as regards their programme which is broadcast in a non-encoded form.

(b) by high quality,

(c) by pluralism and the greatest possible access to the public and its agencies,

(d) by the safeguarding of the quality of the language,

(e) by respect for the personality, reputation and privacy of individuals;

(f) by respect for the ideals of democracy and human rights;

(g) by the safeguarding of the national identity and the cultural heritage of the people of Cyprus.

(2) News bulletins and topical/current affairs programmes should be characterised by objectivity and pluralism, particularly regarding political issues but also regarding any social matters which occupy public opinion.

(3) The broadcasting of programmes in which techniques directed at the subconscious are used is prohibited.”

84. Section 33 sets out the conditions concerning the broadcasting of advertisements and telemarketing. It provides as follows, in so far as relevant:

“...

(2) The broadcast of advertisements and teleshopping messages by a station should be in keeping with, or, depending on the case, should not violate, the following provisions:

...

(d) Surreptitious advertising and telemarketing are prohibited.

...

(h) When advertisements or telemarketing messages are shown in broadcasts other than those envisaged in paragraph (f), a period of at least twenty minutes between two successive breaks in the broadcasts should be allowed.

...

(j) News bulletins may be interrupted only once, in their middle, for the broadcasting of advertisements or telemarketing messages.

...

(4) Any form of advertisement and telemarketing of cigarettes and other tobacco products is prohibited.

(5) (a) The advertisement of medicines and medical treatments which are dispensed only on the basis of a doctor's prescription shall be prohibited as shall be the telemarketing of medical treatments.

(b) Telemarketing of medicines for which a marketing licence is required under the Human Use Medicines (Control of Quality, Supply and Prices) Laws of 1967 to 1995 by stations coming under the jurisdiction of the Republic is prohibited.

...

7. (a) The advertisement should not harm minors morally or physically and, specifically, for the purpose of their protection, it should meet the following conditions:

(i) It should not directly incite minors to purchase a product or a service, exploiting their inexperience and credulity.

...".

85. Section 34 sets out the conditions concerning the duration of advertisements and telemarketing and the advertisement of children's toys. It provides as follows, in so far as relevant:

"...

(4) The advertisement of children's toys by stations coming under the jurisdiction of the Republic, is prohibited:

(a) From morning until ten in the evening daily;

(b) From morning until eleven in the evening during

(i) school holidays as they are defined at any time in the Regulations on the Operation of State Schools of Secondary and Primary Education;

(ii) Saturday and Sunday;

(iii) The days preceding the above.”

(c) Provisions concerning criminal offences

86. Sections 48 and 49 provided for criminal offences and criminal responsibility of legal persons. They read as follows:

“48 (1) Any person who establishes, installs or operates a station without the licence of the Authority or in violation of the terms which are set out in his licence is guilty of a criminal offence and, in the event of conviction, is liable to imprisonment up to three years or a fine which does not exceed twenty thousand pounds or to both penalties.

(2) A person who intentionally and systematically interferes with the transmission of a licensed station is guilty of a criminal offence and, in the event of conviction, is liable to imprisonment up to three years or a fine which does not exceed twenty thousand pounds or to both penalties.

(3) A person who intentionally seeks to influence a member of the Authority or of the Advisory Radio and Television Committee in the exercise of his responsibilities is guilty of a criminal offence and, in the event of conviction, is liable to imprisonment up to three years or a fine which does not exceed twenty thousand pounds or to both penalties.

(4) In the event of the conviction of a person for an offence committed in violation of this Law and the Regulations issued on the basis thereof, the Court may in addition to the imposition of any other penalty order the immediate termination of the operation of the station which belongs to the said person, for so long as and on such terms as the Court may deem expedient to impose.

(5) A person against whom an order has been issued by virtue of the above subsection and who neglects, omits or refuses to conform commits an offence and, in the event of conviction, is liable to imprisonment for a period which does not exceed two years or a fine which does not exceed two thousand pounds or to both penalties.

(6) A person who violates any provision of this Law or the Regulations issued on the basis thereof is guilty of a criminal offence and, in the event of conviction, is liable to imprisonment for a period which does not exceed three years or a fine which does not exceed twenty thousand pounds or to both penalties.”

“49. In the event that any of the offences referred to in this Law are committed by a legal person, the responsibility for the said offence is borne by, apart from the legal persons themselves:

(a) all the members of the Administrative or Management Board or Committee which manages the affairs of the legal person;

(b) the general manager or the manager or the managing director of the legal person,

and the criminal prosecution for the offence may be brought against the company and against all or any of the above persons.”

The above sections were abolished by section 24 of Amending Law 97(1)/2004.

87. Under Section 51 the CRTA is given the authority to issue Regulations, for the improved implementation of the Law and following the approval of the Council of Ministers, to regulate a number of matters, including, the imposition of fines for violation of the provisions of the Law and the Regulations, where these are not envisaged by the Law (section 51(2(n)).

3. The Radio and Television Stations Regulations of 2000, (Regulatory Act 10/2000) (Οι Περί Ραδιοφωνικών και Τηλεοπτικών Σταθμών Κανονισμοί του 2000) as applicable at the time

88. Part I of the Regulations sets out the definition of certain of the terms used in the Regulations. In this the term “family zone” is defined as the hours during which non-encoded programmes suitable for persons under the age of fifteen are broadcast. It starts at 5.30 a.m. and ends at 9.00 p.m. on nights which are followed by working days and at 10.00 p.m. on nights which are followed by non-working days (Saturday, Sunday, public holidays and school breaks as these are defined by the current Regulations concerning the Operation of State Schools of Secondary and Primary Education.

89. Part II of the Regulations concerns the licence for the establishment, installation and operation of a station. Regulation 5 sets out the fees to be paid for such a licence.

90. Part VI of the Regulations concerns the supervision of programme content. The relevant Regulations, at the material time, provided as follows:

Regulation 21 (Introductory provisions)

“...

(3) Stations are obliged in all broadcasts (including advertisements) to show respect for the personality, honour, reputation, private life, professional, scientific, social, artistic, political or other related activity of every person whose image appears on the screen or whose name is broadcast by a station or is mentioned, or about whom such details are transmitted as enable the recognition of his identity. The above obligation extends to every individual or the image generally of a person as an individual or a member of a group.

(4) Stations shall take the necessary steps to maintain generally acceptable standards of propriety and good taste of language and behaviour, taking into account the type and context of each broadcast. Special care is imperative in programmes which are transmitted at a time when minors may be watching.

(5) Stations have the responsibility of ensuring that the viewers or listeners are always informed of the content of the programme which they are watching.

(6) Stations shall ensure that the programmes which are broadcast in the family zone are suitable for children under fifteen.

...”

Regulation 22 (classification of films, warnings for television programmes)

“(1) On the basis of the criteria set forth in these Regulations, warnings shall be given in relation to the nature of the broadcast, irrespective of whether it is aired in the family zone or outside it. This warning shall be of three kinds:

(a) Written notice in the daily press and in radio and television magazines;

(b) Spoken notice before the commencement of the broadcast;

(c) Visual notice, with a visual indication every ten minutes in the bottom left-hand corner of the screen as follows:

(i) (K) in brackets, in green, for programmes suitable for general viewing;

(ii) (12) in brackets, in yellow, for programmes unsuitable for persons under twelve years of age.

(iii) (15) in brackets, in blue, for programmes unsuitable for persons under fifteen years of age.

(iv) (18) in brackets, in red, for programmes unsuitable for persons under eighteen years of age.

(v) (A) in brackets, for programmes of intense erotic content.

(2) The programmes which come under categories (15) and (18) may be shown only outside the family zone.

...”

Regulation 24 (News bulletins)

“(1) (a) The news bulletins shall be prepared in advance and transmitted with accuracy, objectivity, impartiality, multifariousness and the greatest possible fullness.

...

(2) ...

(d) the broadcasting of scenes that may be unsuitable for minors or touch the sensitivities of the viewers shall be brief and be accompanied by visual or spoken warning;

...

(3) The transmission of the names of persons dead, wounded or missing [as the result of hostilities], victims of shipwrecks and missing persons is prohibited before it is absolutely certain that their next of kin have been informed.”

Regulation 26 (Contents of entertainment programmes)

“...

(1) [In entertainment programmes] the transmission of broadcasts which offend against the dignity of either sex, racial, national, religious groups or persons with special needs is prohibited.”

Regulation 32 (Protection of minors)

“...

(2) Non-news broadcasts which project degrading or cruel treatment of human beings or animals, or other unacceptable or condemnable behaviour or displays of violence shall not be transmitted within the family zone.

(3) (a) The broadcast of programmes within the family zone which may seriously harm the physical, intellectual or moral development of minors and particularly programmes which contain erotic scenes or scenes of violence is prohibited.

...”

91. Part VII of the Regulations concerns the examination by the CRTA of complaints and violations. The relevant Regulations provide as follows:

Regulation 41 (Powers of the Authority)

“(1) The Authority has the power to examine complaints from the public which are submitted to it:

- (a) for unfair treatment by stations in informative or entertaining programmes;
- (b) for a violation of private life by the screening of material contained in such programmes;
- (c) for the transmission, in violation of the Law and the Regulations, of sexual activity or excessive and unjustified violence in informative or entertaining or other programmes;
- (d) for the inability of the television station to maintain acceptable levels of decorum vis-à-vis the public, in accordance with the provisions of the Law and the Regulations;
- (e) for interference with radio waves and for any other problems relating to the transmission of the signal.

(2) The Authority has power, *ex proprio motu* and independently of complaints from the public, to examine violations by any station if it comes to its notice that the provisions of the Law and Regulations may not have been complied with.

...”.

Regulation 42 (Procedure for examination of violations)

“(1) The Authority may, on each occasion, appoint a committee or committees consisting of at least four (4) members to examine complaints or violations as provided below.

(2) Without prejudice to the power conferred on the Authority by the Law to transfer its powers, the Authority may transfer any of its powers by virtue of this Part to a committee composed of servants of the Authority.

(3) When a complaint is submitted or violations of the Law or of the Regulations come to the notice of the Authority, the Authority appoints an official to investigate each complaint or violation.

(4) The official has power to hear any witnesses and to take written statements from the persons involved, who are obliged to give all relevant information or facts.

(5) After the completion of the investigation, the official reports his finding to the Authority, fully reasoned, submitting at the same time all the relevant material.

(6) The procedure before the Authority is conducted as appointed below:

(a) A copy of the probable violation or the complaint is sent to the station against whom the charge is made.

(b) The station against whom the charge is made (the respondent) is invited to submit its representations either in person or in writing.

(c) The Authority has power:

(i) To summon witnesses and to require their attendance, as well as the attendance of the respondent and also the complainant.

(ii) To admit any evidence, written or oral, even if it would not have been admitted in civil or criminal proceedings.

(iii) To require production of every document or other exhibit which is relevant to the case.

7. The respondent is obliged, if so required by the Authority:

(a) to submit to the Authority and/or to the complainant a written statement in answer to the complainant;

(b) to supply the Authority with a visual or audio recording of the programme under accusation or of any specific part thereof;

(c) to make suitable arrangements, to enable the complainant to see or hear the programme under accusation or any specific part thereof;

(d) to supply to the Authority and the complainant the transcript of the programme under accusation or any specific part thereof;

(e) to supply to the Authority and the complainant copies of any relevant documents which are in its possession – either the originals or certified copies – and any correspondence which may have taken place between the accused and the complainant in connection with the specific complaint;

(f) where the accused is a station, to arrange together with one or more members of the Administrative Board or with members of its staff to cooperate with the Authority in order to assist with the examination of the complaint;

(g) where the accused is a private production or distribution company, to ensure that one or more members of its staff cooperate, in order to assist with the examination of the complaint.

(8) Every decision of the Authority must be reasoned and signed by its chairman and be communicated in writing to the person against whom the accusation was made and, in the case of a complaint, to the complainant.

...

(10) The Authority may by its decision either find the person against whom the accusation was made guilty and impose on him any of the sanctions provided for in the Law, or discharge him of the charge.”

92. Part VIII includes, *inter alia*, Regulations on the payment of fees and fines and the taking of legal action when payment has not been made. The relevant Regulations provide as follows:

Regulation 47 (Method of payment)

“The fees or administrative fines or any other debts are paid to the Authority irrespective of any objection or recourse.”

Regulation 48 (Judicial or legal measures)

“(1) The Authority may take legal steps to secure payment of any charges, administrative fines or any other debts against any person and may collect such sums with all legal costs as a debt owed to the Authority.”

93. Appendix VIII of the Regulations sets out the journalistic code of conduct for the electronic mass media. Paragraph 8 of Part I provides as follows:

“Journalists in the performance of their function:

...

(2) Shall display fitting sensitivity in matters which concern national security and shall be particularly careful in the presentation of matters such as violence, crime, human pain and death, as well as information or pictures which may cause panic, horror or revulsion.”

94. Paragraphs 1, 6 and 10 of Part II of Appendix VIII concern accuracy, mourning/grief and the principle of presumption of innocence. They provide as follows, in so far as relevant:

Paragraph 1 (Accuracy)

“...

(2) the electronic mass media, even though they have the right to support specific views, are obliged to make clear the distinction between fact, comment and conjecture.

Paragraph 6 (Mourning/grief)

“In the case of mourning, grief or shock, close-ups shall be prohibited and the most discreet coverage of the event is expected. The approach to be adopted should be characterised by the utmost discretion and sympathy and the avoidance of any act likely to increase human suffering.”

Paragraph 10 (presumption of innocence)

“Journalists shall fully respect the principle that a person suspected or accused of committing an offence is innocent until proof, in accordance with the law, of the contrary and shall consequently avoid publishing anything which will lead to a conclusion about the guilt or innocence of the suspect and/or accused or tends to malign or pillory him.”

95. Appendix IX of the Regulations sets out the code for advertisements, telemarketing messages and sponsorship of radio and television programmes. Paragraph 3 of Part E concerns sponsorship and provides as follows:

“Programmes which are sponsored must be identified by the name and/or the logo of the sponsor, featured at the beginning and/or the end of the programmes. The constant or intermittent display on screen of the name, distinctive title and/or trademark of products or services offered by the sponsor is prohibited and in any event shall constitute an advertisement which is subject to the corresponding restrictions.”

4. *The Cyprus Broadcasting Corporation and Law, Cap. 300 A, (Ο Περί Ραδιοφωνικού Ιδρύματος Κύπρου (ΡΙΚ) Νόμος)*

96. The Cyprus Broadcasting Corporation Law, Cap. 300A, provides for the establishment of the CyBC, its powers and functions, the procedures for appointing its personnel and their status. The CyBC is a public service

institution (Article 122 of the Constitution) and is State-funded. It is the public broadcaster of the Republic.

97. Section 2 of Cap. 300A, as amended by Amending Law 116(I)/2003, stipulates that the mission of the CyBC is to provide public broadcasting services within the Republic, responding directly to the democratic, social and cultural needs of Cypriot society and to the need to secure pluralism of, *inter alia*, cultural and linguistic diversity in the mass media, including a balanced package of services consisting of informative, cultural and entertainment programmes, social service programmes, programmes addressed to overseas Cypriots, and transmissions related to national emergencies and civil protection efforts. The functions of the CyBC are set out in section 17 of Cap. 300A.

98. The Regulations on Public Service Broadcasting of 2003 (Περί Ραδιοφωνικού Ιδρύματος Κύπρου (Δημόσια Ραδιοτηλεοπτική Υπηρεσία) Κανονισμοί του 2003) define the criteria the CyBC should satisfy in order to qualify for the title of public service broadcaster. These criteria are based on the need to respect specific quotas for each category of programmes.

99. The CyBC is governed by a Board of Directors which is appointed for a three-year term by the Council of Ministers (section 5). One of the members of the Board is appointed as President by the Council of Ministers (section 5). The Director General is the chief executive officer, appointed by the Board of Directors and endorsed by the Council of Ministers (section 9). The General Auditor performs an annual audit of the accounts of the CyBC in order to ensure that the public funding received was not used in a way that would harm competition against the public interest (section 24B (1) Amending Law 116(I)/2003 and Article 116 of the Constitution). The CyBC can also have its accounts examined by a certified private auditor appointed by the corporation and approved by the General Auditor (section 24B(1)). The CyBC's budget is approved by the Council of Ministers and the House of Representatives.

100. Cap. 300 A sets out, *inter alia*, a number of conditions and obligations concerning broadcasting. At the material time, the conditions concerning the broadcasting of advertisements and telemarketing, including those concerning the broadcasting of advertisements of children's toys [section 17A as introduced by section 5 of Amending Law 8(I)/1998] were the equivalent of those set out in sections 33 and 34 of Law 7(I)/1998 (see paragraphs 84 and 85 above). Further, section 19 defines the obligations of the CyBC to provide programmes which, *inter alia*, are not likely to stir feelings of hatred based on race, gender, religion or nationality, or impair the physical, mental or moral development of minors, and to use appropriate acoustic and visual warnings.

101. Amending Law 96(I)/2004 of 30 April 2004 extended the watchdog powers of the CRTA to the CyBC. In particular, it gave the CRTA the power to investigate possible breaches of the law and impose sanctions for

breaches of the law relating, *inter alia*, to advertising, sponsorship and telemarketing, and to the protection of minors (sections 22B and C of the Amending Law). Cap, 330A has been subject to a number of amendments since 2004, the most recent being in 2010, by Law 117(I)/2010.

C. Relevant Constitutional provisions concerning the protection of human rights

102. Article 12 of the Constitution safeguards the right of the accused. It provides as follows, in so far as relevant:

“1. No person shall be held guilty of any offence on account of any act or omission which did not constitute an offence under the law at the time when it was committed; and no person shall have a heavier punishment imposed on him for an offence other than that expressly provided for it by law at the time when it was committed.

2. A person who has been acquitted or convicted of an offence shall not be tried again for the same offence. No person shall be punished twice for the same act or omission except where death ensues from such act or omission.

3. No law shall provide for a punishment which is disproportionate to the gravity of the offence.”

103. Article 28 of the Constitution safeguards equality before the law and prohibits discrimination. Unlike Article 14 of the Convention, it is an independent provision. It reads as follows, in so far as relevant:

Article 28 (equality/prohibition of discrimination)

“1. All persons are equal before the law, the administration and justice and are entitled to equal protection thereof and treatment thereby.

2. Every person shall enjoy all the rights and liberties provided for in this Constitution without any direct or indirect discrimination against any person on the ground of his community, race, religion, language, sex, political or other convictions, national or social descent, birth, colour, wealth, social class, or on any ground whatsoever, unless there is express provision to the contrary in this Constitution.”

104. Article 35 of the Constitution provides that the legislative, executive and judicial authorities of the Republic shall be bound to secure, within the limits of their respective competence, the efficient application of the provisions of the Constitution concerning fundamental rights and liberties.

D. Relevant Rules of Civil Procedure

105. Order 18 r.1(a), concerning summary judgment and leave to defend where the writ has been specially indorsed, provides as follows:

“1.(a) Where the defendant appears to a writ of summons specially indorsed under Order 2, Rule 6, the plaintiff may, on affidavit made by himself or by any other person who can swear positively to the facts, verifying the cause of action, and the amount claimed (if any), and stating that in his belief there is no defence to the action, apply for judgment for the amount so indorsed, together with interest (if any), or for the recovery of the land (with or without rent), or for the delivering up of a specific chattel, as the case may be, and costs. And judgment for the plaintiff may be given thereupon, unless the defendant shall satisfy the Court that he has a good defence to the action on the merits, or disclose such facts as may be deemed sufficient to entitle him to defend.”

THE LAW

I. JOINDER OF THE APPLICATIONS

106. In the applications the applicant submitted various complaints about the proceedings before and various decisions of the CRTA, the judicial review proceedings and civil proceedings and the allegedly different treatment it received vis-à-vis the public service broadcaster CyBC. It invoked Articles 6 § 1, 10, 13 and 14 of the Convention, Article 1 of Protocol No. 1 and Article No. 1 of Protocol No. 12.

107. Given the similar factual and legal background of the applications and complaints, the Court decides that they should be joined pursuant to Rule 42 § 1 of the Rules of Court.

II. ADMISSIBILITY OF THE APPLICATION WITH REGARD TO CRTA CASES nos. 18/2000(3), 75/2000(3), 88/2000(3) and 113/2000(3)

A. Compatibility *ratione personae*: complaints as to the proceedings concerning the CRTA’s decisions in cases nos. 18/2000(3) and 113/2000(3)

1. The parties’ submissions

108. The Government submitted that the applicant could not claim to be a victim, within the meaning of Article 34 of the Convention, of a violation of its rights under the Convention to the extent that its complaints were directed against the CRTA’s decisions in cases nos. 18/2000(3) and 113/2000(3), which had been annulled by the Supreme Court and the

amount paid as a fine by the applicant refunded. This applied to both the judicial review proceedings and the civil proceedings

109. The applicant made no submissions in this respect.

2. The Court's assessment

110. The Court notes that on 24 February 2003 the Supreme Court annulled the abovementioned CRTA decisions challenged with recourses 809/00 and 304/01 as it found the procedure followed by the CRTA defective and, therefore, that the decisions lacked the necessary legal basis. The decisions were consequently declared null and void and the applicant was reimbursed the fines paid, including the fine that had been the subject of civil proceedings (civil action no. 5197/2002 and civil appeal no. 11804). Even though the CRTA had been successful in the civil proceedings taken against the applicant for the payment of the fine imposed by the decision in case no. 18/2000(3), in the end that decision was annulled in the context of the judicial review proceedings, so these proceedings were eventually of no consequence.

111. In these circumstances, the Court considers that the applicant cannot claim, within the meaning of Article 34 of the Convention, to be a victim of a violation of his rights guaranteed by the Convention and the protocols thereto. Accordingly, this part of the application must be rejected pursuant to Article 35 § 4.

B. Exhaustion of domestic remedies: complaints as to the proceedings concerning the CRTA's decisions in cases nos. 88/2000(3) and 75/2000(3)

1. The parties' submissions

112. The Government submitted that in so far as the applicant's complaints concerned the CRTA's decisions nos. 88/2000(3) and 75/2000(3), the applicant had not exhausted domestic remedies as required by Article 35 § 1 of the Convention. The decisions constituted executory administrative acts the legality of which should have been challenged by way of administrative recourse under Article 146 of the Constitution. The Government first pointed out that the applicant had not brought a recourse against the decision in case no. 88/2000(3), on the basis of which the fine sought to be recovered in the civil proceedings was imposed. Secondly, although the applicant had brought a recourse against the decision in case no. 75/2000(3), this had been dismissed by the Supreme Court for failure on the part of the applicant to file written submissions. No attempt had been made by the applicant to have the above recourse reinstated. Instead, the applicant had tried to challenge the above decisions

in the context of its defence in the civil proceedings brought against it by the CRTA for the payment of the fines. In such proceedings, however, grounds pertaining to the legality of an administrative decision, including issues as to the proportionality of the fine imposed by such a decision, could not be put forward as a defence to the debt claim and could not be examined by the civil courts, as they were matters that fell within the revisional jurisdiction of the Supreme Court. The Government underlined that decisions of administrative authorities giving rise to rights and obligations were considered to be legal and enforceable unless and until they were declared null and void by the Supreme Court in a recourse brought under Article 146.

113. The applicant disputed the Government's submissions. It maintained that in view of the findings of the full bench in its judgment of 24 February 2003, there was no point in bringing a recourse against the decision in case no. 88/2000(3) or an appeal against the decision in case no. 75/2000(3). It was also for this reason that it had put forward its arguments in the civil proceedings brought by the CRTA. However these had been dismissed by both the District Court and the Supreme Court.

2. The Court's assessment

114. The Court reiterates that the rule of exhaustion of domestic remedies referred to in Article 35 § 1 of the Convention requires applicants first to use the remedies provided by the national legal system before turning to the Court. The rule is based on the assumption that the domestic system provides an effective remedy in respect of the alleged breach. While in the context of machinery for the protection of human rights the rule of exhaustion of domestic remedies must be applied with some degree of flexibility and without excessive formalism, it does not require merely that applications should be made to the appropriate domestic courts and that use should be made of remedies designed to challenge impugned decisions which allegedly violate a Convention right. It normally requires also that the complaints intended to be made subsequently at the international level should have been aired before those same courts, at least in substance and in compliance with the formal requirements and time-limits laid down in domestic law (see, among many other authorities, *Fressoz and Roire v. France* [GC], no. 29183/95, § 37, ECHR 1999-I).

115. The Court notes that the CRTA's decisions in question are executory administrative acts the legality of which should be challenged with a recourse under Article 146 of the Constitution. As the Government point out, however, the applicant failed to use this remedy. The applicant relies on the Supreme Court's judgment of 24 February 2003 as a ground for absolving it from doing so. The Court firstly, notes that the two decisions of the CRTA were taken in November 2000, that is, more than two years before the Supreme Court gave its judgment in the joint recourses. Secondly, the CRTA decisions constitute separate executory

administrative acts which do not necessarily give rise to the same grounds for annulment. It cannot be said therefore that the applicant would have been unsuccessful if he had brought recourses against these decisions and that the Supreme Court would have found, in its examination of the legality of the relevant decisions, that annulment was not justified on any ground. In this respect the Court notes in particular that the applicant was successful in two of the twenty-six recourses he had brought. In so far as the applicant can be taken to claim that he had exhausted domestic remedies as he had aired his complaints concerning the CRTA decisions in the civil proceedings brought against him, the Court notes that the civil courts did not have the competence to examine matters which fell within the exclusive revisional jurisdiction of the Supreme Court.

116. In these circumstances, it cannot be said that the applicant exhausted domestic remedies in so far as its complaints under the Convention and the Protocols thereto concern these two CRTA decisions and the sufficiency of the scope of review of those decisions by the civil courts. This part of the application must therefore be rejected under Article 35 § 1 of the Convention for non-exhaustion of domestic remedies.

117. The Court notes, however, that this conclusion does not concern the applicant's complaint of a breach of the principle of equality of arms in the relevant civil proceedings (see paragraph 119 below).

III. ALLEGED VIOLATIONS OF ARTICLE 6 § 1 OF THE CONVENTION

118. The applicant complained under Article 6 § 1 of the Convention concerning a number of aspects of the proceedings before the CRTA and the domestic courts. This provision read as follows:

“In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law.”

A. The applicant's complaints under this provision

119. The applicant complained that the proceedings before the CRTA did not satisfy the independence and impartiality requirement of Article 6 § 1 of the Convention, and that this defect had not been remedied by the domestic courts, as in both the judicial review proceedings and the civil proceedings they did not have “full jurisdiction” to consider its claims and had not provided the guarantees of that provision. With respect to the latter, the applicant raised a number of complaints. In so far as the judicial review proceedings were concerned, the applicant complained about a lack of impartiality on the part of the Supreme Court (see paragraph 134 below),

the joint examination of its recourses (see paragraph 121 below) and the dismissal of its application to submit further arguments before the full bench. In so far as the civil proceedings were concerned, the applicant complained of a violation of the principle of equality of arms.

120. Further, in its observations of 30 July 2007, the applicant complained under Article 13 of the Convention that its cases before the Supreme Court had not been adequately examined. The Court, however, notes that this complaint is the same in substance as that raised under Article 6 § 1 concerning the alleged insufficiency of the scope of jurisdiction of the domestic courts. The Court reiterates that the role of Article 6 § 1 in relation to Article 13 is that of a *lex specialis*, the requirements of Article 13 being absorbed by the more stringent requirements of Article 6 § 1 (see *Brualla Gómez de la Torre v. Spain*, 19 December 1997, § 41, *Reports of Judgments and Decisions* 1997-VIII). Consequently, it will consider this part of the application solely under Article 6 § 1 of the Convention.

B. Admissibility of complaints

1. Six months

121. In its observations of 30 July 2007 the applicant introduced a new complaint. In particular, it complained that the joint examination of its recourses by the Supreme Court sitting as a full bench had rendered the proceedings unfair as it had been deprived of the possibility to appeal and it had been denied a fair examination of pending appeals in other recourses.

122. The Court notes that the above complaint was not raised in the applicant's application form to the Court but was first submitted by the applicant in its abovementioned observations. As the final judgment of the Supreme Court in the recourses was delivered on 24 February 2004, this complaint was not submitted within the six-month time-limit and must therefore be rejected as inadmissible pursuant to Article 35 §§ 1 and 4.

2. Compatibility ratione materiae – the applicability of Article 6 § 1 to the proceedings

(a) The parties' submissions

123. The parties did not contest the applicability of Article 6 § 1 of the Convention under its civil head to the judicial review and civil proceedings in question.

124. Notwithstanding, the applicant argued, that the fines imposed by CRTA were in fact of a criminal nature and that therefore their complaints could also be examined under the criminal head of the Article 6 § 1. In this

connection the applicant drew the Court's attention to Section 48 (6) of the Law and relied on the findings of the Court in the case of *Jussila v. Finland* ([GC], no. 73053/01, ECHR 2006-XIII).

125. In the Government's submission it was quite clear that Article 6 § 1 of the Convention was not applicable under its criminal head. In brief, they argued firstly that according to domestic law and the Supreme Court's case-law the fines imposed by the CRTA had been administrative fines – they came within the ambit of administrative law and were subject to a recourse under Article 146 of the Constitution; secondly, the Law and Regulations were applicable to a limited and very specific group operating radio and television stations under the provisions of the applicable law. Thirdly, the aim of the Law and, by analogy, of the fines was to ensure that the interests of viewers and listeners were safeguarded and to discourage non-compliance; its aim was not to collect funds and to punish stations who failed to comply. The situation was therefore not akin to that in the *Jussila* case (cited above). Furthermore, the administrative procedure was distinguishable from the criminal procedure set out in section 48 of the Law. Fines imposed under the administrative procedure were viewed as debts and could only be recovered through civil proceedings.

(b) The Court's assessment

126. Having regard to the applicant's complaints, the Court does not find it necessary to determine whether the criminal limb of Article 6 § 1 is applicable as paragraph 1 of Article 6, violation of which is alleged by the applicant, applies in civil matters as well as in the criminal sphere (see *Albert and Le Compte v. Belgium*, 10 February 1983, § 30, Series A no. 58).

127. As the parties do not dispute the applicability to the proceedings at issue of Article 6 § 1 under its "civil" head, the Court, seeing no reason to differ, shall examine the present case under that head.

3. The well-foundedness of the complaints

(a) The parties' submissions

(i) The applicant

128. The applicant alleged that he had been denied a fair hearing before an independent and impartial tribunal. In this connection he complained about (a) the proceedings before the CRTA, (b) the judicial review proceedings before the Supreme Court and (c) the civil proceedings before the Nicosia District Court and the Supreme Court.

129. First, the applicant considered that due to its multiplicity of functions in prosecuting, investigating, trying and deciding, the CRTA did not fulfil the requirements of independence and impartiality set out in

Article 6: the CRTA could initiate an investigation not only upon complaint but also *ex proprio motu*; the investigation was carried out by an investigating officer who was an employee of the CRTA; the CRTA then played the part of the prosecution, and its members determined the violation of the legislation; and lastly, the fine which was imposed was paid into its own Fund from which, *inter alia*, the salaries of its staff and the remuneration of its members were paid. In support of its assertions the applicant pointed to sections 38(1)(d) and 38(2)(a) of the Law. It was the applicant's submission, therefore, that the CRTA's staff and members had a direct and personal interest in the imposition of fines. The applicant also claimed that the income generated by fines formed a substantial part of the annual budget of the CRTA, and that the continuing operation of the CRTA was therefore dependent upon that income. The applicant relied on figures given in press releases issued by the CRTA concerning fines imposed during the first six months of 2006. There were no figures available for the fines imposed during the rest of that year or for the period in which the CRTA had issued decisions against and imposed fines on the applicant.

130. It was the applicant's submission that the review carried out by the domestic courts had not remedied the defects of the proceedings before the CRTA to such a degree as to justify a finding that the proceedings as a whole had been in conformity with Article 6. The domestic courts did not have "full jurisdiction" to consider its claims and did not provide the fairness guarantees required under Article 6 § 1.

131. With regard to the judicial review proceedings, the applicant emphasised that the Supreme Court, in its judicial review capacity, could only determine the legality of the administrative decisions in question and could not look into their merits, hear evidence or decide on matters afresh. The applicant submitted that the Supreme Court did not and was not able to examine the facts of the case, whether the CRTA had made correct or adequate findings of fact and whether it had adequately reasoned its decisions.

132. The applicant also stressed that the Supreme Court could not decide upon the necessity of the imposition of the fines by the CRTA and the amounts of the fines on the basis of proportionality; it was the applicant's submission that this had been the essence of its cases. The applicant relied on the dissenting opinion given by two of the Supreme Court judges in the joint recourses to support his arguments that the Supreme Court could not consider issues pertaining to the fines.

133. In view of the above, the applicant claimed that, as in the case of *Tsfayo v. the United Kingdom* (no. 60860/00, 14 November 2006), the Supreme Court could not be said to have examined the crux of its case, and that it had not had the benefit of a full review. In support of its arguments the applicant also relied on the cases, *inter alia*, of *Albert and Le Compte*,

cited above; *Belilos v. Switzerland*, 29 April 1988, Series A no. 132; and *Gradinger v. Austria*, 23 October 1995, Series A no. 328-C.

134. The applicant also maintained that the Supreme Court had not been impartial in the judicial review proceedings, as one of the judges who had sat on the full bench, had given judgment, at first instance, in another recourse brought by the applicant raising the same and/or similar questions¹⁵. The applicant noted that it had unsuccessfully raised this issue with the Supreme Court in its application of 10 February 2004. In its observations of 30 July 2007 the applicant extended this complaint to another three judges on the same grounds¹⁶. All the first-instance judgments referred to by the applicant had been given before the Supreme Court's judgment of 24 February 2004 was delivered¹⁷. The applicant argued that as these judges had already issued judgments rejecting identical and/or similar arguments put forward by the applicant in other cases, they had the same preconceived opinions on how to decide the recourses, and could reasonably be expected not to rule against their initial decisions. As a result the whole bench had been tainted.

135. Finally, with regard to the civil proceedings, the applicant claimed that the civil courts had also not examined the merits of its claims as they had decided that the decisions of the CRTA could not be examined in the context of the civil proceedings.

(ii) *The Government*

136. The Government argued that the present case differed from the *Tsfayo* case. The CRTA did not act as a reviewing body in respect of decisions taken by other administrative bodies but was an independent body set up by Law 7(I)/1998 with the purpose of giving effect to its provisions concerning the standards and principles to be adhered to in the public interest by television and radio stations. Unlike in *Tsfayo*, the applicant had not submitted any evidence showing a lack of impartiality on the part of the CRTA. In this connection, the Government submitted that the applicant's arguments concerning the alleged financial interest of the CRTA in imposing fines were flawed. They noted that the members of the CRTA, including the President and Vice President, did not receive a fixed salary and were not engaged on a full time basis. All the members received an

¹⁵ See paragraph 43 and footnote no. 8.

¹⁶ In its observations the applicant in fact refers to seven judges in total; however, in its subsequent observations of 13 August 2008 the applicant refers to four judges who, as it appears from the documents provided by the parties, delivered seven judgments in seven different recourses. The complaint therefore is raised in respect of four judges and not seven.

¹⁷ Recourse 1101/00 – judgment of 6 November 2001; recourse 1072/99 – judgment of 6 November 2001; recourse 1073/99 – judgment of 21 November 2001; recourse 810/00 – judgment of 27 November 2001; recourse 319/99 – judgment of 27 November 2001; recourse 1096/01 – judgment of 7 January 2003.

amount as compensation for attending meetings, plus travel expenses. This was the usual practice in Cyprus with members of public benefit bodies and organisations. In addition the President of the CRTA received an additional annual amount as compensation and/or reimbursement for attendance costs.

137. Furthermore, the Government pointed out that the CRTA, being a licensing authority, received various fees, including, annual licence fees, an annual fee of 5% on the proceeds received by stations from advertising, as well as fees for the examination, issuing, renewal and amendment of licences. The sums received went into a separate fund and could be used by the CRTA to pay its operational costs. The Government referred to sections 24 and 38 of the Law and Regulation 5. It could not therefore be said that the CRTA was dependent on administrative fines to cover its operating costs, including salaries and compensation paid for attending meetings. The Government considered that the figures the applicant relied on concerning fines, licence fees and operational costs were irrelevant as they concerned a different period in time.

138. Notwithstanding, the Government argued that even if the Court considered that the proceedings before the CRTA did not comply with Article 6 of the Convention, they had been challenged before the Supreme Court, which had sufficient jurisdiction to ensure that the process as a whole complied with the guarantees of that provision. In this regard the Government submitted that the general principles of administrative law developed in civil law jurisdictions by, for example, the French *Conseil d'Etat*, the Greek Council of State and the German constitutional and administrative courts, were applicable to judicial review proceedings under Article 146, and that the grounds of invalidity set out in that provision were broadly interpreted. For example, the Supreme Court would declare a decision to be null and void, where, *inter alia*, it lacked adequate reasoning, where it was based on a misconception of the facts or a mistake of law, or where there had been a breach of natural justice or a breach of the principle of proportionality. A misconception of the facts would be found to exist in a number of situations, including where the administration had failed to take into account material facts or had taken irrelevant facts into consideration. In support of its submissions the Government relied on a number of Supreme Court judgments (*Yiallourides v. the Republic* (1969) 3 CLR 379; *Kontos v. the Republic* (1974) 3 CLR 112; *Constantinou v. the Republic* (1966) 3 CLR 793; *Christides v. the Republic* (1966) 3 CLR 732; *Hadjisavva v. the Republic* (1972) 3 CLR 174; *Meletiou v. the Republic* (1969) 3 CLR 578; *Thalassinou v. the Republic* (1974) 3 CLR 290).

139. Unlike the applicant in the *Tsfayo* case, in the present case, the applicant had not alleged or shown that its recourses raised a core issue which was not and could not be determined by the Supreme Court. On the contrary, the Government emphasised, that all the main legal issues raised by the applicant had been fully examined, including the issues as to

constitutionality, the interpretation of the applicable Law, the rules of natural justice, and the lack of a proper enquiry and adequate reasoning. That the Supreme Court had made detailed reference to one particular case was due to the fact that the parties, having agreed with the court, put forward their arguments with reference to that case. Despite that, it was evident from the Supreme Court's judgment that specific grounds of annulment, such as lack of due enquiry and reasoning, were examined by the Supreme Court in relation to each case.

140. The Government further submitted that the applicant had not alleged in its recourses that the decisions of the CRTA had been based on findings of fact that had been wrong or that the CRTA had relied on any specific facts that had been wrong. The arguments put forward by the applicant in its attempt to show that the Supreme Court lacked full jurisdiction did not concern facts or the credibility of evidence before the CRTA but rather the conclusions of the CRTA as to, for example, whether a particular broadcast was unsuitable for children or did not respect the private life or reputation of others. The Government also pointed out that the applicant had not raised in its recourses before the Supreme Court as a ground for annulment of the CRTA's decisions issues pertaining to the necessity of the imposition of the fines or their proportionality. In this respect they submitted that the applicant's claim that the Supreme Court could not examine such arguments in its judicial review capacity was unfounded. The Government relied on a number of judgments of the Supreme Court, mainly concerning the imposition of fines by the Cyprus Securities and Exchange Commission ("CySec"), in which the court examined allegations concerning, *inter alia*, the amount and proportionality of the fines and the reasoning justifying their imposition (*Cyprus Stock Exchange v. Lordos Hotels (Holdings) Ltd*, revisional appeal no. 3623, judgment of 26 January 2004, (2004) 3 CLR 48; *Sharelink Securities Ltd v. CySec*, recourse no. 641/2002, judgment of 30 April 2004; *AAA United Stockbrokers Ltd v. CySec*, recourse no. 642/2002, judgment of 5 August 2003; *Costas Kirkos v. CySec*, recourse no. 194/2005, judgment of 20 September 2006; *CySec v. Exelixa Ependitiki Ltd*, revisional appeal no. 3721, judgment of 2 June 2006, (2006) 3 CLR 310).

141. Moreover, referring to two Supreme Court judgments, the Government highlighted that it was possible to bring a separate recourse under Article 146 of the Constitution against an administrative decision imposing a fine (*Michalakidis Ioannides v. CySec*, recourse no. 729/2003, judgment of 22 February 2005; *Elma Holdings Ltd v. CySec*, recourse no. 728/2003, judgment of 14 July 2005). The Government also pointed out that the applicant had chosen not to make oral or written submissions in a number of the cases against it, including submissions on the imposition of the fines.

142. Relying on the case of *Bryan v. the United Kingdom* (22 November 1995, Series A no. 335-A), the Government submitted that although the Supreme Court did not have jurisdiction to substitute its own views for those of the administration, such an approach on questions of fact by an administrative law tribunal was common in relation to appeals against administrative decisions in the Council of Europe Member States and could be reasonably expected, particularly where the facts had already been established in the course of a quasi judicial procedure governed by many of the safeguards of Article 6 and the issues required a measure of professional knowledge or experience, and exercise of administrative discretion pursuant to wide policy aims.

143. With regard to the impartiality issue, the Government submitted that the applicant had raised an objection before the Supreme Court only in respect of one of the judges and not in relation to any of the other members of the bench. The Supreme Court had therefore never decided on the matter. Consequently, the Government argued that to the extent the applicant complained about these other judges, it had not exhausted domestic remedies.

144. Furthermore, the Government considered that the applicant's claims as to the impartiality of the judge in question were groundless. In the Government's view there was no merit in the argument that a judge was not impartial or might taint a bench because he had given judgment in another case in which the parties and some of the legal grounds had been the same. According to the domestic court's case-law, pronouncement on a legal issue should not disqualify a judge from entertaining the same legal question in a subsequent case, whether between the same parties or other parties. A judge's role was to solve legal and factual points that arose in each case on the basis of the Constitution and the law. A previous decision or opinion by a judge on a specific matter did not necessarily prejudge his or her opinion on constitutional and legal issues. This was applicable to the present case, the consideration and outcome of which depended on the particular facts of each case, the investigation that had been carried out by the CRTA, the procedure and the reasoning given in each decision. In this regard the Government noted that the applicant had been successful in two of the recourses.

145. The Government accordingly concluded that the Supreme Court, in its judicial review capacity, had had "full jurisdiction" in respect of the applicant's complaints and that these had been determined by an independent and impartial tribunal which provided the guarantees of Article 6.

146. Finally, with regard to the applicant's complaints as to the scope of jurisdiction of the civil courts, the Government, referring to their submissions concerning non-exhaustion of domestic remedies (see paragraph 112 above), underlined that the civil courts did not have

jurisdiction to examine allegations that had been made by the applicant, in the context of its defence, which were directed against the legality of the CRTA's decisions.

(b) The Court's assessment

(i) The proceedings before the CRTA and the scope of the judicial review proceedings¹⁸

147. The Court observes that the applicant's grievance as to the proceedings before the CRTA concentrated on its dissatisfaction with that body and, in particular, the multiplicity of its functions in prosecuting, investigating, trying and deciding cases and imposing sanctions. In addition, the applicant complained that the members and staff of the CRTA had a direct and personal interest in imposing fines as the amounts thus collected were deposited in the CRTA's Fund from which their salaries and/or remuneration were paid. However, no allegation of personal bias on the part of specific members or staff of the CRTA was made.

148. The applicant's complaint is therefore directed at the CRTA's "structural impartiality" and raises, as such, questions of objective impartiality rather than problems of actual bias or independence. In fact, the Court has not found any evidence to suggest any irregularities in these respects.

149. The Court notes the presence of a number of procedural guarantees in the proceedings before the CRTA. For example, the station in question is provided with details of the probable violation or the complaint made against it and is given the opportunity to make written and/or oral submissions during the hearing of the case (Regulation 42). Such submissions may also be made with regard to the imposition of a fine (see paragraph 9 above). Further, the CRTA is required to give a reasoned decision (Regulation 42).

150. Despite the existence of these safeguards, the combination of different functions of the CRTA and, in particular, the fact that all fines are deposited in its own fund for its own use, gives rise, in the Court's view, to legitimate concerns that the CRTA lacks the necessary structural impartiality to comply with the requirements of Article 6.

¹⁸ In view of the Court's findings set out in paragraphs 110, 111 and 114 -117, this part of the application concerns the domestic proceedings regarding CRTA cases nos. 98/2000(3), 117/2000(3), 141/2000(3), 129/2000(3), 152/2000(3), 148/2000(3), 1/2001(12), 9/2001(3), 10/2001(3), 11/2001(3), 13/2001(3), 19/2001(3), 43/2001(3), 44/2001(3), 60/2001(3), 108/2001(3), 125/2001(3), 133/2001(3), 135/2001(3), 143/2001(3), 173/2001(3), 3/2002(3) and 5/2002(3). As CRTA case no. 8.1.09 did not involve any proceedings before the CRTA, only the complaint in this part of the application concerning the fairness of the judicial review proceedings before the Supreme Court relates to this case (see paragraphs 168-178).

151. Nonetheless, the Court reiterates that even where an adjudicatory body, including an administrative one as in the present case, which determines disputes over “civil rights and obligations” does not comply with Article 6 § 1 in some respect, no violation of the Convention can be found if the proceedings before that body are “subject to subsequent control by a judicial body that has “full” jurisdiction and does provide the guarantees of Article 6 § 1 (see *Albert and Le Compte*, cited above, § 29).

152. Both the Commission and the Court have acknowledged in their case-law that the requirement that a court or tribunal should have “full jurisdiction” will be satisfied where it is found that the judicial body in question has exercised “sufficient jurisdiction” or provided “sufficient review” in the proceedings before it (see, amongst many authorities, *Zumtobel v. Austria*, 21 September 1993, § §§ 31-32, Series A no. 268-A; *Bryan*, cited above, §§ 43-47; *Müller and others v. Austria* (dec.), no. 26507/95, 23 November 1999; and *Crompton v. the United Kingdom*, no. 42509/05, §§ 71 and 79, 27 October 2009).

153. In adopting this approach the Convention organs have had regard to the fact that it is often the case in relation to administrative law appeals in the Member States of the Council of Europe, that the scope of judicial review over the facts of a case is limited and that it is the nature of review proceedings that the reviewing authority reviews the previous proceedings, rather than taking factual decisions. It can be derived from the relevant case-law that it is not the role of Article 6 of the Convention to give access to a level of jurisdiction which can substitute its opinion for that of the administrative authorities. In this regard, particular emphasis has been placed on the respect which must be accorded to decisions taken by the administrative authorities on grounds of “expediency” and which often involve specialised areas of law (for example, planning – *Zumtobel*, §§ 31 and 32, and *Bryan*, § 47, both cited above; environmental protection – *Alatulkila and Others v. Finland*, no. 33538/96, § 52, 28 July 2005; regulation of gaming – *Kingsley v. the United Kingdom* [GC], no. 35605/97, § 32, ECHR 2002-IV).

154. In assessing the sufficiency of a judicial review available to an applicant, the Court will have regard to the powers of the judicial body in question (see for example, *Gradinger*, § 44, and *Bryan*, §§ 44-45, both cited above; *Potocka and Others v. Poland*, no. 33776/96, § 55, ECHR 2001-X; and *Kingsley*, § 32, cited above), and to such factors as (a) the subject-matter of the decision appealed against, in particular, whether or not it concerned a specialised issue requiring professional knowledge or experience and whether it involved the exercise of administrative discretion and if, so, to what extent; (b) the manner in which that decision was arrived at, in particular, the procedural guarantees available in the proceedings before the adjudicatory body; and (c) the content of the dispute, including

the desired and actual grounds of appeal (see, *inter alia*, *Bryan*, §§ 44, 45 and 47, and *Crompton* §§ 71-73 and 77, both cited above).

155. Whether the review carried out is sufficient for the purposes of Article 6 will very much depend on the circumstances of a given case: the Court will confine itself as far as possible to examining the question raised in the case before it and to determining if, in that particular case, the scope of the review was adequate.

156. The Court has held in a number of cases, where the court in question did not have full jurisdiction as such but examined the issues raised before it concerning the adjudicatory body's decision, that the judicial review in the case was sufficient and that the proceedings complied with Article 6 § 1 of the Convention. This has been the case, for example, where upon judicial review the applicants' submissions on their merits or grounds of appeal were examined point by point, without the court having to decline jurisdiction in replying to them or in ascertaining various facts (see *inter alia*, *Zumtobel*, § 32, cited above; *Fischer v. Austria*, 26 April 1995, § 34, Series A no. 312; and *Bryan*, § 47, *Müller and Potocka*, §§ 56-58, cited above; see also the Commission decisions in *Kristavcnik – Reutterer v. Austria*, no. 22475/93, 10 September 1993; *ISKCON and 8 others v. the United Kingdom*, no. 20490/92, 8 March 1994; *Stefan v. the United Kingdom*, no. 29419/95, 9 December 1997; *Wickramsinghe v. the United Kingdom*, 9 December 1997 no. 31503/96; and *X. v. the United Kingdom*, no. 28530/95, 19 January 1998). Similarly, in the case of *Crompton* (cited above, §§ 78-80) the Court held that there had been no violation of Article 6 § 1 as the High Court had examined the central issue in the case before it.

157. Where, however, the reviewing court is precluded from determining the central issue in dispute, the scope of review will not be considered sufficient for the purposes of Article 6 (see *Tsfayo*, cited above, § 48). The Court has therefore found violations of Article 6 § 1 in cases where the domestic courts considered themselves bound by the prior findings of administrative bodies which were decisive for the outcome of the cases before them, without examining the issues independently (see, amongst many authorities, *Obermeier v. Austria*, 28 June 1990, §§ 69-70, Series A no. 179; *Terra Woningen B.V. v. the Netherlands*, 17 December 1996, § 46 and §§ 50-55, *Reports* 1996-VI; *I.D. v. Bulgaria*, no. 43578/98, §§ 50-55, 28 April 2005; *Capital Bank AD v. Bulgaria*, no. 49429/99, §§ 99-108 ECHR 2005-XII (extracts); *Tsfayo*, cited above; and *Družstevní záložna Píra and Others v. the Czech Republic*, no. 72034/01, § 112-115, 31 July 2008). In addition the Court has found a violation of Article 6 where a ground of challenge has been upheld by the reviewing court but it was not possible to remit the case for a fresh decision by the same or a different body (see *Kingsley*, cited above, § 32).

158. Accordingly, in the present case, the Court must first decide whether, in the circumstances, the scope of review exercised by the Supreme Court met the requirements of Article 6, taking into consideration all relevant factors (see paragraph 154 above), and, whether that court provided the safeguards required by that provision (see paragraph 151 above).

159. At the outset, it is common ground that the power of review of the Supreme Court under Article 146 of the Constitution was not capable of embracing all aspects of the CRTA's decisions. In particular, as is usually the case in the systems of judicial control of administrative decisions found throughout the Council of Europe's Member States (see paragraph 153 above; see also *Bryan*, cited above, § 44), the Supreme Court could not substitute its own decision for that of the CRTA and its jurisdiction over the facts was limited. Notwithstanding, it could have annulled the decisions on a number of grounds, including if the decision had been reached on the basis of a misconception of fact or law, there had been no proper enquiry or a lack of due reasoning, or on procedural grounds.

160. Such an approach by an appeal tribunal conducting the review of a decision of an administrative body can reasonably be expected, having regard to the nature of review proceedings and the respect which must be given to decisions taken by administrative authorities on grounds of "expediency" (see paragraph 153 above; see also, for example, *Bryan*, § 47 and *Müller*, both cited above).

161. As to the subject-matter of the decision appealed against, the Court notes that the decisions challenged before the Supreme Court were taken by the CRTA, which was set up to regulate broadcasting pursuant to, and to monitor compliance with, the relevant legislation. In its decisions the CRTA had found that the applicant had violated certain provisions of the Law and Regulations in various broadcasts. Their subject matter was therefore a classic exercise of administrative discretion in the specialised area of law concerning broadcasting taken in the context of ensuring standard setting and compliance with the relevant legislation and regulations pursuant to public interest aims (contrast *Tsfayo* and *Crompton*, both cited above).

162. In connection with the manner in which the decisions were arrived at, the Court observes, as it noted above (see paragraph 149), that a number of uncontested procedural guarantees were available to the applicant in the proceedings before the CRTA: the applicant was given details of the probable violation or the complaint made against it and the decisions were arrived at after a hearing had been held. The applicant was able to make written submissions and/or oral submissions during the hearing of the cases although it chose not to do so in some of the proceedings (see Annex). Further, it was open to the applicant to make a wide range of complaints in the context of the judicial review proceedings before the CRTA. It is noted in this respect that the applicant's allegations as to shortcomings in the

proceedings before the CRTA, including those concerning objective partiality and the breach of the principles of natural justice, were subject to review by the Supreme Court.

163. Lastly, with regard to the content of the dispute, the Court observes that in its recourses to the Supreme Court the applicant raised a number of points concerning the legality of the CRTA decisions (see paragraphs 40 and 41 above). In particular, it claimed:

(a) a breach of the rules of natural justice on the grounds that in the proceedings the CRTA had acted in many capacities and had then imposed fines which had ended up in its own Fund;

(b) that the applicable Law and the Regulations were unconstitutional and, in particular, contrary to Articles 12, 19, 23 (in one of the recourses) and 26 of the Constitution; and,

(c) that it had been subjected to discriminatory treatment in the exercise of its Constitutional rights in comparison with the CyBC.

164. The applicant also (d) raised various points concerning the interpretation of the relevant legal provisions relating to the imposition of sanctions for the infringement of the Regulations, and (e) alleged certain shortcomings in the proceedings, such as a lack of proper enquiry and due reasoning, and composition problems.

165. As is evident from the extensive reasoning in its judgment the Supreme Court examined all the above issues, point by point, without refusing to deal with any of them. The Supreme Court gave clear reasons for the dismissal of the applicant's points. It should be noted in this regard, that the applicant has not complained before this Court that the Supreme Court's judgment lacked adequate reasoning.

166. It is also clear from the above that the applicant's cases did not centre on a fundamental question of fact which the Supreme Court did not have jurisdiction to revisit (contrast *Tsfayo*, cited above).

167. To the extent that the applicant argues that the crux of its recourses was the necessity and proportionality of the fines imposed by the CRTA, questions the Supreme Court did not examine, the Court points out that these issues were not raised by the applicant before that court in the legal points on which its recourses were based. The Court further notes that it is clear from a reading of the recourses and the applicant's written addresses and replies that any submissions made by the applicant concerning the fines were related to the legal points raised under Articles 12 and 19 of the Constitution and the interpretation of the relevant legal provisions relating to the imposition of sanctions for the infringement of the Regulations (see points (b) and (d) above). These points were examined by the Supreme Court.

168. Further, to the extent that the applicant can be taken to suggest that, in any event, the Supreme Court did not have jurisdiction to examine the necessity and proportionality of the fines, the Court notes that it is not its

task to decide *in abstracto* that the Supreme Court would not have examined these issues if raised or that it would have declined jurisdiction to deal with them. Such an exercise would, in the circumstances of the present application, be pure surmise. The applicant has not put forward any case-law in support of its claim. The Government, however, have referred the Court to a number of Supreme Court judgments in judicial review proceedings which indicate that the Supreme Court has the competence to examine such issues in its judicial review role. The Court therefore cannot find that the applicant was justified in not raising these issues in its recourses.

169. Having regard to all the above, the Court finds that the scope of the review of the Supreme Court in the judicial review proceedings in the present case was sufficient to comply with Article 6 of the Convention.

(ii) *The fairness of the judicial review proceedings*

170. The Court notes, however, that in addition to its complaint about the scope of review of the Supreme Court, the applicant claims that that court did not itself provide the guarantees of Article 6. In particular, the applicant challenges the fairness of the judicial review proceedings on two counts.

171. Its first complaint concerns the alleged lack of impartiality on the part of four of the judges who sat on the full bench on the ground that they had already given judgment, at first instance, in different recourses brought by the applicant against various CRTA decisions raising identical or similar questions.

172. The Court considers that it does not need to decide on the questions of the six-month rule and exhaustion of domestic remedies that arise in respect of three of the judges concerned by the above complaint (see paragraph 134 above), as in any event it finds, for the reasons set out below, that the applicant's complaint as a whole is not well-founded.

173. The Court first of all finds that the applicant's submissions do not disclose any element to cast doubt on the impartiality of the four judges in question under the subjective test.

174. As regards the objective test, the Court observes that the mere fact that a judge has been involved in other proceedings concerning the same parties is not in itself reasonably capable of giving rise to legitimate doubts as to his or her impartiality (see, for example, *Gillow v. the United Kingdom*, 24 November 1986, Series A no. 109, p. 28, § 73; *Schmid v. Austria*, no. 11831/85, Commission decision of 9 December 1987, Decisions and Reports (DR) 54, p. 144; *Krone-Verlag GmbH and Mediaprint Anzeigen GmbH & Co KG v. Austria*, no. 28977/95, Commission decision of 21 May 1997, unreported; *Galya Pavlova v. Bulgaria* (dec.), no. 39855/03, 14 October 2004; and *Anguelov v. Bulgaria* (dec.), no. 45963/99, 14 December 2004).

175. The Court notes that the judgments referred to by the applicant concerned different CRTA decisions and therefore constituted separate executory administrative acts. Although it appears that some of the grounds for annulment raised in those cases were akin to or the same as some of those raised in the joint recourses, this does not, in the Court's view objectively justify any fears as to a lack of impartiality on the part of the judges concerned in the latter proceedings. The Court notes that it is a usual and inevitable occurrence in any judicial system that judges deal with similar or identical issues in different unrelated cases.

176. The Court therefore finds that the applicants' complaints as to a lack of impartiality of the Supreme Court because of the presence of these four judges on the bench, cannot be regarded as being objectively justified.

177. The applicant's second complaint concerns the dismissal of its application of 10 February 2004 (see paragraph 43 above). Taking into account the grounds on which this application was requested and the reasons given by the Supreme Court for its dismissal, the Court finds that this complaint does not disclose any appearance of a violation of the applicant's rights under Article 6.

178. The Court therefore finds that the Supreme Court fully satisfied the requirements of independence and impartiality and provided the other guarantees of Article 6 of the Convention.

(iii) The civil proceedings¹⁹

179. To the extent that the applicant contests the sufficiency of the review carried out by the District Court and the Supreme Court in the civil proceedings brought against it, the Court recalls its findings in paragraphs 100-111 and 114-117 above.

180. As regards the applicant's complaint as to the infringement of the principle of equality of arms, the Court finds, having regard to all the material in its possession, and in so far as the matters complained of are within its competence, that it does not disclose any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols.

(iv) Conclusion

181. In conclusion, the Court finds that the applicant's complaints under this head are manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

¹⁹ This part of the judgment concerns the proceedings regarding CRTA cases nos. 18/2000(3), 75/2000(3) and 88/2000(3). See paragraphs 60-71 above.

IV. ALLEGED VIOLATION OF ARTICLE 10 OF THE CONVENTION

182. The applicant complained that its right to freedom of expression under Article 10 of the Convention had been violated. This provision 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. The parties’ submissions

1. The Government

183. The Government maintained that there had been no violation of Article 10 of the Convention. First of all, they submitted that the interference complained of had been prescribed by law. It had been based on Law 7(I)/1998 and the relevant regulations. The relevant provisions were clear and their effects reasonably foreseeable, especially with the assistance of a lawyer. Secondly, the Government argued that the interference with the applicant’s right pursued legitimate aims and in particular the protection of the rights of others. In this respect, they emphasised the need to safeguard the rights and interests of viewers, including children, who were vulnerable, and to protect them from abusive practices. The Government relied on the reasoning given by the CRTA in its decisions concerning the broadcasts in question. They further highlighted the need to regulate the mass media in view of the significant influence they had on people and society at large. The measures taken by the CRTA had been necessary in securing compliance with the relevant legal provisions and regulations.

184. As to the proportionality of the fines, the Government emphasised that the Law set out the maximum fines the CRTA could impose and the factors to be taken into account when deciding upon the fines. This exercise was subject to the principle of proportionality as stipulated by the above provision. The CRTA always acted in a transparent and fair manner, giving the broadcaster concerned the opportunity to make submissions on the sanctions to be applied. The fines imposed in the present cases had not been

arbitrary taking into account the nature and circumstances of the breaches of the relevant legal provisions. They had been within the limits provided for by Law.

185. In the Government's view, therefore, the interference was necessary in a democratic society, in other words it corresponded to a "pressing social need", it was proportionate to the legitimate aim pursued and the reasons given to justify it were relevant and sufficient.

2. *The applicant*

186. The applicant complained that the decisions of the CRTA finding that it had violated the provisions of Law 7(I)/1998 and the relevant regulations, and the imposition of a fine, constituted a violation of Article 10 of the Convention. First, the applicant submitted that the provisions of the above Law and regulations had not been formulated with sufficient precision and clarity for the applicant to be able to regulate its conduct. They were drafted in general terms and covered all types of broadcasts, without taking into account their different nature and the need to apply varied standards depending on the particular broadcast. They were also excessively rigid and did not keep pace with changing circumstances and evolving societal attitudes.

187. Secondly, the applicant maintained that the interference with its right did not pursue a legitimate aim and, in particular, that it could not be justified in order to protect the rights of others as the Government suggested. Thirdly, the applicant considered that the interference was not necessary in a democratic society; there was no "pressing social need" to forbid the broadcasts in question and the restriction to its right was not proportionate. In relation to the above, the applicant submitted that there was an overriding need to allow the broadcast in question. The applicant underlined, *inter alia*, the importance of informing the Cypriot public of significant issues affecting Cypriot society, such as drug abuse [CRTA case no. 11/2001(3)] or the possible committing of an offence, such as paedophilia [CRTA case no. 75/2000(3)]. In so far as advertising was concerned, the applicant highlighted the need to take into account the various economic interests involved and the fact that advertising was its only source of income. In this connection, it noted that it should be possible to transmit advertisements of children's toys at times when children were watching television. The applicant also pointed out that in certain television series the use of certain products was essential to the set and contributed to a series' success.

188. Further, the applicant submitted that the decisions of the CRTA lacked a factual basis and adequate reasoning. In this connection, the applicant repeated the arguments it raised in relation to Article 6 of the Convention that the proceedings before the CRTA had been unfair. Finally, the applicant emphasised that the fines imposed on it had been unnecessary

and excessive, a matter that had not been and/or could not be examined by the Supreme Court (see paragraph 132 above).

B. The Court's assessment

1. Admissibility

(a) CRTA case no. 8.1.09

189. The Court notes that the CRTA case no. 8.1.09 concerned the payment of a licence fee by the applicant for the period of 13 November 1998 to 31 January 1999. The applicant, however, has not complained under Article 10 of the Convention about the imposition of such a fee. No issue therefore arises under this provision in respect of this case.

(b) CRTA cases nos. 98/2000(3), 141/2000(3), 129/2000(3), 152/2000(3), 148/2000(3), 1/2001(12), 9/2001(3), 10/2001(3), 11/2001(3), 13/2001(3), 19/2001(3), 43/2001(3), 44/2001(3), 60/2001(3), 108/2001(3), 125/2001(3), 133/2001(3), 135/2001(3), 143/2001(3), 173/2001(3), 3/2002(3) and 5/2002(3)

190. The Court recalls that the twenty-two CRTA cases in question, concerned various broadcasts consisting of advertisements, news reports transmitted within news bulletins, films, series, programmes, trailers and social documentaries (see paragraphs 14-37 above). The applicant was found by the CRTA to have infringed a number of different provisions of the Law and Regulations in relation to these broadcasts. The CRTA then imposed fines on the applicant in respect of those violations.

(i) Whether there was an interference

191. The Court finds that the fines imposed on the applicant in the above cases amounted to an “interference” with the applicant’s freedom of expression, as guaranteed by Article 10 § 1 of the Convention.

(ii) Whether the interference was justified

192. The Court reiterates that in order to comply with Article 10, the interference in question must be “prescribed by law”, pursue one or more of the legitimate aims referred to in paragraph 2 and be “necessary in a democratic society” in order to achieve the aim or aims in question.

193. The Court notes that the parties agree that the interference complained of had a basis in domestic law, namely, Law 7(I)/1998 (as amended) and the relevant regulations. The applicant, however, claimed in general that the provisions of the legislation on which the findings of a violation were based were not sufficiently foreseeable and were extremely rigid.

194. In this connection, the Court reiterates that one of the requirements flowing from the expression “prescribed by law” is the foreseeability of the measure concerned. A norm cannot be regarded as a “law” unless it is formulated with sufficient precision to enable the citizen to regulate his conduct: he must be able – if need be with appropriate advice – to foresee, to a degree that is reasonable in the circumstances, the consequences which a given action may entail. Those consequences need not be foreseeable with absolute certainty: experience shows this to be unattainable. Whilst certainty in the law is highly desirable, it may bring in its train excessive rigidity and the law must be able to keep pace with changing circumstances. Accordingly, many laws are inevitably couched in terms which, to a greater or lesser extent, are vague and whose interpretation and application are questions of practice (see, for example, *Rekvényi v. Hungary* [GC], no. 25390/94, § 34, ECHR 1999-III).

195. The Court notes that Law 7(I)/1998 and the Regulations constitute a detailed legislative scheme aimed at regulating broadcasting. The violations found in respect of the various broadcasts in question were based on an array of different provisions of the Law and Regulations, some more specific than others. It cannot be said, however, that any of these provisions or Regulations were so vague and imprecise as to lack the required quality of law. The Court is therefore satisfied that the interference with the applicant’s rights under Article 10 § 1 was “prescribed by law” within the meaning of Article 10 § 2.

196. Further, the Court agrees with the Government that the interference pursued at least one of the legitimate aims set out in paragraph 2 of Article 10, namely, the protection of the rights of others.

197. The question therefore that arises is whether the interference was “necessary in a democratic society”.

198. The Court reiterates that freedom of expression constitutes one of the essential foundations of a democratic society and one of the basic conditions for its progress. Subject to paragraph 2 of Article 10, it is applicable not only to “information” or “ideas” that are favourably received or regarded as inoffensive or as a matter of indifference, but also to those that offend, shock or disturb. Such are the demands of pluralism, tolerance and broadmindedness, without which there is no “democratic society” (see *Handyside v. the United Kingdom*, 7 December 1976, § 49, Series A no. 24, and *Jersild v. Denmark*, 23 September 1994, § 37, Series A no. 298). This freedom is subject to the exceptions set out in Article 10 § 2, which must, however, be strictly construed. The need for any restrictions must be established convincingly (see, for example, *Lingens v. Austria*, 8 July 1986, § 41, Series A no. 103, and *Nilsen and Johnsen v. Norway* [GC], no. 23118/93, § 43, ECHR 1999-VIII).

199. The test of necessity requires the Court to determine whether the interference corresponded to a “pressing social need”, whether it was

proportionate to the legitimate aim pursued and whether the reasons given by the national authorities to justify it were relevant and sufficient. In assessing whether such a need exists and what measures should be adopted to deal with it, the national authorities are left a certain margin of appreciation. This power of appreciation is not, however, unlimited, but goes hand in hand with a European supervision by the Court, whose task it is to give a final ruling on whether a restriction is reconcilable with freedom of expression as protected by Article 10. The Court's task in exercising its supervisory function is not to take the place of the national authorities, but rather to review under Article 10, in the light of the case as a whole, the decisions they have taken pursuant to their margin of appreciation. In so doing, the Court has to satisfy itself that the national authorities applied standards which were in conformity with the principles embodied in Article 10 and, moreover, that they based their decisions on an acceptable assessment of the relevant facts (see *Karman v. Russia*, no. 29372/02, § 32, 14 December 2006, and *Grinberg v. Russia*, no. 23472/03, § 27, 21 July 2005, with further references).

200. Turning to the cases in question, the Court notes that in each of its decisions concerning the broadcasts the CRTA set out the grounds on which violations of the Law and the Regulations were found. These in general, included, the protection of consumers and children from unethical advertising practices, including surreptitious advertising, the protection of children from broadcasts containing violence or any other material likely to impair their physical, mental or moral development, the importance of ensuring that viewers were informed of the true content of the broadcasts by the use of appropriate acoustic and visual warnings, the protection of pluralism of information, the need for a fair and accurate presentation of facts and events and the protection of the reputation, honour, good name and privacy of persons involved in or affected by the broadcast.

201. Having regard to the broadcasts and their content and/or subject-matter, the reasons given by the CRTA in its decisions for the findings of violations against the applicant, the amount of the fines imposed and the submissions of the parties before it, the Court considers that the impugned interference was proportionate to the aim pursued, and the reasons given to justify it were relevant and sufficient. The Court finds therefore, that the interference with the applicant's exercise of their right to freedom of expression in these cases can reasonably be regarded as having been necessary in a democratic society for the protection of the rights of others.

202. It follows that this complaint must be rejected as being manifestly ill-founded, pursuant to Article 35 §§ 3 (a) and 4 of the Convention.

(c) CRTA case no. 117/2000(3)

203. After a careful examination of the documents pertaining to the CRTA's decision no. 117/2000(3), the Court finds that the applicant's

Article 10 complaint concerning this decision is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

2. Merits (CRTA case no. 117/2000(3))

(a) Whether there was an interference

204. The Court notes, from the material submitted by the parties, that the broadcast in question was an episode from a Cypriot television entertainment series produced by the applicant. A violation of Regulations 21 (3) and (4) and 26 (1) was found by the CRTA and a fine of CYP 2,000 was imposed on the applicant (see paragraph 32 above and point 26 of the Annex). As held in respect of the cases examined above, the imposition of the fine constituted an interference with its right to freedom of expression under Article 10 § 1 of the Convention.

(b) Whether the interference was justified

205. The Court further finds that this interference was “prescribed by law” as it was based on Regulations 21 (3) and (4) and 26 (1), which it considers to be sufficiently precise to enable the applicant to foresee the consequences of its actions. As with regard to the other cases, the Court considers that the interference pursued at least one of the legitimate aims set out in paragraph 2 of Article 10, namely, the protection of the rights of others.

206. It remains to be considered, having regard to the relevant principles (see paragraphs 198-199 above), whether the interference was “necessary in a democratic society” within the meaning of Article 10 § 2 of the Convention.

207. The Court observes that the series in question was an entertainment series which appears, from the documents submitted, to have been fictional. In the episode in question remarks were made which were considered by the CRTA to be, in sum, offensive and disrespectful to the residents of two local towns, and to Arabs, Russian women and women in general, as well as undignified in respect of both sexes (see paragraph 32 above). The remarks in question were made in the context of a dialogue between characters of that series who suggested, *inter alia*, that in the old days it was possible that the town of Paphos had a lot of brothels, that during the 50’s, 60’s and part of the 70’s most of the whores were from that town, that Limassol had been full of Arabs, most of them darker than chocolate and some of them very snobbish, and that Paphos was a whores’ town, with thousands of whores, all of them imported from Greece at the time, just as Russian women were imported nowadays.

208. The Court takes note of the CRTA's concerns about the racist and discriminatory tone of the remarks made. It further emphasises that it is particularly conscious of the vital importance of combating racial and gender discrimination in all its forms and manifestations (see *Nachova and Others v. Bulgaria* [GC], nos. 43577/98 and 43579/98, § 145, ECHR 2005-VII). Even though it appears that the remarks in question were made in the context of a fictional entertainment series, the Court considers, in view of their content, and in the absence of sufficiently detailed information about the programme and specific observations on the part of the applicant, that the CRTA could not be said in the circumstances to have overstepped its margin of appreciation in view of the profound analysis at the national level. In this connection, the Court also attaches importance to the fact that the applicant did not make any submissions at all in the proceedings before the CRTA in the case (see point 26 of the Annex) and that it did not submit observations before the Court disputing the necessity of the interference with its right to freedom of expression in so far as this programme was specifically concerned.

209. Lastly, as to the proportionality of the impugned measure, the Court finds, bearing in mind the amount of the fine and the fact that the CRTA, when imposing the fine, took into account the repeated violations by the applicant in other episodes of the same series, that the fine imposed was proportionate to the aim pursued.

210. Accordingly, there has been no violation of Article 10 of the Convention.

V. ALLEGED VIOLATION OF ARTICLE 14 OF THE CONVENTION TAKEN IN CONJUNCTION WITH ARTICLE 10

211. The applicant complained of a violation of Article 14 of the Convention, taken in conjunction with Article 10, as the CyBC had not been subjected to the same restrictions. In particular, in view of the legal provisions applicable at the material time, the CybC was not monitored by the CRTA and subjected to fines. Furthermore, the CyBC did not have to obtain an annual licence.

Article 14 provides as follows:

“The enjoyment of the rights and freedoms set forth in [the] Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.”

A. The parties' submissions

1. The Government

212. The Government submitted that the nature and the role of public service broadcasting was very different to that of private broadcasting. In contrast to private stations, the CyBC was not a profit-making business or institution but received public funding used entirely for the furtherance of its mission, namely, to provide objective information, education and entertainment to the public of Cyprus. Public service broadcasting was made for the public, which had the right to control the terms and conditions of its operation. The CyBC was therefore directly accountable to the public especially regarding the accomplishment of its mission and the use of public resources. In this connection, the Government observed that the CyBC was accountable to the Auditor General and the House of Representatives and that the CRTA, under Cap. 300A, monitored the quality as well the type of programmes transmitted. An annual report was prepared by the CRTA regarding the achieved quotas, which was submitted to the Minister of Interior and then the General Auditor.

213. Furthermore, the Government submitted that the CyBC was under an obligation at all times to prove that it was fulfilling its public service role and to honour its programme commitments. In case of improper conduct or malfunction its operation could be restricted or even terminated by law.

214. In addition, the CyBC did not rely completely on advertising as a source of revenue, which allowed it to offer alternative programmes such as educational and news programmes and documentaries which were less saleable to the mass audience. In contrast, the aim of private stations was to provide popular shows that attracted larger audiences in order to earn more revenue from advertising. The CyBC had been established under a different legal framework and had a different role and mission, different objectives as well as obligations, and was subjected to another system of control and inspection. It had been established under Cap. 300A. Thus, as it was authorised by law to operate, it did not require a licence.

215. Private stations were private or public companies, owned by individuals and established under the Companies Act. Unlike the CyBC they were not accountable to the Government. In order to operate they needed to use frequencies which were considered as national assets. It was therefore acceptable that the State should control private stations. In addition, nothing prevented a Government from requiring a broadcasting licence from private stations to cover the expenses of the relevant licensing services and authorities.

216. In view of all the above, it could not be said that private stations like those run by the applicant were in an analogous position to the CyBC.

217. The Government also noted that at the time the CRTA had taken the impugned decisions in respect of the applicant, Amending Laws 204 of 1991 and 8(I) of 1998 had been applicable, which incorporated provisions subjecting the CyBC to additional control similar to, and to some extent stricter than that applied to private stations.

218. Finally, the Government noted that the applicant had not given an example of an incident where the CyBC had acted like the applicant but, unlike the applicant, had not been sanctioned. The applicant had not therefore substantiated its allegations as to different treatment or discrimination.

2. The applicant

219. The applicant maintained that its stations were in a situation comparable to the CyBC. Despite this, the CyBC was not subject to monitoring and was not “prosecuted”. The CRTA did not interfere with its transmissions. The CyBC was therefore able to transmit similar broadcasts without supervision and sanction. Here, the applicant referred in general to surreptitious advertising and the broadcasting of information in news bulletins revealing the identity of a suspect. As a result, the public were not protected from the CyBC’s broadcasts. The applicant further submitted that the CyBC also transmitted advertisements, despite receiving Government funding, and unlike private stations, it did not have to pay the CRTA any commission, percentage or royalties in respect of the advertisements.

220. The applicant claimed that there was no reasonable and objective justification for the differential treatment in the exercise of the right to freedom of expression. The subsequent amendments in the applicable law were evidence of this.

B. The Court’s assessment

221. The Court reiterates that discrimination, for the purposes of both Article 14 of the Convention and Article 1 of Protocol No. 12 to the Convention, means treating differently, without an objective and reasonable justification, persons in relevantly similar situations (see *Willis v. the United Kingdom*, no. 36042/97, § 48, ECHR 2002-IV). However, not every difference in treatment will amount to a violation of these provisions. It must be established that other persons in an analogous or relevantly similar situation enjoy preferential treatment and that this distinction is discriminatory (see *Unal Tekeli v. Turkey*, no. 29865/96, § 49, 16 November 2004).

222. In the present case the Court notes that the discriminatory treatment alleged by the applicant lies in the distinction drawn between private stations like its own and the CyBC, the public broadcaster of the Republic of Cyprus. The applicant complains that the CyBC did not have to pay a

licence fee and that, at the material time, it was not monitored by the CRTA and subjected to fines.

223. The Court notes that the applicant seeks to compare the situation of the stations it runs, which are private stations, with that of the public broadcaster. Given, however, the differences in the legal status and the applicable legal frameworks and the different objectives of private stations and the CyBC in the Cypriot broadcasting system, it cannot be said that they are in a comparable position for the purposes of Article 14 of the Convention.

224. The Court finds, therefore, that the present case does not disclose any appearance of discrimination contrary to Article 14 of the Convention.

225. It follows that this part of the application is inadmissible under Article 35 § 3 (a) as manifestly ill-founded and must be rejected pursuant to Article 35 § 4 of the Convention.

VI. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

226. The applicant complained under Article 1 of Protocol No. 1 that its ability to conduct business had been greatly inhibited as it had often been subjected to excessive fines. The applicant further invoked Article 14 of the Convention taken in conjunction with Article 1 of Protocol No. 1. It complained of discriminatory treatment vis-à-vis the CyBC which was not required to pay an annual licence fee or fines. In application no. 35122/05 the applicant also relied on Article 1 of Protocol No. 12 in respect of the last complaint.

227. Finally, in its observations of 30 July 2007 the applicant invoked Article 1 of Protocol No. 12 in respect of application no. 32181/04.

A. Complaint under Article 1 of Protocol No. 1

1. CRTA case no. 8.1.09

228. The Court notes that the applicant's complaint under Article 1 of Protocol No. 1 pertains to the fines imposed by the CRTA. No issue arises therefore under this head in respect of CRTA case no. 8.1.09 (licence fee).

2. *CRTA cases nos. 98/2000(3), 141/2000(3), 129/2000(3), 152/2000(3), 148/2000(3), 1/2001(12), 9/2001/(3), 10/2001(3), 11/2001(3), 13/2001(3), 19/2001(3), 43/2001(3), 44/2001(3), 60/2001(3), 108/2001(3), 125/2001(3), 133/2001(3), 135/2001(3), 143/2001(3), 173/2001(3), 3/2002(3) and 5/2002(3)*

229. The Court notes that the applicant raised the argument concerning the proportionality of the fines in the context of its complaint under Article 10 of the Convention, which was declared inadmissible (see paragraphs 192-202 above). It follows that this part of the application is also manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

3. *CRTA case no. 117/2000(3)*

230. The Court notes that it declared admissible the applicant's complaint under Article 10 of the Convention in so far as it concerned CRTA case no. 117/2000(3) and found no violation of that provision in respect of that case. While finding this complaint as regards the aforementioned case to be admissible, having regard to its reasoning under Article 10, the Court considers that no separate issue arises under Article 1 of Protocol No 1.

B. Complaints under Article 14 taken together with Article 1 of Protocol No. 1 and under Article 1 of Protocol No. 12

231. The Court notes that the applicant's complaint about discriminatory treatment vis-à-vis the CyBC under Article 14 taken with Article 1 of Protocol No. 1 amounts in effect to the same complaint as that examined and rejected in the context of Article 14 taken in conjunction with Article 10 (see paragraphs 220-224 above). Consequently, no separate issue arises and this part of the applicant's complaint is manifestly ill-founded. As the same applies to the complaint under Article 1 of Protocol No. 12, the Court does not need to examine the questions of *ratione temporis* and the six-month rule that arise in relation to this provision.

232. It follows that this part of the application is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Decides* to join the applications;
2. *Declares* the complaints under Article 10 and Article 1 of Protocol No. 1 concerning the decision in CRTA case no. 117/2000(3) admissible and the remainder of the applications inadmissible;
3. *Holds* that there has been no violation of Article 10 of the Convention in respect of CRTA case no. 117/2000(3) and that no separate issue arises under Article 1 of Protocol No. 1 concerning that case.

Done in English, and notified in writing on 21 July 2011, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia Westerdiek
Registrar

Dean Spielmann
President

ANNEX**LIST WITH DETAILS OF RELEVANT BROADCASTS AND
CRTA PROCEEDINGS****A. Advertisements for children's toys***1. CRTA case no. 129/2000(3) - Recourse no. 300/2001*

Broadcasting details: broadcasting of 21 different advertisements for children's toys on 9, 10 and 11 November 2000 between 8.00 a.m. and 11.00 p.m.

Examination: on the CRTA's initiative

Applicant's participation: the applicant made written submissions but did not attend the hearing

Date of Decision: 10 January 2001

Findings: violation of sections 34(4)(a) and 34(4)(b) of Law 7(I)/1998

Fine: CYP 3,000

2. CRTA case no. 148/2000(3) - Recourse no. 302/2001

Broadcasting details: broadcasting of 102 different advertisements for children's toys on 15 and 16 December between 8.00 a.m. and 11.00 p.m.

Examination: on the CRTA'S initiative; it was noted in the decision, however, that complaints had been received by the public

Applicant's participation: the applicant made written submissions but did not attend the hearing

Date of Decision: 14 February 2001

Findings: violations of sections 34(4)(b) and 33(7)(a)(i) of Law 7(I)/1998 and paragraphs B.1 and D.10(o) ("Δ10 (ιε)") of appendix IX of the Regulations

Fine: CYP 3,750 (CYP 3000 for violation of section 34(4)(b) and CYP 750 for violation of section 33(7)(a)(i))

3. CRTA case no. 135/2001(3) - Recourse no. 328/2002

Broadcasting details: broadcasting of 13 different advertisements for children's toys on 4 August and 22 September 2001 between 9.30 a.m. and 11.00 a.m.

Examination: upon complaint

Applicant's participation: the applicant made written submissions and attended the hearing. In its submissions the applicant admitted a violation of section 33(7)(a)(i) in respect of one advertisement.

Date of Decision: 6 February 2002

Findings: Violations of sections 33(2)(d) (“33(2)(δ)”), 34(4)(b), 33(7)(a)(i) of Law 7(I)/1998 and paragraph D.10(o) (“Δ10(ιε)”) of appendix IX of the Regulations for surreptitious advertising of “Pokemon” products and for broadcasting advertisements promoting such products by way of gifts for the purchase of other products.

Fine: CYP 1,500

4. CRTA case no. 3/2002(3) - Recourse no. 331/2002

Broadcasting details: broadcasting of 492 different advertisements for children’s toys between 1 December 2001 and 31 December 2001 from 9.00 a.m. to 10.00 or 11.00 p.m.

Examination: on the CRTA’s initiative

Applicant’s participation: The applicant did not make written submissions but attended the hearing, during which the applicant’s representatives accepted violations of sections 34(4) and 33(7)(a)(i) of Law 7(I)/1998 but stated that in the applicant’s view certain of the toys had been “educational toys”.

Date of Decision: 13 February 2002

Findings: violations of sections 34(4) and 33(7)(a)(i) of Law 7(I)/1998 in 492 cases for broadcasting the advertisements within the family zone over a period of 31 days and, in 25 of these cases (during the same period of time), inciting children to buy products. With regard to the definition of “children’s toys” reference was made to Council Directive 88/378/EEC of 3 May 1988 on the approximation of the laws of the Member States of the European Communities concerning the safety of toys.

Fine: CYP 30,000

B. Interruption of programmes for broadcasting of advertisements, promotion of sponsors during news bulletins and surreptitious advertising

5. CRTA case no. 18/2000(3) – Recourse no. 809/2000, civil action no. 5197/02 and civil appeal no. 11804

Broadcasting details: broadcasting of episodes of a Cypriot series, “Sto Parapente” (“Στο Παραπέντε”) between 14 and 18 February 2000, from 7.40 p.m. to 8.30 p.m., containing clear images of various products of definite brands such as Heineken, Carlsberg and Amstel, Coca-Cola, Schweppes and various local products (biscuits, coffee).

Examination: on CRTA’s initiative

Applicant’s participation: the applicant made written submissions but did not attend the hearing

Date of decision: 5 April 2000

Findings: violation of sections 33 (2)(d) of Law 7(I)/1998

Fine: CYP 2,500

6. CRTA case no. 113/2000(3) - Recourse no. 304/2001

Broadcasting details: broadcasting of repeats of episodes of a Cypriot series, “Sto Parapente” (“Στο Παραπέντε”) between 15 and 20 November 2000, from 4.10, 4.15 or 4.20 p.m. to 5.10 or 5.20 p.m., containing clear images of various products of definite brands such as Heineken, Carlsberg, Budweiser, Beck’s and Amstel, Finlandia and Virgin Vodka, Campari, Ballantine’s scotch whisky, Coca-Cola and Kent cigarettes.

Examination: on CRTA’s initiative

Applicant’s participation: the applicant made written submissions but did not attend the hearing

Date of decision: 11 December 2000

Findings: violation of sections 33 (2)(d) of Law 7(I)/1998

Fine: CYP 4,000

7. CRTA case no. 173/2001(3) - Recourse no. 330/2002

Broadcasting details: broadcasting of 347 advertisements from 15 to 30 November 2001 and 1 to 31 December 2001 between 6.00 p.m. and 12.00 midnight

Examination: on the CRTA’s initiative

Applicant’s participation: the applicant did not make written submissions but attended the hearing of the case and admitted violations of section 33(2)(g) (“33 (2)(η)”) of Law 7(I)/1998 and violation of F.3 appendix IX of the Regulations.

Date of decision: 13 February 2002

Findings : violations of section 33(2)(g) of Law 7(I)/1998 in 22 cases and violation of St. 3 appendix IX of the Regulations in 325 cases

Fine: CYP 32,000

8. CRTA case no.19/2001(3) - Recourse no. 966/2001

Broadcasting details: broadcasting of news bulletins on 20 and 21 February 2001 between 8.10 and 9.30 p.m.

Examination: upon complaint

Applicant’s participation: the applicant made written submissions and attended the hearing. The applicant admitted a violation of section 33(2)(d).

Date of decision: 5 September 2001

Findings: violation of section 33(2)(d) and (i) of Law 7(I)/1998 and paragraph E.3 of appendix IX of the Regulations

Fine: CYP 2500 (CYP 500 for the violation of section 33(2)(i) and the Regulations and CYP 2000 for the violation of section 33(2)(d))

C. News reports within news bulletins

9. CRTA case no. 75/2000(3) - Civil action no. 5187/02 and civil appeal no. 11805

Broadcasting details: broadcasting of a news bulletin on 27 July 2000 between 8.20 p.m. and 9.30 p.m.

Examination: upon complaint

Applicant's participation: the applicant made written submissions but did not attend the hearing

Date of decision: 15 November 2000

Findings: violation of Regulations 21(3), 24(1)(a) and paragraph 10 of part II of appendix VIII

Fine: CYP 500

10. CRTA case no. 98/2000(3) - Recourse no. 448/2001

Broadcasting details: broadcasting of a news bulletin on 2 October 2000 between 8.20 p.m. and 9.30 p.m.

Examination: on the CRTA's initiative

Applicant's participation: the applicant made written submissions and attended the hearing

Date of decision: 1 November 2000

Findings: violation of Regulations 21(6), 24(1)(a) and 24(2)(d) ("24(2) (δ)")

Fine: CYP 250

11. CRTA case no. 152/2000(3) - Recourse no. 301/2001

Broadcasting details: broadcasting of a news bulletin on 27 December 2000 between 8.20 p.m. and 9.30 p.m.

Examination: upon complaint

Applicant's participation: the applicant did not make written submissions and did not attend the hearing

Date of decision: 14 February 2001

Findings: violation of Regulations 24 (2)(a) –(d) and paragraph 6 of part II of appendix VIII.

Fine: CYP 1,500

12. CRTA case no. 9/2001(3) - Recourse no. 914/2001

Broadcasting details: broadcasting of a news bulletin on 23 January 2001 between 8.20 p.m. and 9.30 p.m.

Examination: upon complaint

Applicant's participation: the applicant made written submissions and attended the hearing

Date of decision: 19 September 2001

Findings: violation of Regulations violation of Regulations 24(1)(a), 21 (3) and paragraph 8(2) of part I of appendix VIII

Fine: CYP 1,000

13. CRTA case no. 43/2001(3) - Recourse no. 279/2002

Broadcasting details: broadcasting of a news bulletin on 16 March 2001 between 11.00 p.m. and 11.20 p.m.

Examination: upon complaint

Applicant's participation: the applicant did not make written submissions and did not attend the hearing. However, it subsequently made written submissions concerning the imposition of a fine.

Date of decision: 17 October 2001 and 12 December 2001 (decision imposing the fine)

Findings: violation of Regulation 24(3)

Fine: CYP 500

14. CRTA case no. 44/2001(3)-Recourse no. 663/2002

Broadcasting details: broadcasting of a news bulletin on 27 February 2001 between 8.20 p.m. and 9.00 p.m.

Examination: upon CRTA's initiative

Applicant's participation: the applicant made written submissions and attended the hearing of the case. Subsequently, it also made written submissions concerning the imposition of a fine.

Date of decision: 22 May 2002 and 19 June 2002 (decision imposing the fine)

Findings: violation of Regulations 24(1)(a) and paragraph 10 of part II of appendix VIII

Fine: CYP 2,000

15. CRTA case no. 108/2001(3) - Recourse no. 819/2002

Broadcasting details: broadcasting of a news bulletin trailer and a news bulletin on 16 August 2001 between 6.25 p.m. and 6.51 p.m. and 8.16 p.m. and 9.01 p.m. respectively.

Examination: upon complaint

Applicant's participation: the applicant did not make any submissions in writing and did not attend the hearing. However, it subsequently made submissions in writing concerning the imposition of a fine.

Date of decision: 8 May 2002 and 17 July 2002 (decision imposing the fine)

Findings: violation of Regulations 21(3) and paragraph 1(2) of part II of appendix VIII of the Regulations and section 26(1)(e) of Law 7(I)/1998

Fine: CYP 5,000

D. Films, series, programmes and trailers

16. CRTA case no. 88/2000(3) - Civil action no. 5188/02 and civil appeal no. 11803

Broadcasting details: broadcasting of an episode of the series “The Night Man” (“Ο άνθρωπος της νύχτας”) on 6 September 2000 between 2.00 p.m. and 3.00 p.m. without acoustic and visual warning.

Examination: upon complaint

Applicant’s participation: the applicant did not make written submissions and did not attend the hearing

Date of the decision: 22 November 2000

Findings: violation of Regulations 21 (6) and 32(3)(a)

Fine: CYP 500

17. CRTA case no. 141/2000(3) - Recourse no. 299/01

Broadcasting details:

(a) broadcasting of trailers of the “Highlander” series on 30 November and 6 December 2000 between 8.20 a.m. and 8.40 a.m. and between 5.20 p.m. and 6.20 p.m.

(b) broadcasting of an episode of the “Viper” series on 30 November 2000 between the hours of 5.20 p.m. and 6.20 p.m. with acoustic and visual warning of “suitable for all viewers”

(c) broadcasting of an episode of the “Highlander” series on 6 and 7 December 2000 between the hours of 5.20 p.m. and 6.20 p.m. and 6.10 p.m. and 7.20 p.m. with acoustic and visual warning “suitable for all viewers”

Examination: on the CRTA’s initiative

Applicant’s participation: the applicant did not make written submissions and did not attend the hearing

Date of decision: 8 February 2001

Findings: violation of Regulations 21(5)(b), 21(6) and 32(3)(a)

Fine: CYP 1,000

18. CRTA case no. 13/2001(3) - Recourse no. 348/2001

Broadcasting details: broadcasting of the film “She fought alone”, rated “K”, on 18 February 2001 between 6.00 p.m. and 8.20 p.m.

Examination: upon complaint

Applicant’s participation: the applicant made written submissions but did not attend the hearing

Date of decision: 9 March 2001

Findings: violation of Regulations 21(5) and (6), 22(1), 32(2) and 32 (3)(a)

Fine: CYP 5,000

19. CRTA case no. 125/2001(3) - Recourse no. 817/2002

Broadcasting details: broadcasting of the film “Shadow Warriors II”, rated “18”, on 25 August 2001 between 9.00 p.m. and 11.30 p.m.

Examination: upon complaint

Applicant’s participation: the applicant made written submissions but did not attend the hearing. The applicant admitted that the film should not have been shown in the family zone in view of its rating

Date of decision: 14 June 2002 and 24 July 2002 (decision imposing the fine)

Findings: violation of Regulations 21(6), 22 (2) and 32(3)(a)

Fine: CYP 500

20. CRTA case no. 133/2001(3) - Recourse no. 445/2001

Broadcasting details: broadcasting of the film “Broken Arrow”, rated “15”, on 22 September 2001 between 9.15 pm and 11.02 p.m.

Examination: upon complaint

Applicant’s participation: the applicant did not make written submissions and did not attend the hearing. However, it subsequently made written submissions concerning the imposition of a fine.

Date of decision: 23 January 2002 and 6 March 2002 (decision imposing the fine)

Findings: violation of Regulations 21(6), 22 (2) and 32(3)(a)

Fine: CYP 3,000

21. CRTA case no. 143/2001(3) - Recourse no. 815/2002

Broadcasting details: broadcasting of the film “No Holds Barred”, rated “15”, on 1 September 2001 between the hours 9.00 p.m. and 11.30 p.m.

Examination: upon complaint

Applicant’s participation: the applicant made written submissions but did not attend the hearing.

Date of decision: 14 June 2002 and 6 August 2002 (decision imposing the fine).

Findings: violation of Regulations 21 (6), 22 (2) and 32(3)(a).

Fine: CYP 1,000.

22. CRTA case no. 5/2002(3) - Recourse no. 803/2002

Broadcasting details: broadcasting of the trailer of the film “The Last Boy Scout” 20 times on 4 October 2001 between 8.28 a.m. and 6.45 p.m.

Examination: upon complaint

Applicant's participation: the applicant made written submissions admitting that the trailer contained scenes unsuitable for minors but did not attend the hearing.

Date of decision: 3 April 2002 and 10 July 2002 (decision imposing the fine)

Findings: violation of Regulations 21(6) and 32(3)(a)

Fine: CYP 2,000

E. "Social documentaries"

23. CRTA case no. 10/2001(3) - Recourse no. 912/2001

Broadcasting details: broadcasting of a trailer 13 times, on 5, 7, 8, 10 and 11 February 2001 between 9.00 a.m. and 7.15 p.m., of the social documentary "Pesta sto Mama" (Πέστα στο Μάμα").

Examination: upon complaint

Applicant's participation: the applicant did not make written submissions but attended the hearing

Date of decision: 19 September 2001

Findings: violation of Regulations 21(5) and (6), 22, 24(2)(d), 32(3)(a), and paragraph 8(2) of part I of appendix VIII

Fine: CYP 2,000

24. CRTA case no. 11/2001(3) - Recourse no. 913/2001

Broadcasting details: broadcasting of the social documentary "Pesta sto Mama" (Πέστα στο Μάμα") on 8 and 15 February 2001 between 9.30 p.m. and 12.00 p.m., and of repeats on 11 February and 18 February 2001 between 2.30 p.m. and 5.00 p.m.

Examination: upon complaint

Date of decision: 19 September 2001

Applicant's participation: the applicant did not make written submissions but attended the hearing.

Findings: violation of Regulations 21(3), (5) and (6), 22, 32 (3)(a) and paragraph 8(2) of part I of appendix VIII; violation of section 26(2) of Law 7(I)/1998.

Fine: CYP 3,000

25. CRTA case no. 60/2001(3) - Recourse no. 1097/2001

Broadcasting details: broadcasting of the social documentary "Pesta sto Mama" (Πέστα στο Μάμα") on 3 May 2001 between 10.00 p.m. and 12.00 midnight

Examination: upon complaint

Applicant's participation: the applicant made written submissions, attended the hearing and made written submissions concerning the imposition of a fine.

Date of decision: 9 August 2001 and 10 October 2001 (decision imposing the fine)

Findings: violation of section 26(2) of Law 7(I)/1998

Fine: CYP 5,000

F. Broadcasting of programmes containing offensive remarks and inappropriate language

26. CRTA case no. 117/2000(3) - Recourse no. 303/2001

Broadcasting details: broadcasting of an episode of the Cypriot series "Tis Filakis ta Sidera" ("Της Φυλακής τα Σίδερα") on 8 November 2000 between 10.00 p.m. and 11.30 p.m.

Examination: upon complaint

Applicant's participation: the applicant did not make written submissions or attend the hearing

Date of decision: 24 January 2001

Findings: violation of Regulations 21(3) and (4) and 26(1) ("26(ιβ)")

Fine: CYP 2,000

27. CRTA case no. 1/2001(12) - Recourse no. 922/2001

Broadcasting details: broadcasting of a radio programme "Ola Kala" ("Όλα Καλά") on 19 December 2000 and 9 January 2001 between 1.00 a.m. and 1.00 p.m.

Examination: upon complaint

Applicant's participation: the applicant did not make written submissions and did not attend the hearing. However, it subsequently made written submissions concerning the imposition of a fine.

Date of decision: 5 September 2001 and 10 October 2001 (decision imposing the fine)

Findings: violation of Regulations 21(4) and (6)

Fine: CYP 1,000