



Proceedings before the administrative courts following the imposition of financial penalties by an administrative entity complied with the Convention

In today's **Chamber** judgment¹ in the case of [Edizioni Del Roma Societa Cooperativa A.R.L. and Edizioni del Roma S.R.L. v. Italy](#) (application no. 68954/13) the European Court of Human Rights held, unanimously, that there had been:

no violation of Article 6 § 1 (right to a fair hearing) of the European Convention on Human Rights.

These two cases concerned the financial penalties imposed by the Italian Communications Regulatory Authority (*Autorità per le garanzie nelle comunicazioni* – “AGCOM”) on the applicant companies, which operated in the publishing field. As a result of these penalties, the companies lost the public funding on which they had relied, which led to the collapse of one of them.

The Court considered that the proceedings before AGCOM did not satisfy all of the requirements of Article 6 of the Convention, particularly with regard to equality of arms between the prosecution and the defence and the holding of a public hearing, which would have allowed for an oral confrontation. However, the administrative courts – the regional administrative court and the *Consiglio di Stato* – had been able to review whether, in the special circumstances of the case, AGCOM had made appropriate use of its powers, and been able to examine the merits and proportionality of its choices.

Principal facts

The first applicant, Edizioni Del Roma Società Cooperativa A.R.L., is an Italian cooperative society, and the second applicant, Edizioni Del Roma S.R.L., is an Italian limited liability company (S.R.L.).

The department for information and publications in the Prime Minister's Office (DIP), which awards grants to publishing companies, asked AGCOM to inform it of the position (on the register of telecommunications operators) of publishing houses which were applying for grants, and to check whether there existed any situation of controlled or affiliated companies within the meaning of Article 2359 of the Civil Code.

On 7 March 2011 AGCOM opened proceedings against the companies for a breach, over the period 2008-2010, of the obligation to declare a situation of control, in accordance with section 1 § 8 of Law No. 416 of 1981. The companies had access to the case file, and hearings were held on 2 and 11 May 2011.

On 30 May 2011 AGCOM issued an order, imposing on the second applicant company an administrative penalty amounting to 103,300 euros, on the grounds that it had failed to declare that it had exercised control over the applicant companies during the period 2008-2010, and that it had therefore acted in breach of section 8 § 1 of Law No. 416 of 1981.

1. Under Articles 43 and 44 of the Convention, this Chamber judgment is not final. During the three-month period following its delivery, any party may request that the case be referred to the Grand Chamber of the Court. If such a request is made, a panel of five judges considers whether the case deserves further examination. In that event, the Grand Chamber will hear the case and deliver a final judgment. If the referral request is refused, the Chamber judgment will become final on that day. Once a judgment becomes final, it is transmitted to the Committee of Ministers of the Council of Europe for supervision of its execution. Further information about the execution process can be found here: www.coe.int/t/dghl/monitoring/execution.

In two separate appeals, the applicant companies lodged an action with the Rome Administrative Court to challenge AGCOM's decision.

By a judgment of 25 June 2012, the Rome Regional Administrative Court dismissed these appeals, having ordered the joinder of the two appeals.

The applicant companies appealed against this judgment, challenging the dismissal of their appeals against the penalty imposed on them by AGCOM. In a judgment of 22 April 2013, the *Consiglio di Stato* dismissed the appeal lodged by the applicant companies. The *Consiglio di Stato* also dismissed the applicant companies' complaints concerning the Administrative Court's interpretation of the "situation of control".

Lastly, in a judgment delivered on 26 March 2016, the Rome Criminal Court acquitted the directors of the two applicant companies of the offence of fraud, holding that it had not been for the purpose of obtaining the grants in question for the periods 2008/2009 and 2009/2010 that the companies had hidden a situation of control.

Complaints, procedure and composition of the Court

Relying on Article 6 § 1 (right to a fair hearing), the applicant companies alleged that the proceedings before AGCOM had not been fair. They complained that this entity had not been impartial and independent.

The application was lodged with the European Court of Human Rights on 22 October 2013.

Judgment was given by a Chamber of seven judges, composed as follows:

Ksenija **Turković** (Croatia), *President*,
Krzysztof **Wojtyczek** (Poland),
Linos-Alexandre **Sicilianos** (Greece),
Alena **Poláčková** (Slovakia),
Erik **Wennerström** (Sweden),
Raffaele **Sabato** (Italy),
Lorraine **Schembri Orland** (Malta),

and also Abel **Campos**, *Section Registrar*.

Decision of the Court

Article 6 § 1

The Court noted that, in the context of the proceedings before AGCOM, the applicant companies had been given the opportunity to submit evidence in their defence. However, the report by the revenue police on the investigative measures, based on which the relevant AGCOM committee had taken its decision, had not been communicated to the applicant companies, and they had thus not had an opportunity to defend themselves in relation to the document ultimately submitted by AGCOM's investigatory bodies to that committee, which was responsible for ruling on the merits of the accusations. The Court also noted that the procedure before AGCOM was essentially a written one, as no public hearing was provided for.

Although the obligation to hold a hearing was not absolute and there could be proceedings in which an oral hearing was not necessarily required under Article 6, the Court considered that a public hearing, open and accessible to the applicant companies, had been necessary in the present case. The facts were contested, especially with regard to whether there existed a situation of control of one applicant company over the other, and, quite apart from their financial severity, the penalties

which the applicant companies were liable to incur were likely to adversely affect their professional honour and reputation.

The Court noted that AGCOM's regulations provided for a certain separation between the investigatory bodies and the committee responsible for ruling on whether or not there had been a breach of the rules and for imposing sanctions. In particular, it is the person in charge of the procedure who draws up accusations and conducts the investigation, while the final decision on imposing penalties lies solely with the committee.

It was nevertheless the case that the person in charge of the procedure and the committee were merely branches of the same administrative body, acting under the authority and supervision of a single chairperson. In the Court's opinion, this situation amounted to the consecutive exercise of investigative and judicial functions within one body; in criminal matters such a combination of functions was not compatible with the requirements of impartiality set out in Article 6 § 1 of the Convention.

The Court therefore considered that the proceedings before AGCOM did not satisfy all of the requirements of Article 6 of the Convention, particularly with regard to equality of arms between the prosecution and the defence and the holding of a public hearing which would have allowed for an oral confrontation.

With regard to whether the applicant companies had had access to a court with full jurisdiction, the Court noted that the finding that the proceedings before AGCOM did not comply with the principles of a fair hearing were not sufficient to warrant the conclusion that there had been a violation of Article 6.

In the present case, the applicant companies had been able to appeal to the Rome Regional Administrative Court against the contested penalty and to lodge a further appeal against that court's decision with the *Consiglio di Stato*. As hearings had been held publicly before these two courts, an oral confrontation between the parties and compliance with the principle of equality of arms had been possible. The Court reiterated that, under its case-law, the Rome Regional Administrative Court and the *Consiglio di Stato* satisfied the requirements of independence and impartiality so as to constitute a "tribunal" for the purposes of Article 6 of the Convention.

The Court therefore noted that the administrative courts' jurisdiction was not merely confined to reviewing lawfulness. The administrative courts had been able to review whether, in the special circumstances of the case, AGCOM had made an appropriate use of its powers. They had been able to examine the merits and proportionality of AGCOM's choices.

As AGCOM's decision had been subsequently reviewed by judicial bodies with full jurisdiction, it followed that there had been no violation of Article 6 § 1 of the Convention.

The judgment is available only in French.

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