



## Italian authorities should have ensured that a licensed TV company had the frequencies enabling it to broadcast

In today's Grand Chamber judgment in the case [Centro Europa 7 S.r.l. and Di Stefano v. Italy](#) (application no. 38433/09), which is final<sup>1</sup>, the European Court of Human Rights held, by a majority, that there had been:

**a violation of Article 10 (freedom of expression and information), and**

**a violation of Article 1 of Protocol No. 1 (protection of property) to the European Convention on Human Rights.**

The case concerned an Italian TV company's inability to broadcast, despite having a broadcasting licence, because no television frequencies were allocated to it.

The Court found in particular that the laws in force at the time had lacked clarity and precision and had not enabled the TV company to foresee, with sufficient certainty, the point at which it might be allocated frequencies enabling it to broadcast. The Court concluded that the Italian authorities had failed to put in place an appropriate legislative and administrative framework guaranteeing effective media pluralism.

### Principal facts

The applicants are *Centro Europa 7 S.r.l.* (hereafter *Centro Europa*), an Italian company based in Rome, and Francescantonio Di Stefano, its statutory representative.

On 28 July 1999, the Italian authorities granted the company, in accordance with Law no. 249/1997, a licence for national terrestrial television broadcasting, authorising it to install and operate an analogue television network. The licence specified that *Centro Europa* was entitled to three frequencies covering 80% of the national territory.

For the allocation of frequencies, the terms of the licence referred to a national frequency allocation plan of 1998, which specified that, within 24 months, the company had to bring its installations in line with the requirements of the "assignment plan" as well as with the "adjustment programme" drawn up by the Communications Regulatory Authority.

Starting in 2000, *Centro Europa* turned several times to the administrative courts complaining that no frequencies had been allocated to it. A first set of proceedings ended in May 2008 with the adoption of a judgment by the *Consiglio di Stato*. That judgment deferred the allocation of frequencies to *Centro Europa* until such time as the authorities had adopted the adjustment programme mentioned above.

However, the plan was not implemented until December 2008. Before that, a succession of transitional schemes was applied at national level, allowing existing TV channels, to

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<sup>1</sup> Grand Chamber judgments are final (Article 44 of the Convention).

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

extend their use of frequencies. The result was that, even though it had a licence, *Centro Europa* was unable to broadcast before 30 June 2009.

In the meantime, in November 2003, *Centro Europa* turned to the Regional Administrative Court in a second set of proceedings in which it sought compensation for the damage it claimed it had incurred as a result of the non-allocation of frequencies. The *Consiglio di Stato* stayed those proceedings until the CJEU<sup>2</sup> had interpreted the relevant provisions of the European Union Treaty, several EU Directives and Article 10 of the European Convention on Human Rights. The CJEU delivered its judgment in January 2008. In particular, it found with regard to Article 10 of the Convention that the national legislation adopted during the period in question had favoured the existing TV channels to the detriment of new broadcasters which could not broadcast - despite having licences - because no frequencies had been allocated to them.

Following the CJEU judgment, the *Consiglio di Stato* held that it could not allocate frequencies instead of the Italian Government and ordered it to deal with that question. It also ordered the relevant Ministry to pay the company 1,041,418 Euros (EUR) in compensation calculated on the basis of the legitimate expectation of being allocated frequencies which, it found, *Centro Europa* had. The *Consiglio di Stato* finally concluded that *Centro Europa* had suffered damage as a result of the authorities' negligence which had resulted in not allocating frequencies to the company. However, it held that the pecuniary damage was only due as from 1 January 2004, after which date - in accordance with a finding by the Italian Constitutional Court - legislation had to be adopted allowing licence holders to start broadcasting.

## Complaints, procedure and composition of the Court

The applicants complained under Article 10 that their right to impart information had been breached, and under Article 14 (prohibition of discrimination) that they had suffered discrimination as compared to the Mediaset group. They further relied on Article 6 § 1 (right to a fair hearing), claiming that the proceedings they brought had been unfair as a result of legislation which had prolonged the non-granting of frequencies. Lastly, they contended that the licence granted in 1999 to *Centro Europa* had constituted a "pecuniary interest", and thus property within the meaning of Article 1 of Protocol No. 1, which had not been protected, contrary to the Convention requirements.

The application was lodged with the Court on 16 July 2009 and [communicated](#) to the Italian authorities on 10 November 2009. The Chamber to which the case had been allocated relinquished jurisdiction in favour of the Grand Chamber.<sup>3</sup> The non-governmental organisation *Open Society Justice Initiative* submitted written comments as a third party.

A [public hearing](#) was held on 12 October 2011 during which the applicants clarified that their complaints related only to the period between 28 July 1999, when it was granted a licence, and 30 June 2009, when it was given frequencies for a single channel and began broadcasting.

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<sup>2</sup> At the time, the Court of Justice of the European Communities.

<sup>3</sup> Under Article 30 of the European Convention on Human Rights, "Where a case pending before a Chamber raises a serious question affecting the interpretation of the Convention or the Protocols thereto, or where the resolution of a question before the Chamber might have a result inconsistent with a judgment previously delivered by the Court, the Chamber may, at any time before it has rendered its judgment, relinquish jurisdiction in favour of the Grand Chamber, unless one of the parties to the case objects. "

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

Françoise **Tulkens** (Belgium), *President*,  
Jean-Paul **Costa** (France),  
Josep **Casadevall** (Andorra),  
Nina **Vajić** (Croatia),  
Dean **Spielmann** (Luxembourg),  
Corneliu **Bîrsan** (Romania),  
Elisabeth **Steiner** (Austria),  
Elisabet **Fura** (Sweden),  
Ljiljana **Mijović** (Bosnia and Herzegovina),  
David Thór **Björgvinsson** (Iceland),  
Dragoljub **Popović** (Serbia),  
András **Sajó** (Hungary),  
Nona **Tsotsoria** (Georgia),  
Işıl **Karakaş** (Turkey),  
Kristina **Pardalos** (San Marino),  
Guido **Raimondi** (Italy),  
Linos-Alexandre **Sicilianos** (Greece),

and also Vincent **Berger**, *Jurisconsult*.

## Decision of the Court

### Admissibility

The Italian Government made a number of objections claiming that the application should be declared inadmissible. The Court found in respect of those complaints that:

1) *Centro Europa* could still claim to have been a victim of a Convention violation, given that the Government had not acknowledged – neither explicitly nor in essence – that there had been a violation, but had confined itself to the *Consiglio di Stato*'s finding that the authorities had acted negligently by not allocating the frequencies. The compensation awarded to *Centro Europa* had not, in itself, been sufficient. And, while the allocation of frequencies on 30 June 2009 had put an end to the situation of which *Centro Europa* complained, that had been neither an implicit acknowledgement nor a redress for the period during which the company had been prevented from broadcasting.

2) Francescantonio Di Stefano could not claim to have been a victim, given that the company alone had been granted a broadcasting licence and Mr Di Stefano had not been its sole shareholder. In addition, the refusal to allocate the frequencies and the ensuing court proceedings had affected only *Centro Europa*'s interests. The Court therefore declared the application in his name inadmissible.

3) *Centro Europa* had not abused its right of individual petition to the Court, as its application had not been based on untrue facts with the intention of misleading the Court.

4) *Centro Europa* submitted its application to the Court only 20 days after the situation it had complained about had ended, namely 30 June 2009, when it had been granted frequencies for one TV channel. The decisions of the different national authorities prior to that date had not been final, as they had not settled the company's claim. Therefore, the company had applied to the Court within the deadline of six months following the final domestic decision in its case, in accordance with the Convention requirements.

5) *Centro Europa* had not failed to exhaust the domestic remedies before applying to the Court. While the proceedings with which it had challenged its allocation of frequencies for

a single TV channel were still pending, *Centro Europa* could not be obliged to await the outcome of those proceedings for the purposes of the present application.

The Court thus declared the application on behalf of *Centro Europa* admissible.

### Freedom of expression and information (Article 10)

There could be no democracy without pluralism, emphasised the Court recalling its finding in its well-established case-law on pluralism in the audiovisual media.

Furthermore, it stressed that it was not sufficient for a State to provide for the theoretical possibility for operators to access the audiovisual market. It was necessary for providers to have effective access to that market so as to guarantee diversity of the overall programme content, reflecting as far as possible the different opinions in society.

If, instead, a powerful economic or political group was permitted to dominate the audiovisual media, which is particularly well placed to convey messages with immediate effect, this would undermine freedom of expression and freedom to impart and receive information. Such a position of dominance could lead to a situation where one group exercised pressure on broadcasters and eventually curtailed their editorial freedom, including in respect of questions of general interest.

As regards the situation of *Centro Europa*, the Italian authorities' failure to allocate frequencies to it had deprived the licence given to the company of all practical purpose, since it had been impossible for it to broadcast for nearly ten years. Therefore, there had been a substantial obstacle, and thus an interference with, *Centro Europa's* exercise of its right to impart information and ideas.

More specifically, the Court noted that, following the granting of a broadcasting licence in July 1999, *Centro Europa* could reasonably have expected the authorities to regulate, within 24 months, its terrestrial broadcasting activities. Provided that it had upgraded its installations as it had been required to do, *Centro Europa* should have been entitled to transmit television programmes.

However, the frequency allocation plan had not been implemented until December 2008 and *Centro Europa* had only been allocated a single channel as from 30 June 2009. In the meantime, several existing channel-holders had continued to broadcast by using frequencies that had been meant for allocation to new companies under the national plan.

The *Consiglio di Stato* had found that the situation had been due essentially to legislative factors. The Court examined those factors as follows: a succession of laws had continuously extended the period during which "over-quota" (existing) channels could continue to broadcast at both national and local level. The successive application of those laws had had the effect of blocking the frequencies and preventing operators other than the over-quota channels from participating in the early stages of digital television. In particular, the laws in question had postponed the expiry of the transitional scheme with reference to events occurring on dates which had been impossible to foresee. The laws had been couched in vague terms which had not defined with sufficient precision and clarity the scope and duration of the transitional scheme.

In addition, the CJEU had noted that the measures by the Italian legislature had entailed the successive application of transitional arrangements structured in favour of the existing networks. The CJEU had also found that that had resulted in preventing operators without broadcasting frequencies, such as *Centro Europa*, from accessing the television broadcasting market even though they had a licence.

The Court concluded that the domestic legislative framework had lacked clarity and precision and had not enabled *Centro Europa* to foresee, with sufficient certainty, the point at which it might be allocated frequencies enabling it to broadcast. Therefore, the laws in question had not satisfied the foreseeability requirement established by the Court.

Finally, the authorities had not observed the deadlines set in the licence, thereby frustrating *Centro Europa's* expectations. The Government had not shown that the company had been effectively able to compel the authorities to abide by the law and the Constitutional Court's judgments. Accordingly, it had not been given sufficient guarantees against arbitrariness.

The above signalled shortcomings had resulted, among other things, in reduced competition in the audiovisual sector. That amounted to a failure by the State to comply with its positive obligation under the Convention to put in place an appropriate legislative and administrative framework to guarantee effective media pluralism.

There had therefore been a violation of Article 10.

### Protection of property (Article 1 of Protocol No. 1)

The Court observed that, in view of the licence terms and the legislative framework in place at the time, *Centro Europa* could reasonably have expected the authorities, within 24 months of granting the licence, to regulate its terrestrial broadcasting activities. It therefore had had a "legitimate expectation" to begin broadcasting.

Given that it had been unable to start for a number of years, the Court found that the Italian authorities had interfered with the peaceful enjoyment of *Centro Europa's* possessions. The Court already held, in the context of Article 10, that the authorities' interference with *Centro Europa's* rights had not had a sufficiently foreseeable legal basis. It reached the same finding in relation to its complaint related to its property, and concluded that there had been a violation of Article 1 of Protocol No. 1.

### Other articles

The Court held that it was not necessary to examine separately *Centro Europa's* complaint under Article 14, and found its other complaint, under Article 6 § 1, inadmissible.

### Just satisfaction (Article 41)

The Court held that Italy was to pay *Centro Europa* 10,000,000 euros (EUR) in respect of pecuniary and non-pecuniary damage, and EUR 100,000 for costs and expenses.

### Separate opinions

Judge Vajić expressed a concurring opinion. Judges Sajó, Karakaş and Tsotsoria, joined in part by Judge Steiner, expressed a joint partly dissenting opinion. Judges Popović and Mijović expressed a separate joint partly dissenting opinion and Judge Steiner expressed a dissenting opinion. These opinions are annexed to the judgment.

*The judgment is available in English and French.*

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