

[IT] Italian Supreme Court reverses the Consiglio di Stato's judgment on the logical channel numbering plan (LCN).

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By means of Resolution no. 366/10/CONS, the Italian Communications Authority (Autorità per le garanzie nelle comunicazioni - AGCOM) approved, in 2010, the first logical channel numbering plan for digital terrestrial television in Italy. This plan was voided by the Consiglio di Stato (the Italian High Administrative Court) by judgment no. 4660 of 2012.

Following this judgment, by means of Resolution no. 442/12/CONS, AGCOM launched a public consultation and appointed a specialised company to conduct a survey on viewers/users' preferences in order to adopt a new LCN plan. The plan was approved in 2013 by means of Resolution no. 237/13/CONS.

A local television broadcaster challenged the new LCN plan before the Consiglio di Stato requesting its partial annulment, and the appointment of an extraordinary commissioner to amend the numbering plan and assign channels 8 of 9 to local broadcasters instead of national ones.

The Consiglio di Stato upheld the broadcaster's petition by means of judgment no. 6021 of 2013. This judgment was then challenged by AGCOM and by the Italian Ministry of Economic Development before the Italian Supreme Court, which reversed it through judgment no. 1836/16, published on 1 February 2016.

According to the Supreme Court, the Consiglio di Stato's judgment did not meet the relevant requirements. Namely, the Consiglio di Stato stated that AGCOM, following the annulment of the first numbering plan and in order to adopt the new numbering plan, should have carried out a survey on viewers/users' preferences referring to year 2010.

In the Supreme Court's perspective this would have been impossible for AGCOM from a practical/realistic point of view.

In particular the Supreme Court pointed out that the transition from analogue television to digital terrestrial television (which was completed in Italy on 4 July 2012) had an enormous impact on users' habits and this meant (i) it was practically impossible for AGCOM to carry out such a survey before the transition; and (ii) it was necessary for AGCOM to consider the impact of the transition on users' preferences in order to approve the new logical channel numbering plan.

Corte di Cassazione, Sezioni Unite Civili, Sentenza n. 1836/16

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