[IT] Italian Administrative Court dismissed all appeals against AGCOM copyright regulation

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On 30 March 2017, almost exactly three years after its entry into force, all of the appeals against the Autorità per le garanzie nelle comunicazioni (Italian Communications Authority - AGCOM) Regulation on copyright protection online have been dismissed by two judgments of the Italian Regional Administrative Tribunal for Latium (TAR). The judgments, released in February but made publicly available only two months later, conclude a long legal dispute, arising from the appeals made by associations representing Internet service providers, web-TVs, and consumers.

The Regulation was adopted in 2013 and entered into force on 31 March 2014 (see IRIS 2014-3:1/31), pursuant to the provisions of the Italian Copyright Law (no. 633/41 as amended), assigning to AGCOM monitoring competences on copyright protection in the field of electronic communications, the E-Commerce Decree (no. 70/2003) implementing the E-Commerce Directive 2000/31/EC), and the Italian Audiovisual Media Service (AVMS) Code (n. 177/2005) implementing the Audiovisual Media Services Directive 2007/65/EC.

The plaintiffs appealed in 2014 against the Regulation, denying AGCOM's competence to regulate in the field of copyright infringements online and asking the Court to declare it incompatible with the national and European legal framework. To achieve the utmost accuracy in evaluating the appeal, the TAR, in September 2014, while confirming AGCOM's competence and the compatibility of the Regulation with the law, raised a question of compatibility with the Italian Constitution of a number of articles of the aforementioned decrees, submitting them to the Italian Constitutional Court.

On 9 December 2015, with judgment no. 247/2015, the Constitutional Court declared the questions inadmissible, confirming the compatibility of the targeted provisions with the fundamental principles of the Constitution.

With judgments no. 04100-04101/2017, the TAR dismissed the appeals, stating without any doubt that, according to the Italian copyright law, the AVMS Code, and the E-Commerce Decree, AGCOM is the administrative authority competent in the field of copyright protection on electronic communications networks.

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Regarding one of the most relevant profiles of the appeal, the compatibility of AGCOM's proceedings with those of ordinary courts, the TAR stated that the administrative procedure outlined in the Regulation is not committed to pursuing "primary" copyright violations, which remain under the exclusive competence of the judiciary, since the same Copyright Law declares, at Article no. 156, that its own provisions shall not affect the application of the E-Commerce Decree. Thereby, the TAR affirms that the Law itself has introduced a "double track" protection mechanism, in which, alongside the private enforcement of the judicial authority, there is also the possibility of activating a public enforcement in front of AGCOM as the competent administrative authority. This authority is consequently entitled to adopt orders towards the Internet services providers: the two actions can operate together to ensure effective and fast protection of copyright.

TAR Lazio, Sezione prima, sentenze Reg.Prov.Coll. n. 04101/2017

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Italian Administrative Tribunal for Latium, First Section, judgments no. 04101/2017

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Italian Administrative Tribunal for Latium, First Section, judgments no. 04100/2017

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