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La CEDU su collegio arbitrale non imparziale
(CEDU, sez. I, sent. 20 maggio 2021, ric. n.5312/11)

La Corte Edu si pronuncia sull'accusa di non imparzialità di un collegio arbitrale costituito per risolvere una controversia riguardante un accordo idroelettrico per la produzione di energia elettrica in Albania, stipulato dalla società ricorrente (società registrata in Italia, operante nel settore della costruzione e gestione di centrali idroelettriche ed installazione di impianti a energia rinnovabile) ed ENELPOWER, una società che era stata scorporata dall'ENEL, l'ex azienda elettrica di Stato. In particolare, il problema derivava dalla circostanza che uno dei membri (N.I.) di tale collegio arbitrale era stato nel consiglio di amministrazione di ENEL ed aveva lavorato come avvocato della medesima società.
La Corte ha riconosciuto che gli stretti legami di N.I. con ENEL e quindi i collegamenti con ENELPOWER, avevano compromesso l'oggettiva imparzialità del collegio arbitrale, portando alla violazione dell'art. 6 § 1 (diritto a un equo processo) della Convenzione europea dei diritti dell'uomo.

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

FIRST SECTION

CASE OF XXXXX S.P.A. v. ITALY
(*Application no. 5312/11*)

JUDGMENT
STRASBOURG
20 May 2021

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of XXXXX S.p.a. v. Italy,
The European Court of Human Rights (First Section), sitting as a Chamber composed of:
Ksenija Turković, President,
Krzysztof Wojtyczek,

Alena Poláčková,
Péter Paczolay,
Gilberto Felici,
Erik Wennerström,
Raffaele Sabato, *judges*,
and Renata Degener, Section Registrar,
Having regard to:

the application (no. 5312/11) against the Italian Republic lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a company registered in Italy, XXXXX S.p.a. ("the applicant"), on 21 January 2011;
the decision to give notice to the Italian Government ("the Government") of the complaint concerning Article 6 § 1 of the Convention;
the parties' observations;
the applicant's request to hold a hearing on the admissibility and the merits of the case and the Chamber's decision of 13 April 2021, holding that an oral hearing was not necessary;
Having deliberated in private on 13 April 2021,
Delivers the following judgment, which was adopted on that date:

INTRODUCTION

1. The case concerns, under Article 6 § 1 of the Convention, the alleged unfairness of voluntary arbitration proceedings, in particular the alleged lack of impartiality of one of the arbitrators rendering an arbitral award between the applicant company and ENELPOWER S.p.a., an Italian company.

THE FACTS

2. The applicant is an Italian company, which was represented by Mr A. Saccucci, Mr A.G. Lana and Mr M. Desario, lawyers practising in Rome.
3. The Government were represented by their former Co-Agent, Ms M.G. Civinini.
4. The facts of the case, as submitted by the parties, may be summarised as follows.

I. The factual background

5. The applicant is a company which operates in the sector of the construction and management of hydroelectric power plants and the installation of renewable energy plants.
6. On 12 February 1996 the applicant sent a letter to ENEL, informing it that it was about to start the construction of a hydroelectric power plant in Albania. The applicant wanted to assess ENEL's interest in collecting the electrical energy that would be produced in the plant. ENEL, an acronym which stands for National Entity for Electrical Energy (Ente nazionale per l'energia elettrica), had been created as a public entity in 1962 by nationalising several hundred private electrical energy companies. In 1999, with the creation of a number of subsidiaries and 32% of its capital being sold

on the stock market, a process of privatisation of the entity began. In 1996 it still had a monopoly in the Italian energy sector. At the time, N.I. was ENEL's Vice-Chairman and a member of its Board of Directors.

7. ENEL sent a first positive reply on 29 February 1996, by means of a letter signed by two senior managers of the company, C.P. and G.P., declaring that it would be available in principle to examine the energy supply proposal, provided that the activities necessary to ensure the technical feasibility of the project were completed.

8. In June 1996 the applicant received a concession from the Albanian Government to build the hydroelectric plant. The concession was signed by the applicant in May 1997. A preliminary agreement between ENEL and the applicant, containing a commitment by the parties to implement the project, was then signed in March 1999.

9. In 1999, having previously been an internal division within ENEL, ENELPOWER S.p.a. ("ENELPOWER") was created as a separate corporation, albeit wholly controlled by ENEL and linked to the latter's Engineering and Construction Division.

10. On 2 February 2000, after almost four years of negotiations with ENEL, the applicant signed a cooperation agreement with ENELPOWER, the newly created entity. The agreement was reached on the basis of the construction of the above-mentioned hydroelectric power plant in Albania. One of the main provisions of the agreement was the applicant's obligation to sell, to ENEL (the parent entity), the electrical energy which would be produced in the power plant, with a view to its distribution to ENEL's customers in Italy.

11. In the cooperation agreement the parties undertook, in Article 11, to refer any future disputes to the Arbitration Chamber of the Rome Chamber of Commerce (the "ACR").

12. On 16 March 2000, both parties agreed to entrust A.A., ENELPOWER's auditors, with the task of assessing the value of the applicant's concession. The aim of this assessment was to establish an amount of capital that should then be assigned to a newly created Albanian company, in order to implement the project. A.A. presented its assessment on 19 April 2000. ENELPOWER did not agree with the methods or the outcome of the audit, in addition to expressing its doubts as to the feasibility of the project, and decided not to perform the cooperation agreement.

II. The arbitration proceedings

13. On 23 November 2000 the applicant lodged a request with the ACR to commence arbitration proceedings against ENELPOWER. In particular, the applicant asked the ACR to establish ENELPOWER's breach of the cooperation agreement and sought the termination of the latter, together with an order for damages, evaluated at 237,500,000,000 Italian lira (ITL) (about 130,000,000 euros (EUR)). At the same time, the applicant appointed Mr G.G. as its arbitrator.

14. ENELPOWER filed its reply on 28 December 2000 and appointed, as its arbitrator, Mr N.I.

15. On 12 February 2011 the ACR sent a letter to the named arbitrators to inform them of their appointment and to invite them to disclose in writing any potential conflict of interest. The acceptance statement given by N.I. did not explicitly refer to the absence of any conflict of interest.

16. On 6 March 2001 the arbitral panel was completed by the appointment, by the parties, of a third arbitrator to act as Chair, namely P.D.L. After the latter's resignation, A.V. was appointed by the ACR as Chair on 7 November 2001.
17. At the time of the events, N.I. had been representing ENEL as its lawyer in a parallel civil dispute concluded by judgment no. 15029 of 27 November 2001 (R.G. 4386/1999) of the Court of Cassation. The dispute, between ENEL and, inter alia, the Italian national institute for insurance against accidents in the workplace (INAIL), concerned the reimbursement of insurance claims stemming from work-related accidents.
18. On 17 June 2002 the ACR informed the parties' lawyers that the deadline for the deposit of the award would expire on 15 December 2002.
19. The versions of the facts given by the parties radically differ with regard to the events of 25 November 2002:

– The Government maintained that, on 25 November 2002, the ACR had dismissed, in a private session in which the arbitrators had participated in person ("conferenza personale"), all the applicant's claims. Pursuant to Article 823 of the Italian Code of Civil Procedure (CCP), the award had been decided by a majority and had been deposited, with the signatures of A.V. and N.I., on 6 December 2002 at 16:34. According to the Government, during the private session the arbitrators had asked the Chair to draft the award and G.G. had expressed his intention not to sign the award.
– According to the applicant, it was not true that the arbitrators had reached an agreement on a decision at that meeting. The applicant argued that G.G. had never expressly manifested his intention not to sign the award or to consent to the latter being deposited without his dissenting opinion. Moreover, G.G. had not understood that the meeting had been called to adopt the final decision.

20. Meanwhile, on 6 December 2002, the applicant by means of a registered letter with return receipt, faxed in advance at 16:50 to the ACR and to the three arbitrators, had lodged a request for the withdrawal of N.I. In particular, the applicant had alleged that the day before, on 5 December, it had become aware of the fact that the arbitrator appointed by ENELPOWER, N.I., had been member of the Board of Directors, Vice-Chairman and thus legal representative of ENEL, parent entity of ENELPOWER, between 1995 and 1996. Moreover the applicant had also become aware that N.I. had been, and still was, acting as a lawyer for ENEL. The applicant alleged that on 5 December 2002 its legal representative F.B., while talking with third parties of a conference held by ENEL at the Milan Stock Exchange on 8 November 2002, had discovered this information by chance.
21. On the same day the ACR had sent to N.I. and G.G. a cover letter, together with the full text of the award. The letter read:

"I herewith send you, on behalf of the Chair of the Arbitral Panel, the text of the arbitral award and I inform you that three original counterparts are at your disposal in the Registry, in order for you to sign them. I remind you that the deadline to formally deposit the award has been fixed at 15 December. I would ask you to let us know should you have any difficulty, in order to arrange a swift and smooth conclusion to the proceedings."

22. On 12 December 2002, G.G., allegedly unaware that the award had in the meantime been deposited (see paragraph 19 above), had sent his dissenting opinion to the ACR in which he challenged the conduct of the final stages of the arbitration proceedings. He referred to the fact that the principle of collegiality had been breached; he further complained that no collegial discussion had been held, and that a secretary had been present during the meeting of 25 November 2002. This latter circumstance had led him to believe that the meeting had not been called to adopt the decision, but that it was an informal gathering of the panel. According to the applicant, the fact that the minutes of the meeting indicated that the arbitrators had entrusted the Chair with the task of drafting the award proved nothing, as they had been drawn up some time after the meeting.
23. On 13 December 2002 the ACR dismissed the request for the withdrawal of N.I., since the arguments put forward by the applicant had been lodged out of time and the award had already become binding in respect of the parties, pursuant to Article 823 of the CCP.
24. In the meantime, on 10 December 2002, the applicant had deposited a request for the withdrawal of N.I. in the Registry of the Rome District Court, pursuant to Articles 815 and 51 of the CCP.
25. On 20 February 2003 the President of the Rome District Court dismissed the applicant's request for withdrawal as inadmissible, as it had been lodged out of time. In particular, according to the District Court, the arbitration proceedings had ended on 25 November 2002 (date of the arbitrators' conference) or, at the latest, at the time of the signing of the arbitral award by two of the arbitrators on 6 December 2002. According to the District Court, any grounds for withdrawal, if discovered after the conclusion of the arbitration proceedings, could only have been raised through extraordinary revocation proceedings.
26. Before the Rome District Court, N.I. spontaneously declared that he had previously represented ENEL as lawyer in two sets of proceedings, for which he had been appointed as lawyer prior to the beginning of the arbitration proceedings.
27. For the same reasons as those mentioned at paragraph 25 above, on 29 April 2003 the President of the Rome District Court dismissed as inadmissible a further request for the withdrawal of N.I. that had been lodged by the applicant on 27 January 2003. As an additional ground for dismissal, the District Court made reference to the fact that, in the environment in which the parties to the dispute were operating, it was quite unlikely that the parties had not been aware, well before 5 December 2002, of the professional activities of N.I.
28. The award was declared enforceable (pursuant to Article 825 of the CCP) on 19 December 2003, by a decision of the Rome District Court.

III. The civil proceedings against the ACR

29. On an unspecified date, the applicant lodged a claim against the ACR for negligence, seeking compensation of EUR 374,482.91. The applicant complained, inter alia, of the fact that the ACR had not requested and obtained the explicit disclosure of any conflict of interest from the arbitrators, in violation of Article 6 of its Rules of Procedure, and that it had erroneously indicated 6 December 2002 as the date of the deposit of the award.
30. On 14 March 2005 the Rome District Court dismissed the applicant's claims. In particular, it maintained that the arbitral panel had held a private conference on 25 November 2002 and that, on

that occasion, the award had not been signed by the dissenting arbitrator. All the requirements of Article 823 of the CCP had been duly complied with. The ACR had therefore correctly indicated 6 December 2002 as the date of deposit and no negligence could be imputed to it. At the same time, the ACR could not be held responsible for the fact that N.I. had not indicated in his statement the absence of any conflict of interest, as the ACR did not have an obligation to require such an explicit negative disclosure.

IV. The nullity appeal

31. On 2 December 2003, pursuant to Article 828 of the CCP, the applicant appealed against the arbitral award before the Rome Court of Appeal. In its appeal the applicant requested the courts to ascertain the non-existence or the nullity of the arbitral award of 25 November 2002, and, as a consequence, to refer the proceedings back to the panel for their continuation. The applicant argued that, inter alia, by not having disclosed his incompatibility in the independence declaration provided for by the rules of the ACR, the appointment of N.I. as arbitrator had lacked any lawfulness. It also complained of his lack of impartiality due to his ties to the ENEL group.

32. On 7 April 2009 the Rome Court of Appeal dismissed the applicant's appeal. It maintained that the award had been adopted at the conferenza personale (see paragraph 19 above) on 25 November 2002; that Article 823 of the CCP had been complied with in the sense that the majority of the arbitrators had signed the award; that the absence of an independence declaration was completely irrelevant and that the alleged lack of impartiality could not, in any case, have affected the validity of the award, as a question relating to an arbitrator's impartiality could only have been raised in the request for withdrawal, and could never, in any event, lead to the nullity of the award.

33. The applicant appealed against this judgment to the Court of Cassation. The latter, on 15 November 2010, dismissed the applicant's appeal with final effect. The Court of Cassation, however, radically changed the reason for the dismissal. In fact it deemed admissible the applicant's complaint as to the nullity of the award stemming from the lack of impartiality of N.I., as it had been lodged, albeit after the deliberation on the award, before it had been signed, thus in the course of the arbitration proceedings (as required by Article 829 § 1(2) of the CCP). At the same time, however, the Court of Cassation stated that the existence of a link between the arbitrator and ENELPOWER, resulting in an "alignment of interests" in a specific outcome of that very dispute (Article 51 § 1(1) of the CCP), had not been demonstrated.

V. The criminal proceedings against A.V., G.G. and N.I.

34. Following the events of 6 December 2002, the legal representative of the applicant lodged a complaint with the ACR against its arbitrator, G.G., who had allegedly blackmailed him on 10 December 2002, warning him to drop the request for withdrawal against N.I. or G.G. would otherwise not oppose the final approval of the award, even though it was in his opinion severely flawed by irregularities. The public prosecution office in Rome, having been informed by the ACR of this complaint, opened a criminal investigation for extortion.

35. Following the criminal investigation and the acquisition of further evidence, the public prosecution indicted N.I. and A.V. The indictment against N.I. contained several charges, ranging

from forgery (Article 479 of the Criminal Code) for having, inter alia, failed to disclose his professional relationship with one of the parties, to misfeasance in public office (Article 323 of the Criminal Code) for having intentionally procured an unfair pecuniary benefit to ENELPOWER.
36. Proceedings were discontinued on 13 September 2004 (as to the forgery charges) and 30 September 2005 (as to the misfeasance charges). With particular regard to the offence of misfeasance in public office for having intentionally procured an unfair pecuniary benefit to one of the parties to the arbitration proceedings, the preliminary investigations judge referred to the well-established case-law principle whereby arbitration was private in nature and arbitrators could not be considered public officials, therefore not being liable under the relevant criminal provision.
37. On 30 September 2005 criminal proceedings against G.G. for false declarations to the public prosecutor were also discontinued.

RELEVANT LEGAL FRAMEWORK

I. Relevant domestic law

38. The Court of Cassation has repeatedly stated (see, among others, judgments nos. 3804 of 25 February 2015, 8532 of 28 May 2003, and 10922 of 25 July 2002) that arbitration proceedings are held to be pending when the complaining party has given notice to the other about its intent to refer a dispute for arbitration (domanda di accesso agli arbitri), since the notice includes the nature and legal basis for the proceedings.

A. The Italian Code of Civil procedure (as in force at the relevant time)

39. The applicable provisions of the Code of Civil Procedure (CCP), as in force at the relevant time, read as follows:

Article 51 – Withdrawal of judges

"Judges are under an obligation to stand down where:

1. The judge has an interest in the dispute or in another dispute concerning the same legal issue.
2. The judge or his/her spouse is a relative within the fourth degree of, or has adoptive ties to, lives or has friendly relations with, one of the parties or one of their representatives.
3. The judge or his/her spouse is involved in pending litigation or has a serious conflict with, or is either a debtor or creditor of, one of the parties or one of their representatives.
4. The judge has advised or acted in the dispute, or testified therein as witness, or has previously adjudicated it in another instance as judge or arbitrator, or has been appointed as an expert.
5. The judge is a guardian, representative, agent or employer of one of the parties; or where he/she is the director or manager of a body, an association, even one that is not recognised, a committee, a company or a subsidiary that has an interest in the dispute.

In any other case where there are serious reasons of propriety, the judge can ask the head of the relevant judicial authority for authorisation to stand down ..."

Article 815 – Requests for withdrawal of arbitrators

"A party can request the withdrawal of the arbitrator not appointed by it for the reasons indicated in Article 51.
This request for withdrawal shall be made by petition to the President of the District Court ... within the peremptory time-limit of ten days ... from the time when the ground for the challenge came to the party's knowledge. The President, having heard representations from the challenged arbitrator and, where necessary, having made summary enquiries, shall issue an order against which there shall be no appeal."

Article 820 – Time-limit for decision

"Unless the parties have agreed otherwise, the arbitrators shall render their award within 180 days after acceptance of their appointment. If there are several arbitrators and they did not all accept at the same time, the time-limit begins to run from the last acceptance. Where a request for withdrawal against an arbitrator is filed, the time-limit shall be suspended until a decision is made on such request and it shall be interrupted where it is necessary to replace an arbitrator.
..."

Article 823 – Deliberation and requirements for the award

"The award shall be decided by the majority vote of the arbitrators personally meeting together. It shall then be set down in writing.
It shall contain:
(1) the names of the parties;
(2) the indication of the instrument of submission to arbitration or of the arbitration clause and of the issues submitted for decision;
(3) a brief statement of the reasons;
(4) the disposal of the issues (dispositivo);
(5) the indication of the seat of the arbitration and of the place or the manner in which it was deliberated upon;
(6) the signature of all the arbitrators, with the indication of the day, month and year of their signature; the arbitrators may sign in a place other than the place of deliberation, as well as abroad; if there is more than one arbitrator, they may sign in different places without having to meet again in person.
However, an award signed only by the majority of the arbitrators shall be valid provided that mention is made that it was deliberated upon in the presence of all the arbitrators and that it states expressly that the other arbitrators were either unwilling or unable to sign.
The award shall be binding on the parties from the date of the last signature."

Article 825 – Depositing of the award

"The arbitrators shall prepare the award in as many original counterparts as the parties and shall serve notice thereof upon each party by delivery of an original counterpart, also sending it by registered mail, within ten days from the date of the last signature.
The party intending to have the award enforced in the territory of the Republic shall deposit an original counterpart of the award or a certified copy thereof, together with the instrument of submission to arbitration or the document containing the arbitration clause or an equivalent document, either an original or a certified copy, with the registry of the District Court (tribunale) of the district in which the arbitral tribunal has its seat.
The District Court, after ascertaining that the award meets all formal requirements, shall declare it enforceable by decree. The award which has been declared enforceable may be registered (trascritto) in all cases where a judgment with the same content would be subject to registration.
..."

Article 827 – Means of appeal

"The award may only be subject to a nullity appeal, to revocation or third party opposition.
The appeal may be lodged irrespective of the depositing of the award.
..."

Article 828 – Nullity appeal

"A nullity appeal may be lodged with the Court of Appeal of the district in which the arbitral tribunal has its seat, within ninety days of notification of the award.
No appeal may be lodged after one year from the date of the last signature.
..."

Article 829 – Grounds for nullity

"Notwithstanding any waiver, a nullity appeal may be lodged in the following cases:
...
(2) if the arbitrators have not been appointed in accordance with the provisions laid down in Chapters I and II of this Title, provided that this ground for setting aside has been raised in the arbitration proceedings;
..."

Article 830 – Decision on the nullity appeal

"The Court of Appeal, when granting the appeal, shall issue a judgment declaring the award null and void; where the defect affects only a part of the award which is separable from the others, it shall declare the partial nullity of the award.

Unless all of the parties have declared a contrary intention, the Court of Appeal shall decide also on the merits, if the case is ready for decision, or it shall refer the case back with an order to the investigations judge (istruttore), if the decision on the merits requires the taking of further evidence. While the case is pending, the Court of Appeal may, at the request of a party, make an order staying enforcement of the award."

B. Legislative Decree no. 40 of 2 February 2006

40. Legislative Decree no. 40 of 2 February 2006, which entered into force after the conclusion of the arbitration proceedings in the present case, radically tightened the rules concerning disqualification of the arbitrators, by amending Article 815 of the CCP. The new amended text of Article 815 reads:

"An arbitrator may be disqualified:

1. If he/she lacks the qualifications expressly agreed upon by the parties.
2. If he/she, or a body, association or company of which he/she is director, has an interest in the dispute.
3. If he/she or his/her spouse is a relative within the fourth degree of, or lives or has regular relations with, the legal representative of one of the parties or with one of their lawyers.
4. If he/she or his/her spouse is involved in pending litigation against, or has a serious conflict with, one of the parties, one of their legal representatives or one of their lawyers.
5. If he/she is an employer or regularly gives paid advice or assistance or has any other relationship of a financial or affiliatory nature that might undermine his/her independence vis-à-vis one of the parties, a company controlled by that party, an entity controlling it or a company subject to joint control; or if he/she is the guardian or administrator of one of the parties.
6. If he/she has advised, assisted or represented one of the parties at a previous stage of the case or has testified as a witness.

A party may not seek disqualification of an arbitrator that it has appointed or has contributed to appoint, except for reasons discovered after the appointment
..."

C. The Rules of the ACR

41. Article 6 of the Rules of the ACR, as in force at the relevant time, read as follows:

Article 6 – Acceptance of appointment and disclosure by the arbitrator

"All the arbitrators shall be impartial and independent of the parties to the proceedings.
The arbitrator, having received notice of his or her appointment from the Arbitration Chamber, shall accept within 10 days.
Together with the acceptance, the arbitrator shall indicate, by means of a written declaration:

- Any relationship with the parties or their counsel that might have an impact on his/her independence and impartiality.
- Any direct or indirect personal or economic interest in the subject matter of the dispute.

..."

D. The Code of Conduct of the Italian Bar

42. Article 55 of the Code of Conduct of the Italian Bar, as in force at the relevant time, established that lawyers could not act as arbitrators if they had had professional relations with one of the parties and that, in any event, they were under the obligation to disclose any factual circumstance or relationships with counsel and/or parties that might affect their independence.

II. Relevant international material

43. Standards on conflict of interest disclosure and on arbitrators' independence and impartiality are set out by several international rules and guidelines, applying however mostly to international commercial arbitration or investment arbitration (see, among others, the International Bar Association Guidelines on Conflicts of Interest in International Arbitration ("the IBA Guidelines"), the International Chamber of Commerce ("ICC") Rules, the United Nations Commission on International Trade Law ("UNCITRAL") Arbitration Rules, the Stockholm Chamber of Commerce ("SCC") Rules, and the International Centre for Settlement of Investment Disputes ("ICSID") Arbitration Rules).
44. In particular, the 2004 IBA Guidelines, revised in 2014, reflect the understanding of the IBA Arbitration Committee as to the best current international practice. They seek to assist parties, practitioners, arbitrators, institutions and courts in dealing with the important questions of impartiality and independence.
45. General Principle 1 reads:

"Every arbitrator shall be impartial and independent of the parties at the time of accepting an appointment to serve and shall remain so until the final award has been rendered or the proceedings have otherwise finally terminated."

46. The Guidelines categorise, in three colour-coded lists, the situations that may occur during arbitration proceedings in which a duty to disclose arises. In particular, the Red List enumerates specific situations that, depending on the facts of a given case, may give rise to justifiable doubts as to the arbitrator's impartiality and independence. It is divided into two sub-categories, "a Waivable Red List" (situations that give rise to a conflict of interest that prevents a person from accepting or continuing to serve as arbitrator unless the parties otherwise agree or have full knowledge of the conflict of interest) and "a Non-Waivable Red List" (situations of such a gravity that any waiver by a party or any agreement by the parties shall be regarded as invalid).
47. The Waivable Red List includes the following situation:

"2.3.1 The arbitrator currently represents or advises one of the parties, or an affiliate of one of the parties."

48. The Non-Waivable Red List includes the following situation:

"1.4 The arbitrator or his or her firm regularly advises the party, or an affiliate of the party, and the arbitrator or his or her firm derives significant financial income therefrom."

THE LAW

I. PRELIMINARY ISSUES

A. The Co-Agent's entitlement to represent the Government and to sign their written observations

49. In a letter sent to the Court on 18 March 2019 the applicant, while asking for an extension of the time-limit to submit observations in reply, objected that the Government's written observations had been signed solely by Ms M. G. Civinini, in her capacity as Co-Agent of the Government.
50. The applicant noted that the said observations had been filed on 26 February 2019, i.e. after the entry into force of Decree-Law no. 113 of 4 October 2018 ("Decree-Law no. 113/2018"), which, under section 15(1), added by Law no. 132 of 1 December 2018 ("Law no. 132/2018"), provided that "the functions of agent of the Government in defence of the Italian State are carried out by the Advocate General of the State, who may delegate to an Advocate of the State". Therefore, the applicant expressed its doubts that Ms Civinini had been duly empowered to represent the Italian Government in the proceedings before the Court.
51. The applicant reiterated its doubts in a letter of 23 August 2019.
52. The Court notes that Rule 35 of the Rules of Court reads:

"The Contracting Parties shall be represented by Agents, who may have the assistance of advocates or advisers."

53. In addition, the Court notes that it is the duty of the Permanent Representative to the Council of Europe to inform the Court about the appointment of a Government Agent or Co-Agent or about the termination of his/her appointment.
54. In this regard the Court observes that it is not disputed that Decree-Law no. 113/2018, as modified by Law no. 132/2018, provided that the functions of Agent of the Government were to be carried out by the Advocate General of the State. The Court notes that, on 5 December 2018, the Permanent Representative of Italy to the Council of Europe informed the Court that Mr M. Massella Ducci Teri, Advocate General of the State, had been appointed as the new Agent of the Government. On 24 December 2018, the Permanent Representative informed the Court that, on 21 December 2018, Mr Massella Ducci Teri had delegated the functions of Agent to Mr L. D'Ascia, Advocate of the State.
55. Since the above-mentioned notifications exclusively concerned the functions of the principal Agent of the Government and not the functions of their Co-Agent, which were exercised by Ms Civinini before and after the above-mentioned appointments, in the absence of any formal

communication by the Permanent Representative to the Council of Europe concerning the termination of her appointment, the Court has not identified any procedural incident that would have raised doubts about Ms Civinini's status as Government representative. Therefore, the Court sees no reason to conclude that the Government's observations were not validly submitted. Any other consideration would only concern, and operate within, the domestic legal system.

B. Rule 47 of the Rules of Court

56. The Government objected that the applicant had not proved that F.B., allegedly its legal representative, had been empowered to lodge the application with the Court on its behalf. They invoked in this regard Rule 47 § 3.1(d) of the Rules of Court. They argued that the applicant had not provided the Court with the company registration report (visura), allegedly the only document that could have proved F.B.'s role as its legal representative.
57. The applicant invoked Article 2384 of the Italian Civil Code and Article 75 of the Italian CCP, under which the Chair of the board has authority to carry out all actions falling within the corporate purpose.
58. The Court observes that it is only from 1 January 2014 that the amended Rule 47 applied stricter conditions for the lodging of an application with the Court (see, mutatis mutandis, Oliari and Others v. Italy, nos. 18766/11 and 36030/11, § 68, 21 July 2015).
59. The Court further notes that at the time when the present application was lodged, the applicant had provided the Court with a document attesting that F.B. was the Chairman of the Board of Directors and legal representative of the applicant. He had moreover signed the authority form under Rule 36 of the Rules of Court in his capacity as Chairman of the Board of Directors. That form is dated 14 January 2011.
60. The Court notes that the applicant lodged its application in 2011, and there is no reason to consider that it did not fulfil the requirements of Rule 47 as applicable at the time. Moreover, the Government solely complained that the applicant had not provided the Court with the company registration report, without contesting the actual role of F.B. Having regard to its practice under Rule 47 and the applicable domestic law at the time, the Court is therefore satisfied that the documents provided by the applicant on lodging its application show that F.B. was empowered to represent the applicant before the Court.
61. The Government's objection must therefore be dismissed.

II. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION

62. The applicant complained that, by reason of the professional links between N.I. and ENEL, parent entity of ENELPOWER, the arbitrator N.I. had lacked independence and objective impartiality. This had impinged upon its fair trial rights, enshrined in Article 6 of the Convention, which reads as follows:

"In the determination of his civil rights and obligations ... everyone is entitled to a fair ... hearing ... by an independent and impartial tribunal established by law."

A. Admissibility

1. Whether the Court has jurisdiction ratione personae

63. The Court notes that, although the respondent State has not raised any objection as to its jurisdiction ratione personae, this question calls for consideration by the Court of its own motion (see Sejdić and Finci v. Bosnia and Herzegovina [GC], nos. 27996/06 and 34836/06, § 27, ECHR 2009).
64. In the present case, the Court observes that the complaint before it concerns the alleged lack of impartiality of N.I., one of the arbitrators composing the arbitral panel of the ACR, and the proceedings before the latter. The Court notes that the ACR is not a domestic court but rather a special agency of the Rome Chamber of Commerce, a local authority established under public law whose mission is, among others, to further the interests of businesses (the Chamber's activities and functional autonomy are mainly regulated by Law no. 580 of 29 December 1993 and Legislative Decree no. 112 of 31 March 1998).
65. That being said, the Court notes that Article 21 of the Rules of the ACR provided that the parties, when accepting the Rules, agreed to renounce all the waivable remedies. However, the Court also notes that in certain exhaustively enumerated circumstances, Italian law as in force at the relevant time conferred jurisdiction on the domestic courts to examine the validity of arbitral awards, by granting courts the powers both to declare the latter enforceable (pursuant to Article 825 of the CCP, see paragraph 39 above) and in particular to decide on nullity appeals aimed at reviewing the lawfulness of arbitral proceedings, including the lawfulness of the composition of the arbitral tribunal, and this notwithstanding any waiver of a right of appeal against the award as agreed by the parties in the arbitration clause (see Articles 827 et seq. of the CCP and in particular Article 829, paragraph 39 above). Italian law also conferred jurisdiction on domestic courts to examine the requests for withdrawal lodged against an arbitrator (see Article 815 of the CCP, paragraph 39 above). In this framework, the Court notes that the Rome District Court, on 19 December 2003, declared enforceable the arbitral award, giving it force of law in the Italian legal order (see paragraphs 28 and 39 above). Also, the Rome District Court on 20 January 2003 (see paragraph 25 above) and on 29 April 2003 (see paragraph 27 above) examined and dismissed the applicant's requests for withdrawal. Finally, the Rome Court of Appeal on 7 April 2009 (see paragraph 32 above) and the Court of Cassation on 15 November 2010 (see paragraph 33 above) examined and dismissed the applicant's nullity appeal lodged pursuant to Article 828 of the CCP.
66. The impugned acts or omissions are thus capable of engaging the responsibility of the respondent State under the Convention (see, mutatis mutandis, Mutu and Pechstein v. Switzerland, nos. 40575/10 and 67474/10, § 67, 2 October 2018). It also follows that the Court has jurisdiction ratione personae to examine the applicant's complaint as to the acts and omissions of the ACR as validated by the Italian domestic courts.

2. Abuse of the right of application

(a) Allegedly vexatious expressions

67. The Government submitted that the applicant had abusively used, in its application, the expression "soluzione pilatesca", which could be translated as an "elusive, cowardly" solution, with

reference to the idea of "washing one's hands" of an issue, attributed to Pontius Pilate. This expression, used with regard to the Rome District Court's decision on the request for withdrawal of N.I., had in their view amounted to a violation of Rule 44D of the Rules of Court, on account of its vexatious nature.

68. The Government also contested the use of other expressions by the applicant in its observations. They submitted that the applicant had used strong language in relation to allegedly arbitrary decisions of the domestic courts, to the relationship between N.I. and ENELPOWER, and to the criminal proceedings against N.I.

69. The applicant maintained that the expression mentioned in paragraph 67 above had been used to stress the fact that the President of the Rome District Court had dismissed its request on the allegedly erroneous assumption that the arbitration had already ended, without properly addressing the legal issues at stake.

70. Although expressly raised as a violation of Rule 44D, the Court considers it appropriate to deal with the argument as an objection relating to alleged abuse of the right of application.

71. The Court reiterates that the use of particularly vexatious, insulting, threatening or provocative language by an applicant – whether this is directed against the respondent Government, its Agent, the authorities of the respondent State, the Court itself, its judges, its Registry or members thereof – may be also considered an abuse of the right of application within the meaning of Article 35 § 3 (a) of the Convention. However, it does not suffice for the applicant's language to be sharp, polemical or sarcastic; to be considered an abuse, it must exceed the limits of normal, civic and legitimate criticism (see, among many other authorities, Petrov and X v. Russia, no. 23608/16, § 74, 23 October 2018).

72. In the present case it is certainly true that both the application and the applicant's written observations are characterised by strong and heated language. The applicant expressed its criticism of the domestic decisions and all the events surrounding the arbitral award in a forceful manner.

73. However, the Court does not accept the Government's argument that the language used by the applicant, although certainly sharp and very polemical, had overstepped the limits of normal, civic and legitimate criticism against the judicial authorities of the respondent State. Accordingly, the Court rejects the Government's objection in that respect.

(b) Allegedly deliberate concealment of relevant facts

74. The Government maintained that there had been an abuse of the right of individual application in that the applicant had not informed the Court, in the application form, that it had lodged a civil claim with the Rome District Court in order to obtain compensation for the alleged misconduct of the ACR (see paragraph 29 above). The Government argued that knowledge of such a fact had been essential for the examination of the case.

75. They also maintained that the applicant had introduced new facts and allegations in its written observations (inter alia the criminal proceedings against N.I., the alleged relationship between N.I. and A.A. and the public nature of ENEL) which should be declared inadmissible.

76. The applicant argued that the proceedings mentioned in paragraph 74 above were not relevant to the scope of the application. In particular, they did not relate to the alleged lack of impartiality of

N.I., but were directed against the alleged negligent conduct of the ACR. This was the reason why this set of proceedings had not even been mentioned in the statement of facts contained in the application form.

77. The Court reiterates that an application may be rejected as an abuse of the right of individual application within the meaning of Article 35 § 3 (a) of the Convention if, among other reasons, it was knowingly based on false information or if significant information and documents were deliberately omitted, either where they were known from the outset (see Kerechashvili v. Georgia (dec.), no. 5667/02, 2 May 2006) or where new significant developments occurred during the proceedings and were not brought to the Court's knowledge. Incomplete and therefore misleading information may amount to an abuse of the right of application, especially if the information in question concerns the very core of the case and a sufficient explanation is not given for the failure to disclose that information (see Gross v. Switzerland [GC], no. 67810/10, § 28, ECHR 2014). However, not every omission of information will amount to abuse; the information in question must concern the very core of the case (see Mitrović v. Serbia, no. 52142/12, § 33, 21 March 2017). A deliberate attempt to mislead the Court must always be established with sufficient certainty, as mere suspicion will not be sufficient to declare the application inadmissible as an abuse of the right of application (see Komatinović v. Serbia (dec.), no. 75381/10, 29 January 2013).

78. The Court notes that, although it is not disputed that the applicant has been silent on the civil claim against the ACR that it lodged with the Rome District Court (see paragraph 76 above), those civil proceedings rested upon different grounds as compared to those raised in the context of the nullity appeal and the requests for withdrawal.

79. Even admitting the relevance of those proceedings for the examination of the case, it would have been open to the Court to declare the application inadmissible, if the applicant had been successful in the civil proceedings and received compensation, and had failed to inform the Court of that fact (see Mitrović, cited above, § 34). The applicant, however, was unsuccessful in the civil proceedings, and so that question does not arise.

80. With regard to the objection relating to the introduction of new facts which were already known at the time of the lodging of the application (see paragraph 75 above), the Court notes that knowledge of those facts does not affect the substance of the applicant's complaint under the Convention. As such, they cannot be regarded as "concerning the very core of the case" (see Bestry v. Poland, no. 57675/10, § 44, 3 November 2015). Moreover, the Court does not have sufficient elements in its possession to establish with certainty that the applicant intended to mislead it (see mutatis mutandis Alpeyeva and Dzhalagoniya v. Russia, nos. 7549/09 and 33330/11, § 100, 12 June 2018, and contrast Gross v. Switzerland [GC], no. 67810/10, § 36, ECHR 2014).

81. In view of the above, the Court does not consider that the applicant's conduct amounted to an abuse of the right of application. Accordingly, the Government's objection must be dismissed in its entirety.

3. Six-month rule

(a) The Government's objection

82. The Government submitted that the four different sets of proceedings (arbitration proceedings, requests for withdrawal, nullity appeal and civil claim for damages) were not to be considered as four phases of the same set of proceedings, and that compliance with the six-month rule should have been verified for each of them. In this regard, the Government maintained that the scope of the Court's review should be limited to assessing the compatibility with Article 6 § 1 of the Convention solely of the decision not to quash the arbitral award, rendered in the context of the nullity appeal.
83. As to the arbitration proceedings themselves, the Government maintained that they had ended on 6 December 2002, and that the award had been declared enforceable (pursuant to Article 825 of the CCP) on 19 December 2003, by a decision of the Rome District Court.
84. In this regard the Government claimed that the remedy used by the applicant, i.e. a nullity appeal pursuant to Article 828 of the CCP, could not be considered an ordinary appeal against the award. In particular, they maintained that the award had acquired binding force for the parties from the time of the last signature, pursuant to Article 825 § 4 of the CCP; they further argued that, as an arbitral award, it had never acquired the force of res judicata, and that it needed the exequatur of the President of the District Court, pursuant to Article 825 of the CCP, in order to be executed.
85. The Government argued that the applicant had erroneously considered the said remedy to be an ordinary remedy for the purposes of Article 35 § 1 of the Convention.
86. As to the remaining sets of proceedings, the Government recalled that the two requests for withdrawal had been dismissed on 20 February 2003 and 29 April 2003. In this regard, the Government observed that the application had been lodged with the Court eight years after the final decision on the requests for withdrawal.
87. The Government further stated that the civil action for damages brought by the applicant against the ACR had become final on 14 March 2005. The application would therefore be out of time also in respect of this set of proceedings.
88. Regardless of all the previous considerations, the Government claimed that the application would in any case be out of time also with regard to the nullity appeal, which ended with the judgment of the Court of Cassation of 15 November 2010 (see paragraph 33 above). In particular, they claimed that the applicant had sent an introductory letter on 21 January 2011, which had not interrupted the six-month time-limit because:
– the letter had been signed solely by the lawyers and not by the legal representative of the applicant company; and
– the authority attached to the complete application sent on 6 June 2011 did not have a specific date.
89. Moreover, they claimed that, being the applicant's lawyers, members of an "international law firm", those lawyers should have known the rules for lodging an application with the Court, and that the possibility for an applicant to interrupt the running of the six-month term was meant to be afforded solely to victims who had difficulty defending themselves.

(b) The applicant's reply

90. The applicant contested the Government's assertions. In its submission, it was undisputed that the nullity appeal was an ordinary remedy for the purposes of Article 35 § 1 of the Convention. The fact that such a challenge was not subject to any authorisation or approval and that the judicial

authorities enjoyed a wide range of powers in the context of this procedure militated in favour of the ordinary nature of the remedy.

91. The applicant further argued that the fact that the parties could not waive in advance their right to use such a means of appeal confirmed that judicial scrutiny in respect of the award was an integral part of the arbitration proceedings. Moreover, the existence of two other remedies, such as revocation and third-party opposition, the latter being an extraordinary remedy, corroborated the conclusion as to the ordinary nature of the remedy provided for by Article 829 of the CCP.

92. As to the requests for withdrawal, the applicant maintained that their dismissal had not conclusively dealt with the issue of the arbitrator's alleged bias. In fact, it had expressly lodged a nullity appeal in respect of N.I.'s alleged lack of impartiality.

93. As to the civil action for damages, the applicant maintained that these proceedings had not concerned the alleged lack of impartiality of the arbitrator and that this explained why it had not mentioned the action in the statement of facts when it lodged its application (see paragraph 76 above).

94. Finally, with regard to the introductory letter, the applicant observed that Article 47 § 5 of the Rules of Court, as in force at the time of the lodging of the application, stated that the date of introduction of the application must be considered that of the first communication with the Court. The applicant also maintained that there was no requirement for powers of attorney to be drawn up in accordance with national legislation. In any event, the relevant authority had been granted on 14 January 2011, before the introductory letter.

(c) The Court's assessment

95. The Court reiterates that the six-month rule is closely linked to the rule of exhaustion of domestic remedies. In this regard, the Court shall first and foremost assess whether the applicant's nullity appeal was a domestic remedy to be used pursuant to Article 35 § 1 of the Convention in order to complain of a violation of the Convention that had allegedly occurred in the context of the arbitration proceedings.

96. The Court also reiterates that Article 35 § 1 cannot be interpreted in a manner which would require applicants to bring a complaint to the Court before their position in connection with the matter has been finally settled at the domestic level. If an extraordinary remedy is the only judicial remedy available to the applicant, the six-month time-limit may be calculated from the date of the decision given regarding that remedy (see Zubkov and Others v. Russia, nos. 29431/05 and 2 others, § 101, 7 November 2017 and the authorities cited therein).

97. In this regard the Court would note that Article 829 § 1(2) of the CCP provided that a nullity appeal could be lodged, inter alia, where the arbitrators had not been appointed according to the provisions established by the law (therefore including cases where a fundamental prerequisite of the formation, impartiality, was allegedly lacking), provided that this ground for setting aside the award had been raised in the arbitration proceedings. This means that, regardless of the outcome of the autonomous requests for withdrawal, the domestic courts were empowered to hear the applicant's complaint concerning N.I.'s impartiality, once it had been ascertained that the complaint had originally been raised, by way of a request for withdrawal, in the arbitration proceedings.

98. In the present case, the Court notes that the applicant, after the dismissal of the requests for withdrawal, lodged a nullity appeal against the arbitral award on account of N.I.'s alleged lack of impartiality pursuant to Article 828 of the CCP. The Court notes that it was precisely the dismissal of the requests for withdrawal, which the applicant has referred to using the impugned expression "soluzione pilatesca" (see paragraph 67 above), that formed the legal basis for the subsequent nullity appeal.

99. Without looking into the ordinary or extraordinary nature of such a remedy, the Court notes that, after the dismissal of the requests for withdrawal, and having regard to Article 829 § 1(2) of the CCP, the nullity appeal under Article 828 of the CCP was the only means by which the respondent State could have provided an opportunity to put matters right through its own legal system. The Court notes, in particular, that the Court of Cassation dealt with the merits of the applicant's complaint concerning N.I.'s impartiality, having ascertained that it had been raised in the arbitration proceedings, and concluded that the existence of a link between the arbitrator and ENELPOWER, resulting in an "alignment of interests", had not been demonstrated (see paragraph 33 above).

100. The Court further notes that in the framework of this remedy the domestic courts enjoyed a wide range of powers extending from declaring the nullity of the award to the reopening of the arbitration proceedings, even after it had acquired binding force (Articles 829 and 830 of the CCP). For these reasons, the remedy as in force at the relevant time should be regarded as an accessible and effective remedy by which to complain of the alleged violation of Article 6 § 1 of the Convention (see, mutatis mutandis, Kiiskinen v. Finland (dec.), no. 26323/95, ECHR 1999-V) and, as a consequence, the Government's objection, in the part concerning the arbitration proceedings and the requests for withdrawal, must be dismissed.

101. With regard to the civil proceedings against the ACR, there is no need to deal with the Government's objection since, in any case, this set of proceedings rested upon different grounds from those to be considered by the Court in the present case (see paragraph 78 above).

102. With regard to the last objection of the Government, that the application was out of time, the Court notes the following. According to the Court's case-law based on Rule 47, as worded before the amendments of 6 May 2013, which entered into force on 1 January 2014, the date of introduction of the application was normally considered to be the date of the first communication from the applicant setting out – even summarily – the object of the application, on the condition that a duly completed application form was then submitted within the time-limit fixed by the Court (see, for instance, Kemevuako v. the Netherlands (dec.), no. 65938/09, §§ 19-20, 1 June 2010).

103. As to the Government's argument that the applicant's lawyers should have submitted the introductory letter completed with the authority form, the Court observes that the date on which a form of authority has been submitted is not decisive for the purposes of the assessment of compliance with the six-month requirement (see Abubakarova and Midalishova v. Russia, nos. 47222/07 and 47223/07, § 224, 31 January 2017). Moreover, the Court reiterates that the mere fact that the applicant's instruction to its legal representative was put in writing after the introduction of the application cannot deprive the introductory letter of its legal effect (see, mutatis mutandis, Neshev v. Bulgaria (dec.), no. 40897/98, 13 March 2003).

104. In the present case the applicant sent an introductory letter on 21 January 2011, signed by its representatives, within the six-month term (the final decision of the Court of Cassation had been

deposited on 15 November 2010). The Registry of the Court acknowledged reception of such letter and requested the applicant to submit a duly completed form by 6 June 2011. The applicant sent its complete application form, including the authority form signed by the legal representative of the applicant company and dated 14 January 2011, on 5 June 2011.

105. In view of the foregoing, the Court finds that the application was sent in time and that the Government's objection must therefore be dismissed.

4. Non-exhaustion of domestic remedies

106. The Government argued that the applicant had made reference to N.I.'s participation, as ENEL's lawyer, in a specific dispute (concluded by the Court of Cassation's judgment no. 15029/2001, deposited on 27 November 2001) for the first time in the application form. As a consequence, the Government objected that the applicant had not exhausted domestic remedies with regard to N.I.'s participation in the above-mentioned dispute as ENEL's lawyer.

107. The Court would point out that under Rule 55 of the Rules of Court, any plea of inadmissibility must be raised by the respondent Contracting Party in its written or oral observations on the admissibility of the application (see among many authorities Khlaifia and Others v. Italy [GC], no. 16483/12, §§ 52-53, 15 December 2016, and N.C. v. Italy [GC], no. 24952/94, § 44, ECHR 2002-X). In the present case, the Government had not clearly raised an objection as to the non-exhaustion of domestic remedies in their observations of 26 February 2019 on the admissibility and merits, and the question of a failure by the applicant to refer, in domestic proceedings, to N.I.'s activity as lawyer in the dispute concluded by judgment no. 15029 of 27 November 2001 was raised only in their additional observations and submissions on just satisfaction. The Court further notes that during the proceedings before it the Government did not indicate any impediment by which they had been prevented from referring, in their initial observations of 26 February 2019 on the admissibility and merits of the case, to a failure by the applicant to challenge N.I.'s participation in the above-mentioned dispute.

108. It follows that the Government are estopped from relying on a failure to exhaust domestic remedies.

5. Conclusion as to admissibility

109. The Court notes that the application is neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. It must therefore be declared admissible.

B. Merits

1. The parties' submissions

(a) The applicant

110. The applicant stressed that, while it was true that a person could waive certain Convention rights in favour of arbitration, the safeguards provided for under Article 6 § 1 of the Convention would be applicable in a situation where the waiver was not established in an equivocal manner,

and was not voluntary or attended by minimum safeguards commensurate with its importance. In this regard, the applicant argued that a decision to implicitly waive the independence and impartiality guarantees afforded by Article 6 presupposed that the party had been made aware of any conflicts of interest.

111. Consequently, the applicant argued that no waiver of the right to an impartial tribunal could be inferred from its failure to complain of the absence of a conflict of interest disclosure from N.I., since the arbitrators were not under an obligation to explicitly disclose the absence of circumstances potentially affecting their independence and impartiality. According to the applicant, if an arbitrator did not disclose a potential conflict of interest, it was presumed that no such conflict existed. Nor was it relevant that the arbitrators were high-profile figures, given the obligation to disclose any potential circumstance affecting their independence and impartiality.

112. The applicant further argued that the fact that it had complained of N.I.'s alleged lack of impartiality only after the deliberation on the arbitral award had nothing to do with a waiver of the right to an impartial tribunal. In this regard, the applicant recalled that the Court of Cassation, in its 2010 judgment, had found that the nullity appeal had been lodged in a timely fashion in the arbitration proceedings, i.e. prior to the signing of the award, albeit that after the deliberation.

113. On the merits, the applicant complained that N.I., the arbitrator appointed by ENELPOWER, lacked the requisite independence and objective impartiality, by reason of his professional links with the ENEL group. In particular, the applicant referred to the fact that, between June 1995 and June 1996, right at the time when it was negotiating with ENEL the agreements that would later be at the heart of the arbitration proceedings, N.I. had been Vice-Chairman (with full authority to act as Chairman) and a member of the Board of Directors of ENEL (and, as a consequence, of ENELPOWER, at the time a mere division within ENEL, see paragraph 9 above). In particular, the applicant argued that in February 1996 N.I., being at the helm of ENEL, could not have been unaware of the ongoing negotiations. The letter of 29 February 1996 (see paragraph 7 above) had been signed by two of the top managers of ENEL, thus providing clear evidence that the project had been discussed at the highest levels of the entity.

114. The applicant also argued that the arbitrator had acted as a lawyer in important proceedings before domestic courts, and in particular in one dispute, concluded by the Court of Cassation's judgment no. 15029 of 27 November 2001, and had possibly received fees for the equivalent of hundreds of thousands of euros. Despite these serious circumstances of incompatibility, N.I. had wilfully failed to disclose them to the ACR.

115. As to the fact that N.I.'s relationships had been with ENEL and not with ENELPOWER, the applicant argued that in the years 1995-1996, ENELPOWER was still an internal division of ENEL, and was constituted as a separate corporation (S.p.a.) only in 1999. The preliminary agreement at the origin of the arbitration proceedings had been signed, in 1999, between the applicant and ENEL itself. Moreover, the applicant recalled that ENELPOWER was wholly controlled by ENEL and that, for the purposes of the present application, they should be considered as a single entity. Finally, by reason of the fact that ENEL was at the time, in the applicant's opinion, a State-controlled entity, the State had a dominant influence in both ENEL and ENELPOWER and, as a consequence, a direct financial interest in the outcome of the case.

116. The applicant maintained that the provisions of the Italian CCP in force at the time were inadequate to ensure the impartiality and independence of arbitrators, since they subjected the disqualification of the arbitrator to the presentation of proof that he or she had an interest in the dispute (it referred to Article 51 § 1(1) CCP and to the Court of Cassation's judgment of 15 November 2010; see paragraph 33 above). It further argued that N.I.'s previous involvements with one of the parties should have led in any case to the nullity of the award, in accordance with the general clause in Article 51 § 2 CCP ("serious reasons of propriety"). The applicant also maintained that the flaws in the arbitration proceedings were so flagrant that the award would not be entitled to receive recognition by other national legal systems.
117. Finally, the applicant contested the Government's argument according to which the applicant, directly or at least through its arbitrator G.G., was aware of N.I.'s ties with the ENEL group. According to the applicant, this presumption of knowledge had not been supported by any concrete evidence and, in any case, N.I. had a duty to disclose his current and prior involvement with the ENEL group.

(b) The Government

118. The Government did not contest the applicability of Article 6 § 1 to the arbitration proceedings. However, they referred to the Court's case-law and observed that the present case concerned voluntary arbitration to which consent by the applicant had been freely given. In this regard, the Government submitted that the right to a court under Article 6 § 1 of the Convention was not absolute. They argued in particular that an individual could waive the exercise of certain Convention rights in favour of arbitration, in order to settle a dispute as to civil rights and obligations, provided that such waiver was free, lawful and unequivocal. The Government argued in the present case that the consent given by the applicant had been free, lawful and unequivocal and that the subsequent requests for withdrawal and the nullity appeal lodged by the applicant had not affected the nature of the consent given.
119. The Government based their argument on the fact that neither G.G. nor N.I. had indicated in their acceptance statements the absence of a conflict of interest (see paragraph 15 above) and that the applicant had not complained of this fact. They further argued that the arbitrators were high-profile figures, that the parties were aware of the professional links of N.I. (they referred to the wording of the Rome District Court, see paragraph 27 above) and that, as a consequence, there was no need for such disclosure. In particular, the Government argued that G.G. and N.I. had been colleagues as professors at the Rome University "La Sapienza", that they had often worked as lawyers in the same defence team in important disputes and that they had been members of several eminent advisory committees. In sum, the parties had such confidence in these important and illustrious figures that they had willingly refrained from challenging the absence of an explicit negative disclosure by N.I. and G.G.
120. The Government further recalled that in the present case the applicant had raised the question of incompatibility only 11 days after the deliberation on the award and 16 minutes after its signature.
121. On the merits, the Government argued that N.I.'s role as member of the Board of Directors and Vice-Chairman of ENEL had been a well-known fact of which the applicant, at the time when it

entered into business with ENELPOWER, could not have been unaware. They further recalled that the arbitration proceedings concerned a dispute between the applicant and ENELPOWER. In this regard, they argued that there had never been any relationship before, during or after the arbitration proceedings between ENELPOWER and N.I. The latter had only had relationships with ENEL. N.I. had in fact been a non-executive Vice-Chairman and member of the Board of Directors of ENEL from 1995 to 1996. In any event, they argued that the reply sent by ENEL in 1996 had only been a declaration of intent, and that the applicant had not proved that N.I. was personally aware of the ongoing project.

122. The Government contested the applicant's argument that ENEL and ENELPOWER should be treated as a single entity, and, as a consequence, as a State-controlled company. The Government, relying also on domestic case-law, argued that ENEL could not be characterised as a State-controlled company, having been privatised in 1999 and being, at the time of the arbitration proceedings, a profit-oriented company. They further argued that controlled companies were free to apply directives issued by parent entities in a completely autonomous way.

123. The Government stressed that the Court of Cassation had carefully taken into account the applicant's arguments and, with duly and extensively reasoned decisions, at the end of a procedure fully respecting the adversarial principle, had rejected the allegation that N.I. had lacked impartiality.

124. The Government lastly argued that the Court should refrain from assessing the 2002 arbitration proceedings in the light of the changes in legislation and in legal scholarship. The Government maintained that it was only in 2006, when judicial control had been broadened by a reform of the CCP, that arbitration had acquired significant importance in the Italian legal system.

2. The Court's assessment

(a) General principles

125. The Court reiterates that Article 6 § 1 of the Convention secures to everyone the right to have any claim relating to his civil rights and obligations brought before a court or tribunal. This Article thus enshrines the "right to a court", of which the right of access, that is the right to bring proceedings before courts in civil matters, constitutes one aspect only (see Ali Rıza and Others v. Turkey, nos. 30226/10 and 4 others, § 171, 28 January 2020, and the authorities cited therein).

126. This access to a court is not necessarily to be understood as access to a court of law of the classic kind, integrated within the standard judicial machinery of the country; thus, the "tribunal" may be a body set up to determine a limited number of specific issues, provided always that it offers the appropriate guarantees (see Lithgow and Others v. the United Kingdom, 8 July 1986, § 201, Series A no. 102). Article 6 does not therefore preclude the establishment of arbitral tribunals in order to settle certain pecuniary disputes between individuals (see Suda v. the Czech Republic, no. 1643/06, § 48, 28 October 2010). Arbitration clauses, which have undeniable advantages for the individuals concerned as well as for the administration of justice, do not in principle offend against the Convention (see Tabbane v. Switzerland (dec.), no. 41069/12, § 25, 1 March 2016).

127. In addition, a distinction must be drawn between voluntary arbitration and compulsory arbitration. In the case of voluntary arbitration, to which consent has been freely given, no real issue

arises under Article 6. The parties to a dispute are free to take certain disagreements arising under a contract to a body other than an ordinary court of law. By signing an arbitration clause the parties voluntarily waive certain rights secured by the Convention. Such a waiver is not incompatible with the Convention provided it is established in a free, lawful and unequivocal manner. In addition, in the case of certain Convention rights, a waiver, in order to be effective for Convention purposes, requires minimum guarantees commensurate to its importance (see Mutu and Pechstein v. Switzerland, nos. 40575/10 and 67474/10, § 96, 2 October 2018, and the authorities cited therein).

128. As is well established in the Court's case-law, in order to ascertain whether a tribunal can be considered "independent" for the purposes of Article 6 § 1, regard must be had, inter alia, to the manner of appointment of its members and their term of office, the existence of safeguards against outside pressures and the question whether it presents an appearance of independence (see Kleyn and Others v. the Netherlands [GC], nos. 39343/98 and 3 others, § 190, ECHR 2003-VI). A tribunal or a tribunal's member must be independent vis-à-vis the executive, Parliament, but also the parties. In order to determine whether a tribunal can be considered to be independent as required by Article 6, appearances may also be of importance (see Sramek v. Austria, 22 October 1984, § 42, Series A no. 84).

129. Impartiality normally denotes the absence of prejudice or bias. According to the Court's settled case-law, for the purposes of Article 6 § 1 the existence of impartiality must be determined according to a subjective test, that is, on the basis of the personal convictions and conduct of a particular judge, by ascertaining whether he showed any personal prejudice or partiality in a given case, and also according to an objective test, that is, whether the court offered, in particular through its composition, guarantees sufficient to exclude any legitimate doubt about his impartiality (see, among many authorities, Nicholas v. Cyprus, no. 63246/10, § 49, 9 January 2018).

130. As to the subjective test, the personal impartiality of a judge must be presumed until there is proof to the contrary (see Wettstein v. Switzerland, no. 33958/96, § 43, ECHR 2000-XII). As to the objective test, it must be determined whether, quite apart from the judge's conduct, there are ascertainable facts which may raise doubts as to his impartiality. This implies that, in deciding whether in a given case there is a legitimate reason to fear that a particular judge lacks impartiality, the standpoint of the person concerned is important but not decisive. What is decisive is whether this fear can be held to be objectively justified (see among many authorities, Ilnseher v. Germany [GC], nos. 10211/12 and 27505/14, § 287, 4 December 2018).

131. In itself, the objective test is functional in nature: for instance, professional, financial or personal links between a judge and a party to a case (see, for example, Pescador Valero, cited above, § 27, and Wettstein, cited above, § 47), may give rise to objectively justified misgivings as to the impartiality of the tribunal, which thus fails to meet the Convention standard under the objective test (see Kyprianou v. Cyprus [GC], no. 73797/01, § 121, ECHR 2005-XIII). It must therefore be decided in each individual case whether the connection in question is of such a nature and degree as to indicate a lack of impartiality on the part of the tribunal (see Ramos Nunes de Carvalho e Sá v. Portugal [GC], nos. 55391/13 and 2 others, § 148, 6 November 2018).

132. In this connection even appearances may be of a certain importance, a principle that is reflected in the adage "justice must not only be done, it must also be seen to be done". What is at stake is the confidence which the courts in a democratic society must inspire in the public (see Morice v. France

[GC], no. 29369/10, § 78, ECHR 2015, and Oleksandr Volkov v. Ukraine, no. 21722/11, § 106, ECHR 2013).

133. Lastly, the concepts of independence and objective impartiality are closely linked and, depending on the circumstances, may require joint examination (see Anželika Šimaitienė v. Lithuania, no. 36093/13, § 80, 21 April 2020).

134. Having regard to the facts of the present case, the Court finds it appropriate to examine the issues of independence and impartiality together.

(b) Application of those principles to the present case

135. At the outset, the Court would point out that there is no dispute between the parties as to the voluntary nature of arbitration proceedings before the ACR. Indeed, it notes that the applicant and ENELPOWER had agreed, in Article 11 of their cooperation agreement (see paragraph 11 above), to refer any future dispute arising from that agreement to an arbitral panel to be appointed under the scheme provided by the ACR. Nor had the validity or the legality of the cooperation agreement ever been challenged or called into question by the parties.

136. It remains to be ascertained whether, despite initially opting, even freely, for the jurisdiction of the ACR's arbitral panel instead of that of a court of law of the classic kind, the applicant subsequently waived, in an unequivocal manner and among other rights secured by Article 6, specifically its right to have its dispute with ENELPOWER settled by an independent and impartial tribunal.

137. The Court primarily notes that the applicant company had freely and voluntarily accepted the ACR arbitration at a point in time before the actual appointment of N.I. as one of the arbitrators.

138. The Court does not agree with the Government's argument that the fact that the applicant had not challenged the lack of an explicit negative disclosure demonstrates a waiver of its right to have its dispute settled by an independent and impartial tribunal.

139. In this regard it would note that Article 6 of the Rules of the ACR (see paragraph 41 above) compelled the arbitrators to indicate, in their written declaration, any relationship with the parties or their counsel that might have an impact on their independence and impartiality, and any direct or indirect personal or economic interest in the subject matter of the dispute. However, the said Article did not compel arbitrators to explicitly indicate the absence of such relationships and/or economic interests. Having regard to the documents at its disposal, the Court notes that, contrary to what the Government asserted, G.G., A.V. and P.D.L. had expressly indicated the absence of any reason that might have had an impact on their independence and impartiality, while N.I. had simply accepted the appointment. The Court agrees in this regard with the applicant's argument that, in the absence of an explicit negative disclosure, one could legitimately presume that such relationships and/or economic interests did not exist.

140. As to the Government's assertion that the arbitrators were well-known figures and that the applicant, through its arbitrator G.G., was most probably aware of the professional links between N.I. and the ENEL group, the Court notes the following. The reasons advanced by the domestic courts (see paragraph 27 above) and the Government are based on a presumption of knowledge which does not rest on any concrete evidence to the effect that the applicant was in fact aware of the

professional activities of N.I. (see, mutatis mutandis, Pescador Valero v. Spain, no. 62435/00, § 26, ECHR 2003-VII). The Court therefore disagrees with the Government and does not find that facts have been demonstrated from which it could infer the unequivocal waiver of the requirement of impartiality in respect of the arbitrator.

141. Finally, as to the impartiality complaint lodged with the domestic courts, the Court would refer to its decision in Suovaniemi and Others v. Finland ((dec.), no. 31737/96, 23 February 1999), where it took the view that the applicants' choice to have recourse to arbitration had not only been voluntary, because they had freely accepted the arbitration agreement, but also "unequivocal", because although they had been aware of the grounds for challenging the independence and impartiality of an arbitrator, they had not sought his withdrawal during the arbitration proceedings. By employing such a test, as suggested by its case-law, as regards the need for a voluntary and unequivocal waiver of the right to an impartial adjudicator be established, the Court emphasises that it has been developed in the context of arbitral proceedings, which is material to the present case, without having to decide whether a similar waiver would be valid in the context of purely judicial proceedings.

142. In the present case the Government suggested that the applicant's request for withdrawal had been out of time. In this regard the Court would note that the applicant, as soon as it became aware of the professional links between N.I. and one of the parties, informed the ACR and the other arbitrators of its intention to lodge a request for withdrawal (see paragraph 20 above), immediately filed a request for withdrawal with the Rome District Court (see paragraph 24 above) and later challenged the validity of the award, pursuant to Article 828 of the CCP before the civil courts. Although it is not disputed that the requests for withdrawal lodged with the Rome District Court were later dismissed as out of time (see paragraphs 25 and 27), the Court notes that the civil courts called upon to rule on the alleged nullity of the award, and in particular the Court of Cassation in its decision of 15 November 2010 (see paragraph 33 above), stated that the complaint as to the nullity of the award stemming from a lack of impartiality of N.I. had been regularly lodged in the arbitration proceedings, even though the deliberation on the award had already taken place. It proceeded therefore to analyse the merits of the applicant's complaint, then dismissing it. The case in this sense radically differs from Suovaniemi and Others, cited above.

143. Having regard to the above, the Court finds that the applicant company could not be considered to have unequivocally waived both the guarantee of impartiality of the arbitrators, as established under the Rules of the ACR (see paragraph 139 above), and the expectation that the domestic courts would ensure that the arbitral award complied with the relevant rules in the Italian CCP, including those relating to the impartiality of the arbitrators (see paragraphs 39 and 142 above). Consequently, the arbitration proceedings had to afford the safeguards provided for under Article 6 § 1 of the Convention (see paragraph 127 above).

144. Turning to the analysis of the merits of the applicant's complaint, the Court considers at the outset that, for the purposes of the examination of the present case, establishing whether or not N.I.'s impartiality was tainted is not dependent on the public or private nature of ENEL and ENELPOWER. What is at stake is in fact whether the arbitration proceedings to which the applicant was a party afforded the safeguards provided for under Article 6 § 1 of the Convention, namely in view of the alleged lack of impartiality of one of the arbitrators. In this regard, what matters are the

relationships between ENEL and ENELPOWER (see paragraphs 6 and 9 above, and 148 and 151 below), which are independent from the issue of their public or private nature. The Court will therefore not dwell any further on the issue.

145. As to the subjective aspect of impartiality, the Court finds that there is no evidence in the present case to suggest any personal prejudice or bias on the part of N.I.

146. With regard to the objective test, it must be determined whether, apart from N.I.'s conduct, there are ascertainable facts which may raise doubts as to his impartiality.

147. As to the Government's contention that the applicant had been well aware of N.I.'s professional links with ENEL, the Court reiterates that it has already rejected this argument when dealing with the applicant's waiver (see paragraph 140 above).

148. The Court notes that it is not disputed by the parties that N.I. had been Vice-Chairman and member of the Board of Directors of ENEL from June 1995 to June 1996. It is also an undisputed fact that the formal invitation to participate in the project was sent by the applicant to ENEL on 12 February 1996, whereas ENEL's first positive reply was sent on 29 February 1996 (see paragraphs 6 and 7 above). In this regard, the Court will not speculate as to N.I.'s effective knowledge of the ongoing negotiations. However, the Court notes that all negotiations concerning the business project, including the 1999 preliminary agreement, were conducted between ENEL and the applicant (see paragraph 8 above).

149. In this regard, the Court reiterates that even appearances may be of a certain importance (see paragraph 134 above). It would therefore note that, given the importance and the economic stakes of the business project, N.I.'s senior role in the entity which had conducted the first negotiations and whose subsidiary ENELPOWER would later oppose the applicant in the arbitration proceedings, seen from the point of view of an external observer, could legitimately give rise to doubts as to his impartiality.

150. As to N.I's role in parallel proceedings, the parties do not disagree on the fact that N.I. had been the lawyer of ENEL in some domestic sets of civil proceedings. It was N.I. himself who declared this before the Rome District Court (see paragraph 26 above). In this regard, the Court notes that it is a fact that N.I. had been ENEL's lawyer in a set of civil proceedings concluded by a judgment of the Court of Cassation of 27 November 2001, at a time when the parties had already appointed their arbitrators.

151. It is true, as the Government argued, that in the said dispute N.I. was the counsel of ENEL and not of ENELPOWER and that the latter had been created, as a separate entity from ENEL, in 1999. However, the Court notes that ENELPOWER was at the time wholly controlled by ENEL, which held 100% of its share capital. Moreover, when the civil dispute had started, ENELPOWER was still an internal division within ENEL.

152. The Court notes that Legislative Decree no. 40 of 2 February 2006 (see paragraph 40 above) radically amended Article 815 of the CCP and the grounds for disqualification of arbitrators, providing for a strengthening of the principles of independence and impartiality in arbitration, to an extent similar to ordinary courts of law. In particular, new Article 815 § 1 (5) indicates as a reason for disqualification the fact that the arbitrator regularly advises a party to the arbitration proceedings or, inter alia, the company that controls it. The Court notes with interest the change in the law, which provides for clearer and, if applicable, wider guarantees against a lack of impartiality in the context

of arbitration proceedings, such that, if the case had been domestically adjudicated after this reform the outcome might have been different.

153. To conclude, having regard to N.I.'s role as Vice-Chairman and member of the Board of Directors of ENEL between 1995 and 1996 and his role as lawyer for ENEL in at least one dispute which overlapped with the arbitration proceedings, the Court is of the view that N.I.'s impartiality was capable of being, or at least appearing, open to doubt and that the applicant's fears in this respect can be considered reasonable and objectively justified.

154. There has accordingly been a violation of Article 6 § 1 of the Convention.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

155. Article 41 of the Convention provides:

"If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party."

A. Damage

1. The applicant

156. The applicant in the first place asked the Court to direct the Italian State to reopen the proceedings that had validated the arbitral award in breach of Article 6 § 1 and to proceed with a fresh determination of its claims by an independent and impartial tribunal. In particular, the applicant argued that, since the extraordinary remedy of revocation (Articles 395 and 396 of the CCP) could not be used in order to seek the reopening of a case following a judgment of the Court finding a violation of Article 6 of the Convention, an order of the Court providing for the reopening of proceedings would be the most effective, if not the only, means of achieving restitutio in integrum.

157. As to pecuniary damage, the applicant argued that it had sustained direct and immediate pecuniary damage as a result of the lack of independence and impartiality of the arbitral tribunal. In particular, it claimed that the arbitrator's vote had been essential for the approval of the award and that, if N.I. had not been subjectively biased due to his close professional relationship with one of the parties to the arbitration proceedings, its claims would have been ultimately accepted by the arbitral tribunal. The alleged material damage (in the form of damnum emergens) amounted to EUR 395,089,527.77, i.e., an amount equal to the compensation claims which had been dismissed by the arbitral tribunal, whereas the loss of profit (lucrum cessans) could be quantified at EUR 816,000,000.00, if calculated from the date of the arbitral award, or at a round figure of EUR 343,200,000.00, if calculated from the date of the final decision of the Court of Cassation upholding the validity of the award. Under both heads, the applicant claimed that the question of just satisfaction in respect of pecuniary damage was not ready for decision and requested that the Court reserve the question of the application of Article 41 in this regard.

158. The applicant also claimed EUR 646,746.37, plus any tax that may be chargeable to it, in respect of pecuniary damage related to the costs and expenses of the arbitration proceedings. In particular, it argued that, since the arbitration proceedings were flawed by the lack of independence and

impartiality of N.I., the respondent State should bear all the costs and expenses of the arbitration, since in any case the applicant would not be able to recover such costs and expenses.
159. The applicant lastly claimed EUR 1,000,000.00 plus any tax that may be chargeable to it, in respect of non-pecuniary damage. It based its claim on the prolonged uncertainty in the conduct of its business and on the feeling of helplessness and frustration caused to the members of its management and to its shareholders.

2. The Government

160. The Government objected that the reopening of proceedings would upset the legitimate interests of third parties. They referred to the jurisprudence of the Italian Constitutional Court that had declared unfounded (in its judgments nos. 123 of 7 March 2017 and 93 of 21 March 2018) the question of constitutionality of Articles 395 and 396 of the CCP in the part in which they did not include, among the cases for revocation of a judgment, the re-examination of a civil case after a judgment finding a violation of a provision of the Convention, mainly by reason of the protection of third parties. In any case, the Government argued that the only proceedings of which the Court could order reopening would be the nullity proceedings and not the arbitration proceedings themselves.
161. The Government requested that no pecuniary damage be recognised as having been sustained by the applicant since, had the domestic courts in the proceedings for nullity annulled the arbitral award, they could not have decided on the merits, and a new set of arbitration proceedings should have started. Moreover, they claimed that no causal link could be discerned between the violation found and the pecuniary damage alleged. As to non-pecuniary damage, they objected that the applicant's claim was excessive and not justified. In any event, they opposed the request that the decision on just satisfaction be reserved.

3. The Court's assessment

162. As to the reopening of proceedings, the Court would reiterate that it is in principle for the Contracting States to decide how best to implement the Court's judgments without unduly upsetting the principles of res judicata or legal certainty in civil litigation, in particular where such litigation concerns third parties with their own legitimate interests to be protected (see Bochan v. Ukraine (no. 2) [GC], no. 22251/08, § 57, ECHR 2015). The Court therefore dismisses the applicant's request.
163. The foregoing considerations should not detract from the importance, for the effectiveness of the Convention system, of ensuring that domestic procedures are in place to allow a case to be revisited in the light of a finding that the safeguards of a fair hearing afforded by Article 6 have been violated (see Bochan v. Ukraine (no. 2) [GC], cited above, § 58, and Tence v. Slovenia, no. 37242/14, § 43, 31 May 2016). This is particularly true in Italy where the Constitutional Court has repeatedly stated that there is no mechanism for the reopening of civil proceedings in order to give effect to the execution of a judgment of the Court finding a violation of a Convention provision.
164. With regard to the remainder of the claim for just satisfaction, the Court considers that in the instant case the only basis for awarding just satisfaction lies in the fact that the applicant did not have the benefit of the guarantees of Article 6 of the Convention. Since the Court cannot speculate

as to the outcome of the proceedings had the position been otherwise, having regard to all the circumstances, and in accordance with its normal practice in civil and criminal cases as regards violations of Article 6 § 1 caused by a lack of objective or structural independence and impartiality, the Court does not consider it appropriate to award financial compensation to the applicant in respect of the material damage and/or the loss of profit allegedly flowing from the outcome of the domestic proceedings (see Ramos Nunes de Carvalho e Sá v. Portugal, nos. 55391/13 and 2 others, § 104, 21 June 2016). Thus the Court does not discern any causal link between the violation found and the pecuniary damage alleged; it therefore rejects this claim.

165. On the other hand, having regard to the violation found under Article 6 § 1 of the Convention, the Court considers that an award of compensation for non-pecuniary damage is justified in this case. Making its assessment on an equitable basis, the Court awards the applicant EUR 15,000, plus any tax that may be chargeable.

B. Costs and expenses

166. The applicant also claimed EUR 220,088.45 for the costs and expenses incurred before the domestic courts and EUR 135,659.57 for those incurred before the Court. It produced documents in support of its claims.

167. The Government objected that the claim was excessive.

168. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these were actually and necessarily incurred and are reasonable as to quantum. In the present case, regard being had to the documents in its possession and the above criteria, the Court considers it reasonable to award the sum of EUR 35,000 covering costs under all heads, plus any tax that may be chargeable to the applicant.

C. Default interest

169. The Court considers it appropriate that the default interest rate should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. Declares the application admissible;
2. Holds that there has been a violation of Article 6 § 1 of the Convention;
3. Holds

(a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts:

(i) EUR 15,000 (fifteen thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;

(ii) EUR 35,000 (thirty-five thousand euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses;

(b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

4. Dismisses, the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 20 May 2021, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Renata Degener
Registrar

Ksenija Turković
President