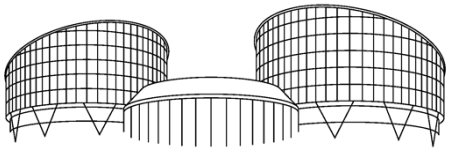

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

CASE OF CROATIAN RADIO-TELEVISION v. CROATIA

(Applications nos. 52132/19 and 19 others)

JUDGMENT

Art 34 • Locus standi • Legislative framework sufficiently guaranteeing public broadcasting organisation's editorial independence and institutional autonomy to qualify as a "non-governmental organisation" • Not exercising "governmental powers" and not established "for public-administration purposes"
Art 6 § 1 (civil) • Fair hearing • Divergent domestic courts' decisions in applicant's actions for unjust enrichment overcome by adequate machinery applied through Supreme Court's decisions providing guidance to ensure uniform application of relevant substantive law

STRASBOURG

2 March 2023

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 Croatian Radio-Television v. Croatia,

The European Court of Human Rights (First Section), sitting as a Chamber composed of:

Marko Bošnjak*, President*,
Péter Paczolay,
Krzysztof Wojtyczek,
Alena Poláčková,
Erik Wennerström,
Raffaele Sabato,
Davor Derenčinović*, judges*,
and Renata Degener, *Section Registrar,*

Having regard to:

the applications (nos. 52132/19 and 19 others, see appendix) against the Republic of Croatia lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by Croatian Radio-Television ("the applicant institution"), on various dates indicated in the appended table;

the decision to give notice to the Croatian Government ("the Government") of the complaints concerning divergent case-law and access to the Constitutional Court, and to declare inadmissible the remainder of the applications;

the parties' observations;

Having deliberated in private on 28 June 2022 and 31 January 2023,

Delivers the following judgment, which was adopted on the last-mentioned date:

INTRODUCTION

1. The case concerns divergent decisions of domestic courts in twenty sets of civil proceedings regarding unjust enrichment which the applicant – a national radio and television broadcasting institution – instituted against various individuals to whom one of its employees had paid fees on its behalf for work they had never performed.

THE FACTS

2. The applicant institution, Croatian Radio-Television, is a Croatian public broadcasting organisation which has its seat in Zagreb. Under Croatian law its legal status is that of a public institution (*javna ustanova*), that is, of a non-membership, non-profit legal entity. It was represented by Ms N. Owens, a lawyer practising in Zagreb.

3. The Government were represented by their Agent, Ms Š. Stažnik.

4. The facts of the case may be summarised as follows.

I. EVENTS GIVING RISE TO THE DISPUTE

5. In October 2009 an internal audit discovered that a certain A.K., an employee in the applicant institution's finance department, had paid fees for external translation services on behalf of the applicant institution to 176 individuals who had never performed those services. It transpired that those individuals had been contacted by A.K. directly or through an intermediary, a certain M.P., who was also an employee of the applicant institution where he worked as a technician. All payments had been duly processed through the information technology and accounting systems of the applicant institution and deposited in the accounts of the fictitious external contractors. They then returned the sums paid to A.K. or M.P., keeping around 5% of the sums received as a commission.

6. In that way the applicant institution lost around 7,500,000 Croatian kunas (HRK), that is, approximately 995,421 euros (EUR).

7. A.K. was summarily dismissed and the applicant institution lodged a criminal complaint against him. He died soon afterwards, in early 2010. No criminal proceedings were instituted against him.

8. In 2010 and 2011 the applicant institution brought more than a hundred civil actions for enrichment without cause ("unjust enrichment") against various individuals who had received the above-mentioned payments.

9. In approximately half of those cases, the domestic courts ruled in its favour, whereas in the other half they ruled for the defendants, depending on which second-instance court had decided the case. Specifically, the applicant institution submitted that all of the cases examined on appeal by the Zagreb County Court or the Pula County Court had ended in those courts ruling against it.

10. The domestic courts which ruled in favour of the applicant institution applied the general rule on unjust enrichment set out in section 1111(1) of the Obligations Act (see paragraph 73 below). They also held that in the given circumstances there was no room for applying the exception set out in section 1112(1) of that Act – which provides that restitution cannot be sought if the person who made the payment knew that nothing was owed (see paragraph 73 below) – because the defendants had received the funds in bad faith, that is, in full knowledge that there had been no legal basis for the payments. Those courts considered it irrelevant whether A.K. had been authorised to act for and/or on behalf of the applicant institution.

11. On the other hand, the domestic courts which found against the applicant institution applied the exception set out in section 1112(1) of the Obligations Act (see paragraph 73 below). They held that A.K., at least in the eyes of the defendants, had had the authority to make the payments in issue on behalf of the applicant institution. Therefore, the applicant institution had known or ought to have known that it had been paying something it had not been liable to pay.

II. PROCEEDINGS IN THE PRESENT CASES

A. Proceedings before the first and second-instance courts

12. The present cases concern twenty sets of civil proceedings, eighteen of which were conducted at first instance before the Zagreb Municipal Court and the remaining two before the Pula Municipal Court and the Sesvete Municipal Court respectively. In five of those twenty cases, municipal courts gave judgments in favour of the applicant institution.

13. Of these twenty cases, nineteen were examined on appeal by the Zagreb County Court and one by the Pula County Court. In all of those cases, those county courts, in judgments adopted in the period between 15 January 2013 and 22 September 2015, ruled for the defendants.

14. Subsequently, in each of those twenty cases, the applicant institution concurrently lodged (a) an extraordinary appeal on points of law (*izvanredna revizija*), a remedy provided in section 382(2) of the Civil Procedure Act for ensuring the uniformity of case-law (see paragraph 71 below), and (b) a constitutional complaint.

B. Proceedings before the Supreme Court

15. In its appeals on points of law, the applicant institution argued that the outcome of the proceedings depended on the resolution of certain points of law which were important for ensuring the uniform application of the law because in respect of those points there was conflicting case-law of the second instance courts. It also provided examples of that conflicting case-law.

16. In one of those twenty cases (application no. 62358/19), the Supreme Court found the applicant institution's extraordinary appeal on points of law admissible but dismissed it on the merits. In that case, the applicant institution had raised the following point of law in the form of a question:

> "Can it be concluded, solely from the indisputable fact that the payment was made without a legal basis, that the person who made the payment knew that he or she was paying something that was not owed, within the meaning of section 1112 of the Obligations Act, or that [that situation] amounts to unjust enrichment as defined in section 1111(1) of [that Act]?"

17. The Supreme Court, in decision no. Rev-1660/13-2 of 10 October 2017, considered that point of law important for the uniform application of the law and provided the following answer, explaining the rationale behind the exception set out in section 1112 of the Obligations Act:

> "Section 1111 of the Obligations Act contains the general rule on unjust enrichment ...
>
> Section 1112 of the Obligations Act ... regulates the situation in which the acquirers are entitled to refuse the return of what they acquired ...

> Since the transfer of the property of the impoverished party into the property of the acquirer occurs precisely by an action of the impoverished party (by making a payment), the conscious payment of something that was not owed is in principle qualified as a gift. Therefore, the impoverished parties in a civil action [for unjust enrichment] based on the payment of something that was not owed must prove [that] payment [took place], the absence of a debt and, possibly, their error, and, if there was no error ..., they must prove that they retained the right to a refund, that they paid to avoid duress or that the payment of the debt depended on the fulfilment of [certain] conditions.
>
> Therefore, the answer to the questions raised is that in the situation of the payment of something that was not owed, section 1112 of the Obligations Act applies. The burden of proving ... the exceptions specified in section 1112 of the Obligations Act, namely that ... the payment was made without knowing that nothing was owed, is on the impoverished person – the plaintiff.
>
> [In the present case] the lower courts, by properly applying the rules on the burden of proof, correctly applied the substantive law, [namely] section 1112 of the Obligations Act, to the established facts ... in finding the claim unfounded."

18. In the remaining nineteen cases, in decisions adopted in the period between 31 October 2017 and 27 March 2019, the Supreme Court declared inadmissible the applicant institution's extraordinary appeals on points of law because the points raised were not important for ensuring the uniform application of the law. It emphasised that the points of law raised had to be of a general nature, so that the legal view taken regarding that point could be applied in the future in an unlimited number of cases. In the absence of such a point of law of a general nature, a mere reference to decisions where other courts had ruled differently could not render the point of law raised important and, consequently, an extraordinary appeal on points of law admissible. More specifically, in the nineteen cases in question, the Supreme Court declared the applicant institution's extraordinary appeals on points of law inadmissible for one or more of the following reasons:

– because the resolution of the point of law had clearly and unambiguously followed from the relevant provisions, the application of which depended on the factual and legal circumstances of each case;

– because the points of law raised had been based on the factual circumstances of the specific case, which meant that those points could only be relevant for the correct application of the law in that case but not for ensuring the uniform application of the law; and

– because the points of law raised had been based on assumptions that had not corresponded to the findings of facts of the lower courts, which meant that those points had not been decisive for the outcome of the case.

C. Proceedings before the Constitutional Court

19. The Constitutional Court (*Ustavni sud Republike Hrvatske*) declared inadmissible the applicant institution's constitutional complaint in each of the twenty cases (see paragraph 14 above). Relying on section 72 of the

Constitutional Court Act (see paragraph 70 below), the court held that the applicant institution – as a public institution closely organisationally and functionally connected with the State – could not be considered a bearer of the rights guaranteed by the Constitution and thus it did not have standing to lodge a constitutional complaint. The Constitutional Court also relied on the Court's decision in the case of *JKP Vodovod Kraljevo v. Serbia* ((dec.), nos. 57691/09 and 19719/10, 16 October 2018) and on the decision of the former European Commission of Human Rights in the case of *RENFE v. Spain* (no. 35216/97, Commission decision of 8 September 1997, Decisions and Reports (DR) 90-B, p. 179).

20. That reasoning reflected a significant shift in the Constitutional Court's case-law as regards the *locus standi* of public entities from an earlier, rather permissive, approach to a new, more restrictive, one, which occurred in March 2015 with decision no. U-III-2119/2010 in the case concerning the Croatian Health Insurance Fund. Despite that change in its case-law, in 2017 the Constitutional Court nevertheless examined a constitutional complaint lodged by the applicant institution on the merits. It would appear that it was only in its first decision in the present cases, which was adopted on 26 February 2019, that the Constitutional Court, sitting in a plenary session, decided to extend its new case-law to the applicant institution as a public broadcasting organisation. The relevant part of that decision reads as follows:

> "3. ... the complainant is a legal entity which has the status of a public institution whose activities, function and content of the public services [it provides], funding, management, supervision and manner of operation are regulated by the Croatian Radio-Television Act ... and [subordinate] legislation enacted on its basis. The complainant's founder is the [State], and the founders' rights are exercised by the Government of Croatia.
>
> The complainant ... provides public broadcasting services and the [State] provides it with independent and autonomous funding in accordance with the Croatian Radio-Television Act and the rules on State aid for public broadcasting services.
>
> ...
>
> 6. The Constitutional Court notes that even though public authorities [can] be parties to proceedings before courts, this does not automatically mean that they [can] also be holders of ... constitutional rights ...
>
> ...
>
> 7.1. In [decision no. U-III-2119/2010 concerning] the Croatian Health Insurance Fund, the Constitutional Court, harmonising its position on public entities as complainants [before it], ... changed its previous practice and took a more restrictive approach regarding the *locus standi* of institutions whose main activity is providing public services ... [It] was pointed out that, since the [State] is not entitled to lodge a constitutional complaint because, by the nature of things, a [decision] cannot violate its human rights and fundamental freedoms, an institution (a public authority) whose founder is the [State] and which is closely organisationally and functionally connected

with [its] founder in providing the public service, is not entitled to lodge a constitutional complaint either.

8. The above views are also applicable to the complainant. Since the complainant is a public institution organisationally, functionally and financially connected with the [State], the Constitutional Court finds that ... the complainant cannot be the holder of ... constitutional rights and does not have *locus standi* to lodge the constitutional complaints in question.

8.1. In the present case the case-law of the European Court of Human Rights in the case of *JKP Vodovod Kraljevo v. Serbia* ((dec.), nos. 57691/09 and 19719/10, 16 October 2018) and of the European Commission in the case of *Spanish Railways – RENFE v. Spain* (no. 35216/97, Commission decision of 8 September 1997, DR 90-B) is also relevant.

9. The relevant part of section 72 of the Constitutional Court Act reads:

Section 72

'The Constitutional Court shall by a decision declare the constitutional complaint inadmissible ... if the complaint was lodged by a legal entity which cannot be a holder of constitutional rights.'

10. Given that the complainant's constitutional complaint in the present case is inadmissible on the basis of section 72 of the Constitutional Court Act, it was decided as stated in the operative provisions."

21. One of the judges of the Constitutional Court submitted a dissenting opinion, and one submitted a concurring opinion.

22. The judge who submitted the dissenting opinion stated that the conditions governing individual applications under the Convention were not necessarily the same as national criteria relating to *locus standi*. National rules in this respect could serve purposes different from those contemplated by Article 34 of the Convention and, while those purposes could sometimes be analogous, they need not always be so. He relied on the Court's judgments in the cases of *A.K. and L. v. Croatia* (no. 37956/11, § 46, 8 January 2013) and *Norris v. Ireland* (26 October 1988, § 31, Series A no. 142). The judge in question referred in addition to *Radio France and Others v. France* ((dec.), no. 53984/00, ECHR 2003-X (extracts)) and *Österreichischer Rundfunk v. Austria* (no. 35841/02, 7 December 2006), where the Court had held that those public broadcasting organisations were non-governmental organisations within the meaning of Article 34 of the Convention because the Austrian and French States had devised a legislative framework designed to guarantee their editorial independence and institutional autonomy. He then pointed out that the applicant institution did not exercise any public powers and that its editorial independence was guaranteed by the law. He therefore concluded that the Constitutional Court's approach adopted in the applicant institution's case had been more restrictive than that of the Court and that it had unnecessarily restricted access to the Constitutional Court.

23. The judge who submitted the concurring opinion stated that in the applicant institution's case he would have been ready to make an exception

to the general rule that legal entities which were closely organisationally, functionally and financially connected with the State did not have *locus standi* to lodge a constitutional complaint. He would have been willing to do so because Croatian Radio-Television had been conceived and established by law as a public broadcasting service. In order to fulfil that role, the applicant institution had, according to the Croatian Radio-Television Act, to "respect the highest professional standards and ethical principles as well as professionally recognised standards of independent journalism" (see paragraph 53 below). However, in that judge's view:

> "... the practice of disciplining its own (and other) journalists by bringing lawsuits [against them] does not seem to fit into 'the highest ethical principles' and certainly negatively affects 'the standards of independent journalism'.
>
> Since, in my opinion, in view of the above, Croatian Radio-Television does not act as a public service, it does not deserve to be exempted from [the general rule on the *locus standi* of public entities] according to the above criterion.
>
> If Croatian Radio-Television brings its activities in line with its statutorily conceived role, in future cases I will be ready to reconsider [my] view ..."

III. OTHER RELEVANT FACTS

24. In a number of cases stemming from the same events (see paragraphs 5-6 above), in which the first and/or the second-instance courts had ruled in favour of the applicant institution, the Supreme Court allowed extraordinary or ordinary appeals on points of law lodged by the defendants. It held that the points raised in those extraordinary appeals were important for the uniform application of the law. It then quashed the contested judgments and remitted the cases to the first-instance courts, as it found that the lower courts had failed to establish some important facts such as: whether A.K. had been authorised by the nature of his job or otherwise to make the disputed payments and who had eventually received the money paid back by the defendants to A.K. and M.P. (see paragraph 5 above) (them or the applicant institution). Specifically, the Supreme Court adopted those decisions in cases nos. Rev-2800/15-5 of 3 November 2016, Rev-650/14-2 of 4 October 2017, Rev-1892/14-2 of 6 December 2017, Rev-124/2014-2 of 18 September 2018, Rev-2828/2015-2 of 4 December 2018, Rev-1380/2016-2 of 27 August 2019, Rev-1905/2016-2 of 12 May 2020 and Rev-1365/2017-2 of 1 July 2020.

25. Following the Supreme Court's decision in one of those cases, namely case no. Rev-1380/2016-2, on 4 January 2021 the Zagreb Municipal Civil Court, in the resumed proceedings, adopted a judgment ruling against the applicant institution. In line with the Supreme Court's instructions (see the previous paragraph), the Municipal Court established that A.K. had been authorised by the nature of his job to make the disputed payments and that the money had never been paid back to the applicant institution. The

Municipal Court thus concluded that the applicant institution had known that it had been paying something that was not owed, which meant that the conditions for the application of the exception set out in section 1112(1) of the Obligations Act had been met (see paragraphs 11 above and 73 below). It therefore dismissed the applicant institution's action. That first-instance judgment, following a subsequent appeal, was upheld by the Zadar County Court on 23 March 2021. On 25 August 2021 the Supreme Court refused the applicant institution's petition to be granted leave to lodge an appeal on points of law (see paragraph 72 below).

26. In decisions nos. Rev-300/14-2 of 13 March 2018, Rev-2877/2014-2 of 15 January 2019 and Rev-2775/2015-2 of 22 January 2019 the Supreme Court allowed extraordinary appeals on points of law, and in decision no. Rev-2309/15-2 of 29 May 2018 an ordinary appeal on points of law lodged by the applicant institution, quashed the contested judgments and remitted the cases to the first-instance courts. In those cases, the Supreme Court held that the lower courts had not given sufficient reasons for their finding that the applicant institution had made the disputed payments knowing that nothing had been owed.

27. In decisions nos. Rev-1073/13-4 of 23 April 2014, Rev-2321/14-7 of 27 October 2015 and Rev-2616/2019-2 of 12 September 2019 the Supreme Court declared inadmissible extraordinary appeals on points of law lodged by the defendants because the appeals did not meet the formal requirements for lodging that remedy set out in section 382(3) of the Civil Procedure Act (see paragraph 71 below). In decision no. Rev-1415/2016-2 of 10 June 2020 the Supreme Court declared inadmissible such an appeal on points of law lodged by the applicant institution, holding that the points of law raised were not important for ensuring the uniform application of the law because they had been based on the factual circumstances of that case. In decision no. Revd-2141-2020-2 of 15 September 2020 the Supreme Court declared inadmissible a petition in which the applicant institution had asked that it be granted leave to lodge an appeal on points of law (see paragraph 72 below). It held that the points of law raised were not important for ensuring the uniform application of the law because they had been based on the factual circumstances of that case and on assumptions that had not corresponded to the factual findings of the lower courts.

RELEVANT LEGAL FRAMEWORK

I. DOMESTIC LAW

A. The Constitution

28. The relevant Articles of the Croatian Constitution (*Ustav Republike Hrvatske*, Official Gazette no. 56/90 with subsequent amendments) read as follows:

Article 38

"1. Freedom of thought and expression shall be guaranteed.

2. Freedom of expression shall include, in particular, freedom of the press and other media, freedom of speech and [the freedom] to speak publicly, and the free establishment of all media institutions.

3. Censorship shall be forbidden. Journalists shall have the right to freedom of reporting and access to information.

..."

Article 116 § 1

"The Supreme Court of the Republic of Croatia, as the highest court, ensures the uniform application of the law and the equality of all in its application."

B. Media legislation

1. The Media Act

29. The Media Act (*Zakon o medijima*, Official Gazette no. 59/04 with further amendments), which has been in force since 18 May 2004, sets out preconditions for, *inter alia*, the exercise of the rights to freedom of the media, journalistic freedom and access to public information, the rights and obligations of publishers, the transparency of the ownership of media institutions and competition in the media sector.

30. Section 3(1) guarantees freedom of expression and freedom of the media.

31. Section 3(2) specifies that freedom of the media comprises, in particular: freedom of expression, the independence of the media, freedom to collect, seek, publish and disseminate information for the purpose of informing the public, the pluralism and diversity of the media, the free flow of information and openness of the media to different opinions, beliefs and various content, the availability of public information, respect for the protection of human personality, privacy and dignity, the freedom to establish media institutions, the printing and distribution of press and other media from within the country and abroad, the production and broadcasting of radio and

television programmes as well as other electronic media, and the independence of editors, journalists and other authors.

32. Section 5 provides for the obligation of the State to promote and protect the pluralism and diversity of the media.

33. Section 35 provides that rules for the protection of market competition apply to publishers, legal persons engaged in media distribution, and other legal persons performing activities related to informing the public.

2. The Electronic Media Act

34. The Electronic Media Act of 2009 (*Zakon o elektroničkim medijima*, Official Gazette no. 153/09 with subsequent amendments), which was in force between 30 July 2013 and 21 October 2021, regulated the rights, obligations and responsibilities of legal and natural persons providing broadcasting and electronic publication services *via* electronic communication networks, and the State interest in the field of the electronic media.

35. Section 3 guaranteed the rights to freedom of expression and full programming freedom of the electronic media, and provided that no provision of that Act could be construed as allowing censorship or restricting freedom of speech or freedom of expression.

36. Section 7 provided that the media service provider independently created the programming policy of the media and was responsible for publication of the programmes.

37. Section 28 provided that State authorities and their representatives, as well as trade unions and various interest groups, must not influence television or radio broadcasters as regards the creation of television or radio programmes.

38. Section 35 provided that political parties and coalitions could not sponsor television or radio programmes, except during election campaigns in accordance with separate legislation.

39. Section 65 provided that the rules on the protection of market competition applied to providers of media services and that the rules on State subsidies applied to subsidies granted under that Act.

40. On 22 October 2021 the new Electronic Media Act (*Zakon o elektroničkim medijima*, Official Gazette no. 111/21 with subsequent amendment), which regulates the same matters as the 2009 Electronic Media Act (see paragraph 34 above), came into force. Its sections 4, 9, 32, 41 and 72 correspond to the above-cited sections 3, 7, 28, 35 and 65 of the 2009 Electronic Media Act.

41. The 2009 Electronic Media Act established the Electronic Media Agency, an independent legal entity vested with public powers. Its organisation and powers were regulated in the same way in the old and the new Electronic Media Act. The Agency's governing bodies are the Director and the Electronic Media Council. The chairman of the Electronic Media

Council is the Director of the Agency. The statute of the Agency must be approved by the Croatian Parliament. Section 73(3) of the 2021 Electronic Media Act prohibits any form of influence on the work of the Agency which could jeopardise its autonomy or independence.

42. The Electronic Media Council is the regulatory authority in the electronic media sector whose role is to monitor the application of the Electronic Media Act. The Council has seven members who are appointed (for a single term of five years) and dismissed by the Croatian Parliament on a proposal by the Government of Croatia after a public call. State officials or officials in the executive branch of government and officials in political parties or trade unions cannot be members of the Council. Likewise, the members of the Council must not own, hold shares in or be directors, managers or members of governing bodies of legal entities (media institutions) to which the Electronic Media Act applies or be in an employment, a contractual or any other legal relationship with those entities which could expose them to a conflict of interests.

43. Members of the Council can be removed before their term expires on a limited number of grounds (listed in section 68(11) of the 2009 Electronic Media Act and section 76(14) of the 2021 Electronic Media Act).

3. The Croatian Radio-Television Act

(a) The Croatian Radio-Television Act

44. The legal status of Croatian Radio-Television is regulated by the Croatian Radio-Television Act (*Zakon o Hrvatskoj radioteleviziji*, Official Gazette no. 137/10 with further amendments) which has been in force since 8 December 2010.

45. Section 1(2) provides that Croatian Radio-Television is a public institution whose founder is the State. The founders' rights are exercised by the Government of Croatia.

46. Section 1(3) provides that in carrying out its activities, Croatian Radio-Television is to be independent of any political influence or pressure from promoters of commercial interests.

47. Section 1(5) provides that the Electronic Media Act applies to Croatian Radio-Television, unless the Croatian Radio-Television Act provides otherwise.

48. Section 3 provides that the activities of Croatian Radio-Television are the production as public services of radio, audio-visual and multimedia programmes, music production, provision of audio and audio-visual media services, multimedia services and electronic publication services. Those activities are carried out, *inter alia*, by broadcasting two national, general, terrestrial television programme channels and two national, specialised, digital television programme channels, and by broadcasting three national terrestrial radio programme channels.

49. In addition to the public services set out in section 3, Croatian Radio-Television also carries out certain commercial activities listed in section 4 of the Act.

50. Its public-service mission is reflected in its programming principles. In accordance with section 5, in its programmes Croatian Radio-Television must satisfy the interests of the public at the national, regional and local levels and ensure an appropriate representation of news, artistic, cultural, educational, children's, entertainment, sports and other content.

51. Under section 6, in its programmes Croatian Radio-Television must:

– promote national interests, contribute to the respect and promotion of fundamental human rights and freedoms, patriotism, tolerance, understanding and respect for diversity, democratic values and institutions, civil society, and the promotion of a culture of public dialogue; and

– respect the privacy, dignity, reputation and honour and the fundamental rights and freedoms of others, especially children and young people, as well as the elderly and the infirm.

52. Section 7(1) provides that Croatian Radio-Television must, *inter alia*:

– continually, accurately, completely, impartially and in a timely manner inform the public about current affairs;

– respect and encourage the pluralism of political, religious, philosophical and other ideas and enable the public to be acquainted with these ideas, and must not in its programmes advocate the views or interests of a particular political party, or of any other particular political, religious, philosophical or other views or interests; and

– impartially address political, economic, social, religious and other issues, enabling equality in the expression of views from different sources.

53. Section 7(2) provides that in its programmes Croatian Radio-Television must adhere to the highest professional standards and ethical principles as well as professionally recognised standards of independent journalism.

54. Section 13 provides that the programming obligations of Croatian Radio-Television referred to in the Act and the amount and source of funds to finance them is determined by an agreement with the Government of Croatia concluded for a period of five years, which contains the type, scope and content of all public services provided by Croatian Radio-Television under the Act.

55. Under section 18 the governing bodies of Croatian Radio-Television are: the Director General, the Board of Directors, the Supervisory Board and the Programming Council.

56. Under section 19a(3) the Director General is appointed (for a term of five years) and removed by the Croatian Parliament by a majority vote of all the members of parliament (MPs). Under section 20(7) the proceedings for removal of the Director General are instituted by the Supervisory Board but the body which is entitled to lodge a formal motion for removal is the

Parliament's Committee for Information, Computerisation and the Media. Under section 20(3) the roles of Director General and editor-in-chief are incompatible with any duty in State or local government bodies or in the governing bodies of political parties.

57. Section 21a provides that the Board of Directors is composed of the Director General and the directors of Croatian Radio-Television's organisational units. According to its statute, Croatian Radio-Television has four organisational units whose directors are appointed by the Director General for a term of five years.

58. In accordance with section 22a(1) the Supervisory Board has five members. Four members of the Supervisory Board are appointed and removed by the Croatian Parliament by a majority vote of all MPs on the basis of a public competition organised by the Parliament's Committee for Information, Computerisation and the Media, which proposes their appointment. One member of the Supervisory Board is a representative of employees who is appointed and dismissed in accordance with other provisions of the Act and the relevant employment legislation.

59. Section 23 provides that the Supervisory Board, *inter alia*:

– adopts the statute of Croatian Radio-Television on a proposal by the Director General and with the approval of the Croatian Parliament; and

– adopts the work programme of Croatian Radio-Television on a proposal by the Director General and after previously obtaining the opinion of the Programming Council.

60. Section 24 provides that the role of the Programming Council is to represent and protect the interests of the public by monitoring and improving programme and other broadcasting and multimedia services. Under section 25 the Croatian Parliament appoints and removes nine of the eleven members of the Programming Council. The appointment of those members is based on a public call published and organised by the Parliament's Committee for Information, Computerisation and the Media. The remaining two members of the Programming Council are appointed and removed by journalists and other employees of Croatian Radio-Television.

61. Section 25 also provides that in the appointment of the members of the Programming Council, account must be taken of philosophical and other types of pluralism in Croatian society. State officials or persons holding positions in the governing bodies of political parties or local government bodies cannot be members of the Programming Council.

62. Section 17 of the Act provides that Croatian Radio-Television is independent in its operation. That independence is to be achieved:

– by carrying out its activities independently and in application of its independent programming and editorial policy, especially in the planning and production of programmes and the establishment of the programming schedule; and

– through the independent and stable financing of its public-service activities.

The independence of Croatian Radio-Television is also reflected in its right to regulate:

– its internal affairs and organisation, in accordance with the provisions of the Croatian Radio-Television Act; and

– employment-related issues, in accordance with the law and the collective agreements.

63. Section 33 defines Croatian Radio-Television's sources of income. Its revenue comes from its commercial activities and from public funds, namely from a monthly licence (user) fee which can be up to 1.5% of the average monthly net salary in Croatia. The level of the fee is set every year by the Supervisory Board of Croatian Radio-Television and is levied on every household and business owning a radio or television set. More than 85% of Croatian Radio-Television's annual revenue comes from the licence fee.

64. Section 21(1)(4) and section 36(1) entitle the Director General to adopt subordinate legislation regulating payment of the monthly licence fee.

65. Section 37 limits the duration of promotional messages in each television or radio programme to nine minutes per hour, or four minutes per hour in the period between 6 and 10 p.m. It also provides that feature films may be interrupted with promotional messages only once during the duration of the film.

66. Section 44 of the Act provides that the operation of Croatian Radio-Television and the application of the Act is to be supervised by the Electronic Media Council, an independent regulatory authority established by the Electronic Media Act (see paragraphs 41-43 above).

67. Sections 47 and 48 provide that not registering or using a deregistered radio or television set constitutes a minor offence punishable by a fine.

(b) Decision on the control of payment of the monthly licence fee and deregistration of radio and television sets

68. On the basis of section 21(1) subparagraph 4 and section 36(1) of the Croatian Radio-Television Act (see paragraph 64 above), on 18 June 2019 the Director General adopted a decision on the control of payment of the monthly licence fee and deregistration of radio and television sets (*Odluka o kontroli plaćanja mjesečne pristojbe i načinu odjave prijamnika*). On 30 November 2020 the High Administrative Court reviewed the compatibility of the decision with primary legislation and invalidated some of its provisions.

69. The decision entitles the applicant institution to (a) institute relevant proceedings before courts for minor offences defined by the Croatian Radio-Television Act (see paragraph 67 above); (b) collect certain data against the will of persons concerned with a view to establishing whether they

own a radio or television set; and (c) control the payment of the licence fee directly, through its own services for control and payment.

C. Other legislation

1. Constitutional Court Act

70. The relevant provision of the Constitutional Act on the Constitutional Court of the Republic of Croatia (*Ustavni zakon o Ustavnom sudu Republike Hrvatske*, Official Gazette of the Republic of Croatia no. 99/99 with subsequent amendments – "the Constitutional Court Act") reads as follows:

Section 72

"The Constitutional Court shall by a decision declare the constitutional complaint inadmissible ... if the complaint was lodged by a legal entity which cannot be a holder of constitutional rights."

2. Civil Procedure Act

71. The relevant provisions of the Civil Procedure Act (*Zakon o parničnom postupku*, Official Gazette of the Socialist Federal Republic of Yugoslavia no. 4/77 with subsequent amendments, and Official Gazette of the Republic of Croatia no. 53/91 with subsequent amendments), which has been in force since 1 July 1977, read as follows at the material time:

1. Appeal on points of law
Section 382

"(1) Parties may lodge an appeal on points of law [*revizija*] against a second-instance judgment:

– if the value of the subject matter of the dispute concerning the contested part of the judgment exceeds HRK 200,000;

– [in certain employment disputes]; or

– if the second-instance judgment was adopted in accordance with section 373a or 373b of this Act [that is, if the second-instance court assessed the evidence and/or established the facts differently from the first-instance court or held a hearing].

(2) In cases where the parties are not entitled to lodge an appeal on points of law in accordance with paragraph 1 of this section, they may [nevertheless] do so if a decision in the dispute depends on the resolution of a point of substantive or procedural law [that is] important for ensuring the uniform application of the law and the equality of all in its application, for example:

– if the Supreme Court has not yet ruled on that point ... in respect of which there is divergent case-law of the second-instance courts;

– if the Supreme Court has already ruled on that point but the decision of the second-instance court is not in conformity with that ruling; or

– if the Supreme Court has already ruled on that point and the decision of the second-instance court is in conformity with that ruling but ... the case-law should be revisited in view of changes in the legal system occasioned by new legislation, international treaties or decisions of the Constitutional Court, the European Court of Human Rights or the Court of Justice of the European Union.

(3) In the [extraordinary] appeal on points of law referred to in paragraph 2 of this section, the appellants must specify the point of law which is the ground for their appeal [together] with a specific reference to legislation and other sources of law related thereto, and [must] give reasons as to why they find that point important for ensuring the uniform application of the law and the equality of all in its application.

(4) An appeal on points of law must be lodged within thirty days of notification of the second-instance judgment."

Section 392b

"(1) A panel composed of five judges of the Supreme Court shall declare inadmissible an incomplete, inadmissible [in the strict sense] or belated [extraordinary] appeal on points of law, unless the first-instance court has not already done so. Such a decision shall be reasoned.

(2) The panel referred to in paragraph 1 of this section shall by a decision declare inadmissible an [extraordinary] appeal on points of law if it does not specify the point of law which is the ground for the appeal [together] with a specific reference to legislation and other sources of law related thereto, or if it does not give specific reasons as to why the appellant finds that point important for ensuring the uniform application of the law and the equality of all in its application.

(3) The panel referred to in paragraph 1 of this section shall declare inadmissible an [extraordinary] appeal on points of law if it finds that the point of law which is the ground for the appeal is not important for ensuring the uniform application of the law and the equality of all in its application."

72. Upon the entry into force of the 2013 Amendments to the Civil Procedure Act (*Zakon o izmjenama i dopunama zakona o parničnom postupku*, Official Gazette of the Republic of Croatia no. 70/19) on 1 September 2019, extraordinary appeal on points of law was replaced by petition whereby the parties to civil proceedings could ask leave from the Supreme Court to lodge an appeal on points of law. The conditions under which the Supreme Court could grant such a leave were nearly identical to the conditions of admissibility of former extraordinary appeal on points of law.

3. The Obligations Act

73. The relevant provisions of the Obligations Act (Official Gazette no. 35/05 with subsequent amendments), which has been in force since 1 January 2006, concerning unjust enrichment read as follows:

ENRICHMENT WITHOUT CAUSE
General rule
Section 1111(1)

"When part of the property of one person passes, by any means, into the property of another, and that transfer has no basis in a legal transaction, a decision by a court or other relevant authority or in legislation [that is, it is without cause], the person who received it [the beneficiary] shall return it. If restitution is not possible, he or she shall provide compensation for the value of the benefit obtained."

RESTITUTION RULES
When restitution cannot be sought
Section 1112(1)

"Anyone who makes a payment knowing that he or she does not have to pay has no right to seek restitution, unless he or she has retained the right to a refund, if he or she has paid to avoid duress or if the payment of the debt depends on the fulfilment of a condition."

II. COUNCIL OF EUROPE MATERIALS

A. Instruments regarding public service media

74. The relevant parts of Recommendation CM/Rec(2012)1 of the Committee of Ministers to member States on public service media governance (adopted by the Committee of Ministers on 15 February 2012 at the 1134th meeting of the Ministers' Deputies) read as follows:

Guiding principles for public service media governance
I. The context: challenges facing public service media

1. Public service media across Europe face an unprecedented range of significant challenges.

The challenge of securing the right level of independence from the State

2. The first priority for public service media must be to ensure that their culture, policies, processes and programming reflect and ensure editorial and operational independence.

...

Independence

21. Independence is the core requirement for every public service media organisation. Without demonstrable independence of action and initiative, from government as well as from any other vested interest or institution, public service media organisations cannot sustain their credibility and will lose (or never gain) popular support as a forum for carrying forward the national debate and holding power to account.

22. Securing and safeguarding independence is therefore a primary role of any framework of public service media governance, and this is why independence has been at the heart of all of the relevant Council of Europe standards.

23. The fundamental requirement is that the editorial autonomy of the public service media should be guaranteed, and the structures necessary to ensure independence of editorial action clearly and unambiguously set out.

Appointments

27. As public institutions, it is legitimate for the State to be involved in the appointment of the highest supervisory or decision-making authority within the public service media. To avoid doubt, this involvement should not normally extend to appointments at executive or editorial management level. ...

75. Other relevant Council of Europe instruments, containing the principles and guidelines on public service broadcasting set by the Committee of Ministers of the Council of Europe, are cited in *Manole and Others v. Moldova*, no. 13936/02, §§ 51-54, ECHR 2009 (extracts).

B. Other instruments and materials

76. The relevant part of Recommendation No. R (95) 5 concerning the introduction and improvement of the functioning of appeal systems and procedures in civil and commercial cases, adopted by the Committee of Ministers on 7 February 1995 at the 528th meeting of the Ministers' Deputies, reads as follows:

Chapter IV- Role and function of the third court

Article 7 – Measures relating to appeals to a third court

"a. The provisions of this recommendation should, where appropriate, apply also to the 'third court', where such a court exists, that is a court which exercises control over the second court. Constitutional courts or similar are, for the purposes of this recommendation, not included.

b. In considering measures concerning third courts, states should bear in mind that cases have already been heard by two courts.

c. Appeals to the third court should be used in particular in cases which merit a third judicial review, for example cases which would develop the law or which would contribute to the uniform interpretation of the law. They might also be limited to appeals where the case concerns a point of law of general public importance. The appellant should be required to state his reasons why the case would contribute to such aims.

..."

77. The relevant parts of Opinion no. (2017) of the Consultative Council of European Judges (CCJE) on the Role of Courts with Respect to the Uniform Application of the Law of 10 November 2017, read as follows:

"III. THE CASE LAW AS A SOURCE OF LAW

14. ... A consolidated trend of decisions on a certain point all in accord (settled case law, *jurisprudence constante*, *ständige Rechtsprechung*) has traditionally been required in order to become relevant in civil law countries. This will certainly not prevent a decision from having a jurisprudential value when the supreme court rules for the first time on a question of law which is not yet settled. It is accepted that there can be no

formula as to how to identify the moment at which the case law can be considered settled. Numerous supreme courts in civil law countries are now empowered to select cases with intention of setting standards that should be applicable in future cases. Therefore, in these cases, already one judgment of a supreme court, when it was reached with intention to set a precedent, can count as an authoritative case law.

IV. MEANS FOR ENSURING THE UNIFORM CASE LAW

...

b. The role of supreme courts

20. It is primarily a role of a supreme court to resolve contradictions in the case law. The supreme court must ensure uniformity of the case law so as to rectify inconsistencies and thus maintain public confidence in the judicial system. There is an inherent link between considerations concerning the uniformity of the case law, on the one hand, and mechanisms for access to the supreme court, on the other.

21. The CCJE recognises that, on account of differences in legal traditions and organisation of judiciaries, access to supreme courts is framed differently across Europe. The same applies to the concepts as to whether supreme courts should predominantly serve the private function or the public function. The former consists of striving for just and correct resolution of every individual case for the benefit of the parties to this case. The latter is concerned with safeguarding and promoting the public interest in ensuring the uniformity of the case law and the development of law. ... the supreme court's responsibility to ensure uniform case law is likely to require the establishment of adequate selection criteria for admitting cases to the supreme court.

Those countries which permit unfettered right to appeal may consider introducing a requirement for seeking leave or other appropriate filtering mechanism. The criteria for granting leave should facilitate the supreme court in fulfilling its role in promoting the uniform interpretation of the law. In that context the CCJE recalls what was said in Recommendation No. R (95) 514.

22. The introduction of such criteria for granting leave to appeal namely implies that a supreme court's resolution of the matter bears significance beyond the scope of the individual case. It will generally be expected to be followed in future cases and therefore offers a valuable guidance for lower courts and all future litigants and their lawyers. Only such selection criteria ensure that only cases of precedential value are adjudicated by a supreme court. At the same time, these are also the only criteria which may ensure that all such cases can reach a supreme court. Therefore, a supreme court can effectively perform the function of stating rules that should be effective in future cases in all areas of law ...

23. The CCJE takes the view that the responsibility of supreme courts to ensure and maintain the uniformity of the case law thus should not be understood as if the supreme court is required to intervene as often as possible. In addition to causing delays in the supreme court's handling of cases and diminishing the quality of its adjudication, such an approach would inevitably cause contradictions within the case law of the supreme court itself, whereby it is also inevitable that if the number of cases decided by a supreme court is excessively high, its case law will frequently remain overlooked. Therefore, existence of conflicting judgments of lower courts cannot simply be cured by providing for an unrestricted access to the supreme court.

24. The existence of instruments for ensuring uniformity within the same court is particularly relevant for supreme courts. It is especially problematic if the supreme court

itself becomes a source of uncertainty and of conflicting case law, instead of ensuring its uniformity. It is thus of paramount importance that within the supreme court, mechanisms exist which can remedy inconsistencies within this court ...

25. The CCJE is of the opinion that a divergent case law in appellate level of jurisdiction (either within the same appellate court or between different appellate courts) is best addressed by a possibility to file a further appeal on points of law to the supreme court.

c. The role of appellate courts

26. It should be recalled that if access to the supreme courts is shifting from a matter of a right to a matter of exception, it is the courts of appeal that are becoming the highest instance for most cases. They should therefore be in a position to accomplish their role in ensuring the quality of justice which includes the need to secure the uniform application of the law. Achieving consistency of the case law may take time, and periods of conflicting case law may therefore be tolerated without undermining the principle of legal certainty. Consequently, in the CCJE's view, it cannot be automatically imposed on a supreme court to intervene as soon as there are divergent decisions on the level of appellate courts. It can be expected in numerous cases that the uniform application of laws should in due time be achieved on the level of appellate courts. Therefore, appellate courts have an important role in ensuring uniform application of laws."

THE LAW

I. JOINDER OF THE APPLICATIONS

78. Having regard to the similar subject matter of the applications, the Court finds it appropriate to examine them jointly in a single judgment.

II. *LOCUS STANDI* OF THE APPLICANT INSTITUTION

79. The Court notes at the outset that the applicant institution brought proceedings before the Court by lodging an individual application under Article 34 of the Convention, which reads as follows:

"The Court may receive applications from any person, non-governmental organisation or group of individuals claiming to be the victim of a violation by one of the High Contracting Parties of the rights set forth in the Convention or the Protocols thereto. The High Contracting Parties undertake not to hinder in any way the effective exercise of this right."

80. The Court therefore considers that it must first examine whether the applicant institution as a legal entity has standing for the purposes of the above provision. It reiterates in this connection that a legal entity may submit an individual application to the Court, provided that it is a "non-governmental organisation" within the meaning of Article 34 of the Convention (see, for example, *Slovenia v. Croatia* (dec.) [GC], no. 54155/16, § 61, 18 November 2020).

A. The parties' submissions

1. The Government

81. The Government submitted that the applicant institution did not enjoy sufficient institutional and operational independence from the State to be considered a non-governmental organisation within the meaning of Article 34 of the Convention and the Court's case-law. Thus, it did not have *locus standi* to lodge an individual application with the Court.

82. As regards its structure, the Government pointed out that Croatian Radio-Television was a public institution whose sole founder was the State, and that the founders' rights were exercised by the Government of Croatia (see paragraph 45 above). Moreover, its activities and their supervision, and its operation, financing and management were set out in special legislation, the Croatian Radio-Television Act (see paragraphs 44-65 above), which distinguished it from other, commercial, broadcasting companies operating in Croatia.

83. Only one member of Croatian Radio-Television's Supervisory Board and two members of the Programming Council were elected by journalists and other employees, whereas fourteen members of those governing bodies were appointed and removed by the Croatian Parliament, which also appointed and removed the Director General (see paragraphs 55-56 and 58-60 above).

84. Moreover, Croatian Radio-Television's operation and its general legal acts were supervised by the Ministry of Culture and the Media and by the Electronic Media Council (see paragraph 66 above).

85. As regards financing, the Government pointed out that, even though the relevant legislation prescribed that Croatian Radio-Television was financed by public and commercial revenues, more than 85% of its financial resources in the past several years had come from public sources (see paragraph 63 above), namely from the mandatory licence fee (which was a form of State aid) and direct allocations from the State budget.

86. In addition, the Croatian Radio-Television Act prescribed the number of minutes per hour allowed for promotional messages (commercials) (see paragraph 65 above). Thus, the applicant institution's main source of revenue was not sponsored advertising, but almost exclusively State aid and State budget allocations.

87. That meant that Croatian Radio-Television's financial viability was guaranteed regardless of its success in the market. This placed it in a significantly more favourable position than other broadcasting companies which did not enjoy the same privilege. Therefore, while Croatian Radio-Television did not have a broadcasting monopoly, it could not be said that it competed equally with other media companies and television networks in Croatia.

88. The Government further argued that the applicant institution was not only structurally and financially dependent on the State, but that this was to a large extent true also for its programming policy. Although the relevant legislation prescribed that Croatian Radio-Television Act was independent in its operation (see paragraph 62 above), its programming policy was strictly defined by the law and the creation of its programmes thus differed significantly from programme creation in privately-owned broadcasting media (see paragraphs 48-51 above).

89. Moreover, at the time of the health crisis caused by the COVID-19 pandemic, when the State had been in strict lockdown, Croatian Radio-Television had been chosen to exercise some of the State's powers, namely those related to the education of children, by organising distance learning programmes for primary-school pupils.

90. The Government therefore concluded that the applicant institution was not sufficiently structurally, financially or in terms of the programmes it produced separate from the State to be considered a non-governmental organisation within the meaning of Article 34 of the Convention. They therefore invited the Court to declare the application inadmissible for lack of *locus standi*.

91. As regards the applicant institution's argument that the present cases were not in any way different from *Radio France and Others* (*v. France* (dec.), no. 53984/00, ECHR 2003-X (extracts); see paragraphs 94 and 97 below), the Government replied that in that case the Court's conclusion that the applicant was a non-governmental organisation had been based on the finding that it did not enjoy any powers beyond those conferred by ordinary law and that it was subject to the jurisdiction of the ordinary courts, and not administrative courts. However, that could not be said for the applicant institution.

92. In this regard the Government pointed out that the Director General of the applicant institution had the power to enact subordinate legislation (see paragraphs 64 and 68 above). Under that subordinate legislation, regulating in greater detail the payment of the mandatory licence fee, the applicant institution enjoyed the privilege of having its own inspectors entitled to check whether individuals or companies owned radio or television sets and were thus liable to pay the licence fee. It also entitled the applicant institution to institute minor-offence proceedings against persons who withheld that information, and to collect personal data (such as names, addresses, personal identification numbers, motor vehicle registration numbers, etc.) of individuals and legal entities liable to pay the fee (see paragraph 69 above).

93. Compatibility of that subordinate legislation with primary legislation was subject to review by the High Administrative Court (see paragraph 68 above), in the same way as any other subordinate legislation enacted by (other) public authorities such as the State or local governments. This meant

that, at least as regards some of its activities, the applicant institution enjoyed powers beyond those conferred by ordinary law and that it was, in respect of those powers, subject to the jurisdiction of administrative and not ordinary courts.

2. The applicant institution

94. The applicant institution considered odd the Government's argument that Croatian Radio-Television did not enjoy sufficient institutional and operational independence from the State even though the respondent State itself had through its legislation guaranteed the independence of the applicant institution (they referred to section 1(3) and section 17 of the Croatian Radio-Television Act, cited in paragraphs 46 and 62 above), a guarantee important for a healthy democracy.

95. The applicant institution submitted that its status, arguments it was making and the legal framework in which it operated were almost identical to those of the applicant company in the case of *Radio France and Others* (cited above). Similarly, the Government's arguments were almost identical to those that had been advanced by the French Government in that case, in which the Court had found that the applicant company was a non-governmental organisation and thus had had *locus standi* to lodge an individual application.

96. Relying on the Court's criteria developed in *Radio France and Others* (cited above), *Österreichischer Rundfunk v. Austria* (no. 35841/02, 7 December 2006) and *Islamic Republic of Iran Shipping Lines v. Turkey* (no. 40998/98, ECHR 2007-V), the applicant institution argued that it had to be viewed as a non-governmental organisation because (a) it was granted editorial independence and institutional autonomy by the relevant legislation (see paragraph 62 above); (b) it had not been established to carry out public-administration tasks; (c) it provided a public service (see paragraph 48 above) rather than exercised any governmental powers; (d) it operated in a sector open to market competition and did not have a broadcasting monopoly; (e) it was under the supervision of the Electronic Media Council, an independent authority (see paragraph 66 above); and (f) ordinary courts had jurisdiction to decide on its rights and obligations.

97. The applicant institution therefore concluded that there were no substantial differences between the present cases and *Radio France and Others* which could result in a different assessment of the admissibility of the applications.

B. The Court's assessment

98. The Court again reiterates that under Article 34 of the Convention, a legal entity "claiming to be the victim of a violation by one of the High Contracting Parties of the rights set forth in the Convention or the Protocols

thereto" may submit an individual application to the Court, provided that it is a "non-governmental organisation" within the meaning of that provision (see, for example, *Slovenia v. Croatia*, cited above, § 61).

99. The term "governmental organisations", as opposed to "non-governmental organisations" within the meaning of Article 34, includes legal entities which participate in the exercise of governmental powers or run a public service under government control. The term "governmental organisations" applies not only to the central organs of the State, but also to decentralised authorities that exercise "public functions", regardless of their autonomy *vis-à-vis* the central organs; likewise it applies to regional and local authorities, including municipalities (ibid.).

100. Other public-law entities can have the status of a "non-governmental organisation" in so far as they do not exercise "governmental powers", are not established "for public-administration purposes" and are completely independent of the State (see *The Holy Monasteries v. Greece*, 9 December 1994, § 49, Series A no. 301-A; *Radio France and Others*, cited above, § 26; and *Islamic Republic of Iran Shipping Lines*, cited above, § 80). In order to determine whether a legal person is a "governmental organisation" or "non-governmental organisation", account must be taken of its legal status and, where appropriate, the rights that status gives it, the nature of the activity it carries out, the context in which it is carried out, and the degree of its independence from the political authorities (see *Slovenia v. Croatia*, §§ 61, 68 and 78; *Radio France and Others*, § 26; and *Österreichischer Rundfunk*, all cited above, §§ 48-54).

101. The term "governmental organisation" thus includes, *inter alia*, State-owned companies which do not enjoy "sufficient institutional and operational independence from the State" (see, for example, *Zastava It Turs v. Serbia* (dec.), no. 24922/12, §§ 19-23, 9 April 2013). On the other hand, the Court has considered a company to be "non-governmental" for the purposes of Article 34 where it was governed essentially by company law, did not enjoy any governmental or other powers beyond those conferred by ordinary private law in the exercise of its activities, and was subject to the jurisdiction of the ordinary rather than the administrative courts (see *Slovenia v. Croatia*, cited above, § 62). The Court has also taken into account the fact that an applicant company carried out commercial activities and had neither a public-service role nor a monopoly in a competitive sector (ibid.). However, none of the above-mentioned factors alone can be considered to be decisive; the Court has always taken into account all the relevant factual and legal circumstances in their entirety (ibid., § 63).

102. Applying these criteria (see paragraphs 100-101 above) to public broadcasting organisations, the Court has so far always held that they had *locus standi* to lodge an individual application (see *Radio France and Others*, cited above, § 26; *Österreichischer Rundfunk*, cited above, §§ 46-53; *MacKay and BBC Scotland v. the United Kingdom*, no. 10734/05, §§ 18-19,

7 December 2010; *Schweizerische Radio- und Fernsehgesellschaft SRG v. Switzerland*, no. 34124/06, 21 June 2012; and *Schweizerische Radio- und Fernsehgesellschaft and publisuisse SA v. Switzerland*, no. 41723/14, §§ 46-48, 22 December 2020). What the Court considered decisive was whether the legislature had devised a framework which was designed to guarantee their editorial independence and their institutional autonomy (see *Radio France and Others*, § 26; *Österreichischer Rundfunk*, § 53; and *Schweizerische Radio- und Fernsehgesellschaft and publisuisse SA*, § 47, all cited above – those guarantees are also emphasised in the relevant Council of Europe instruments cited in paragraphs 74-75 above).

103. Turning to the present cases, the Court first observes that the applicant institution undisputedly does not exercise governmental powers (compare *Österreichischer Rundfunk*, cited above, § 49) and that it was not established "for public-administration purposes" (compare *The Holy Monasteries*, cited above, § 49). Rather, it provides a public service which consists of operating a certain number of national television and radio channels (see paragraph 48 above; compare *Österreichischer Rundfunk*, § 49, cited above).

104. The Government argued that, in contrast to the Court's findings in *Radio France and Others* (cited above, § 26), the applicant institution enjoyed, at least as regards some of its activities, powers beyond those conferred by ordinary law (passing subordinate legislation and having its own inspectors), and that in respect of those powers it was subject to the jurisdiction of administrative and not ordinary courts (see paragraphs 91-93 above).

105. In this regard the Court would first emphasise that, as demonstrated by the facts of the present cases, the applicant institution is in respect of all of its activities (including the collection of the monthly licence fee) subject to the jurisdiction of ordinary courts, save for its power to pass subordinate legislation whose compatibility with the Constitution and laws is reviewed by administrative courts. The Court further refers to its findings in *The Holy Monasteries* case where it held that the applicant monasteries were "non-governmental organisations" for the purposes of Article 34 of the Convention even though they belonged to the Greek Orthodox Church, which played a direct and active part in public administration and took enforceable administrative decisions which were subject to review by administrative courts like any other decision of public authorities (ibid., § 48). Therefore, the fact that as regards some of its activities the applicant institution may be seen as enjoying some powers beyond those conferred by ordinary law is not decisive for its status of "non-governmental organisation". Rather, as stated above (see paragraph 100), what is important for public-law entities to be considered "non-governmental organisations" is that they do not exercise "governmental powers", that they are not established "for

public-administration purposes" and that they are completely independent of the State.

106. It therefore remains to be examined whether the applicant institution provides the public service under government control (see *Österreichischer Rundfunk*, cited above, § 49). Given that the applicant institution is a public broadcasting organisation, this means examining whether it enjoys editorial independence and institutional autonomy (see paragraph 102 above).

107. At this juncture the Court notes that the present cases differ from the previous cases lodged by public broadcasting organisations (see paragraph 102 above) in that in examining a very similar issue, namely *locus standi* to lodge a constitutional complaint, the Croatian Constitutional Court held that the applicant institution did not have standing to do so because it was so closely organisationally and functionally connected with the State that it could not be considered as a bearer of the constitutional rights (see paragraphs 19-20 above).

108. In this regard the Court first reiterates that the conditions governing individual applications under the Convention are not necessarily the same as national criteria relating to *locus standi*. National rules in this respect may serve purposes different from those contemplated by Article 34 and, while those purposes may sometimes be analogous, they need not always be so (see *A.K. and L. v. Croatia*, no. 37956/11, § 46, 8 January 2013, and *Norris v. Ireland*, 26 October 1988, § 31, Series A no. 142).

109. It is true that in the specific circumstances of the present cases the criteria for determining *locus standi* before the Court and before the Constitutional Court are very similar, as they both in essence entail an examination of the issue whether the applicant institution was sufficiently independent of the State. This similarity is further corroborated by the fact that the Constitutional Court, in finding that the applicant institution did not have standing to lodge a constitutional complaint, relied on the Court's and the former Commission's case-law on *locus standi* (see paragraphs 19-20 above).

110. While in such circumstances it may be argued that, having regard to the principle of subsidiarity, the Constitutional Court was better placed to ascertain whether the applicant institution was sufficiently independent of the State, it should be noted that the Court has held that the legal concepts mentioned in Article 34 of the Convention must be interpreted autonomously and irrespective of the relevant domestic concepts (see *Slovenia v. Croatia*, cited above, § 63). That is so because the issue of *locus standi* is the matter that goes to the Court's jurisdiction *ratione personae* which the Court is, like any other question of its jurisdiction, obliged to examine of its own motion (see *Blečić v. Croatia* [GC], no. 59532/00, § 67, ECHR 2006-III, and *Schweizerische Radio- und Fernsehgesellschaft and publisuisse SA*, cited above, § 43). The Court must therefore be very careful before accepting

findings of national courts which may have implications for its own jurisdiction.

111. The Constitutional Court's finding that the applicant institution lacked standing to lodge a constitutional complaint because it was not sufficiently independent of the State was based on the Court's and the former Commission's case-law on *locus standi* in general (see paragraphs 19-20 above). However, that court did not refer to more specific case-law concerning the *locus standi* of public broadcasting organisations (see the cases cited in paragraph 102 above).

112. Furthermore, the Constitutional Court's finding was not based on a detailed analysis of the legislative framework, which would be comparable to the one conducted by the Court in *Radio France and Others* (cited above, § 26) and *Österreichischer Rundfunk* (cited above, §§ 48-54).

113. For these reasons (see paragraphs 110-112 above), the Court cannot defer to the Constitutional Court's finding that the applicant institution was not sufficiently independent of the State. Rather, it must carry out its own examination of whether the Croatian legislature has devised a framework which is designed to ensure the editorial independence and institutional autonomy of the applicant institution (see paragraph 102 above).

114. In this connection, the Court first observes that under the Croatian Radio-Television Act the State is the founder of the applicant institution (see paragraph 45 above), its statute has to be approved by the Croatian Parliament (see paragraph 41 above), its resources are to a large extent public (see paragraph 63 above), it provides broadcasting and other services in the interests of the public (see paragraph 50 above) and it is obliged to enter into an agreement with the Government of Croatia defining its programming obligations and their financing (see paragraph 54 above, and compare *Radio France and Others*, cited above, § 26).

115. It is also true that the Director General of Croatian Radio-Television and a large majority of the members of its Supervisory Board and the Programming Council are appointed by the Croatian Parliament (see paragraphs 56, 58 and 60 above), and that all the members of the Electronic Media Council are also appointed by Parliament (see paragraph 42 above).

116. However, the Court also notes that the electronic media in Croatia, including Croatian Radio-Television, are regulated by the Media Act and the Electronic Media Act, both of which contain, *inter alia*, provisions to ensure their objectivity and independence (see paragraphs 32, 36-38 and 52-53 above). The Court further notes that the Croatian Constitution and the Media Act guarantee the freedom of the media (see paragraphs 28 and 30-31 above). Moreover, the Electronic Media Act guarantees the right to full programming freedom of the electronic media (see paragraph 35 above).

117. That means that Croatian Radio-Television, within the bounds of, *inter alia*, the public-service requirements set out in the Croatian

Radio-Television Act (see paragraph 50 above), does not come under the aegis of the State but enjoys the freedom of the media and is independent in its operation (see paragraph 62 above). It operates under the control of the Electronic Media Council, an independent regulatory authority (see paragraphs 41-42 above) responsible for monitoring the application of the Electronic Media Act, including the provisions which aim to ensure the objectivity and independence of the electronic media (see the previous paragraph, and compare *Radio France and Others*, cited above, § 26).

118. What is more, even though the State is the founder of Croatian Radio-Television (see paragraph 45 above), the applicant institution finances its activities from the monthly licence (user) fee which it can fix itself (see paragraph 63 above, and compare *Österreichischer Rundfunk*, cited above, § 50). It should also be noted that the Court has considered public broadcasters as non-governmental organisations even when they enjoyed less financial independence from the State, namely when their operation was financed by a special tax (see *Radio France and Others*, cited above, §§ 14 and 26).

119. Croatian Radio-Television does not have a monopoly over television or radio broadcasting and operates in a sector open to competition (see *Österreichischer Rundfunk*, § 52, and *Radio France and Others*, § 26, both cited above). While it is true that the applicant institution could rely on a method of financing which was not at the disposal of private broadcasters (see paragraph 63 above), the Court reiterates that, even where a public broadcaster is largely dependent on public resources for the financing of its activities, this is not considered to be a decisive criterion, while the fact that a public broadcaster is placed in a competitive environment is an important factor (see *Österreichischer Rundfunk*, cited above, § 52).

120. In view of the foregoing considerations, the Court finds that, although Croatian Radio-Television has been entrusted with a public-service mission (see paragraph 48 above) and depends to a considerable extent on the State for its financing (see paragraph 63 above), the Croatian legislature has devised a framework designed to guarantee its editorial independence and its institutional autonomy (compare *Radio France and Others*, § 26, and *Österreichischer Rundfunk*, § 53, both cited above). Therefore, it cannot be said that the applicant institution is under "government control" (see paragraph 106 above, and, *mutatis mutandis*, *Österreichischer Rundfunk*, cited above, § 51).

121. Consequently, Croatian Radio-Television qualifies as a "non-governmental organisation" within the meaning of Article 34 of the Convention and is therefore entitled to lodge an individual application with the Court.

III. ALLEGED VIOLATIONS OF ARTICLE 6 § 1 AND ARTICLE 14 OF THE CONVENTION ON ACCOUNT OF DIVERGENT CASE-LAW OF DOMESTIC COURTS

122. The applicant institution complained of the conflicting case-law of the domestic courts because in the twenty sets of civil proceedings in question the domestic courts had ruled against it, while in a number of other cases arising from the same set of facts they had ruled in its favour (see paragraphs 9-13 above). It also complained that, instead of harmonising the divergent case-law of the lower courts, the Supreme Court had itself become the source of uncertainty by declaring inadmissible or dismissing the applicant institution's extraordinary appeals on points of law in those twenty sets of civil proceedings, while allowing such appeals lodged in other similar cases (see paragraphs 18 and 24 above). The applicant institution relied on Article 6 § 1 of the Convention, taken alone and in conjunction with Article 14.

123. Being master of the characterisation to be given in law to the facts of the case (see *Guerra and Others v. Italy*, 19 February 1998, § 44, *Reports of Judgments and Decisions* 1998-I, and *Radomilja and Others v. Croatia* [GC], nos. 37685/10 and 22768/12, § 124, 20 March 2018), the Court finds that this complaint falls to be examined solely under Article 6 § 1 of the Convention. The relevant part of that Article reads as follows:

> "In the determination of his civil rights and obligations ... everyone is entitled to a fair ... hearing ... by [a] ... tribunal ..."

A. Admissibility

124. The Court notes that this complaint 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 institution

125. The applicant institution submitted, firstly, that under section 382(2) of the Civil Procedure Act parties were entitled to lodge an extraordinary appeal on points of law if a decision in the case depended on the resolution of a point of law which was important for ensuring the uniform application of the law (see paragraph 71 above). That provision also referred to some situations where a point of law was always considered to be of such importance, for example, where there was divergent case-law of the second-instance courts and the Supreme Court had not yet ruled on the point of law which was in dispute between them (ibid.).

126. In the present cases there had evidently been conflicting case-law of the second-instance courts (see paragraphs 9-13 above), which the applicant institution had stressed and provided examples of in each of its extraordinary appeals on points of law (see paragraph 15 above). The applicant institution could therefore have legitimately expected that the Supreme Court would accept its extraordinary appeals and rule on the merits of each case. Yet, the Supreme Court had in nineteen out of the twenty cases held that the point of law raised by the applicant institution had not been important for ensuring the uniform application of the law (see paragraph 18 above). As a result, the Supreme Court had in the present cases neglected its constitutional role as the court responsible for ensuring the uniform application of the law (it referred to Article 116 § 1 of the Croatian Constitution cited in paragraph 28 above).

127. Secondly, the applicant institution submitted that the Supreme Court had arbitrarily accepted certain extraordinary appeals on points of law lodged by the defendants even though they had not even satisfied the admissibility criteria for lodging that remedy. For example, in its decisions in cases nos. Rev-2800/15 of 3 November 2016 and Rev-1892/14 of 6 December 2017 (see paragraphs 24 above), the Supreme Court had of its own initiative raised a point of law, in the form of a question, which it had considered important for the uniform application of the law. It had done so even though the defendants had not posed any questions and thus had not properly raised any points of law in their extraordinary appeals, which was a formal requirement for the admissibility of that remedy. The Supreme Court had not applied the same approach in any of the cases brought by the applicant institution. It was difficult to discern what the reason for such a difference in treatment had been.

128. Likewise, in case no. Rev-650/14 (see paragraph 24 above), the Supreme Court had decided to examine the defendant's extraordinary appeal as an ordinary appeal on points of law, finding that the conditions set out in subparagraph 3 of section 382(1) of the Civil Procedure Act had been met, namely because the second-instance court had assessed the evidence and/or established the facts differently from the first-instance court (see paragraph 71 above). However, in similar cases where the second-instance court had assessed the evidence and/or established the facts differently from the first-instance court, the Supreme Court had refused to examine the applicant institution's extraordinary appeal as an ordinary appeal on points of law, for example in decision no. Rev-1283/2015-2 of 27 March 2019 (which was the subject of application no. 1939/20, see the appendix).

129. Thirdly, in reply to the Government's argument that the point of law raised in an extraordinary appeal on points of law had to be of a general nature (see paragraphs 134 and 136 below), the applicant institution maintained that in each of its extraordinary appeals it had formulated the point of law in such a way that the adopted legal view could be applied to all other unjust enrichment cases arising from A.K.'s conduct (see paragraphs 5 and 8 above).

130. Fourthly, the most drastic example of how the Supreme Court's case-law had been inconsistent was the fact that in some cases it had considered the points of law raised as being important for the uniform application of the law (decisions nos. Rev-300/14 of 13 March 2018 and Rev-2775/15 of 22 January 2019), whereas in other cases it had held that the very same points of law had not been of such importance (for example, in decision no. Rev-1102/16 of 20 March 2019, as well as decision no. Rev-1283/15 of 27 March 2019, which was the subject of application no. 1939/20 (see the appendix), as well as in many other cases which were the subject of the present applications). The Supreme Court had not provided any reasons for these discrepancies. It had therefore been difficult to discern whether it had consciously departed from its previous decisions and, if so, for what reasons.

131. The applicant institution argued that the inconsistencies in the case-law of the Supreme Court in the present cases were comparable to the situation in the *Vusić* case, where the Court had found a violation of Article 6 § 1 of the Convention (referring to *Vusić v. Croatia*, no. 48101/07, §§ 38-46, 1 July 2010).

132. For the reasons stated above, the Supreme Court had itself become the source of uncertainty and thus could not have consolidated the diverging case-law of the second-instance courts.

(b) The Government

133. The Government submitted that this complaint had to be examined in the light of the specific nature of extraordinary appeals on points of law – a remedy for harmonising case-law in Croatia.

134. The point of law raised in such an appeal had to be of a general nature, so that the legal view taken by the Supreme Court could be applied in future cases (see paragraph 18 above). At the same time, the point also had to be decisive for the case at hand. Thus, the point of law could only be raised in relation to the reasons underlying the lower courts' judgments.

135. The Supreme Court could not of its own motion examine a certain point of law; rather, it acted solely on the initiative of the parties and was limited by the points raised by them. In addition, the Supreme Court could not base its legal view in the case before it on the findings of fact from other cases, even if they all arose from the same event. Therefore, the harmonising of case-law by means of an extraordinary appeal on points of law was circumscribed by the points of law raised by the parties and by the findings underlying the lower courts' judgments. Those findings were in turn defined by the facts adduced and evidence put forward by the parties in each case.

136. All but one extraordinary appeal on points of law lodged by the applicant institution in the present cases had been declared inadmissible because the points of law raised had not been general in nature but had instead been based on the facts of each case (see paragraph 18 above).

137. The Government further submitted that all of the Supreme Court decisions in the civil proceedings for unjust enrichment instituted by the applicant institution because of A.K.'s conduct could be divided into two groups.

138. The first group concerned decisions in which the Supreme Court had decided on the merits of the extraordinary appeals on points of law lodged by the applicant institution and/or the defendants, having assessed that the parties had met the admissibility requirements for lodging that remedy (see paragraphs 17 and 24-26 above).

139. In those cases the Supreme Court had quashed the lower courts' judgments, having found that the lower courts had failed to establish all the key facts (see paragraphs 24-26 above), save for decision no. Rev-1660/13-2, in which it had upheld the judgments of the lower courts, holding that the relevant substantive law, namely section 1112 of the Obligations Act (see paragraph 73 above), had been correctly applied (see paragraph 17 above).

140. The second group concerned rulings in which the Supreme Court had declared inadmissible extraordinary appeals on points of law lodged by either party, having assessed that the parties had not met the admissibility requirements for lodging that remedy (see paragraphs 18 and 27 above). In each of those cases, the Supreme Court had given reasons as to why the admissibility requirements had not been met, which reasons did not disclose any arbitrariness.

141. Therefore, it could not be argued, as the applicant institution had done (see paragraphs 122 and 126-128 above), that the Supreme Court had issued contradictory decisions on extraordinary appeals on points of law and thereby contributed to legal uncertainty.

142. The Government also challenged the applicant institution's specific argument that in case no. Rev-2800/15 (see paragraphs 24 and 127 above) the Supreme Court had itself formulated a question concerning a point of law it considered important for the uniform application of the law even though the defendant had not raised that point in the form of a question, as required by that court's practice. The Government argued that in the reasoning of that decision the Supreme Court had stated that the defendant had "referred to several legal concepts in drafting the point of law". In addition, even though the Supreme Court had no right to go beyond the points raised, it could reduce them to their essence. In decisions nos. Rev-300/14, Rev-2775/15-2 and Rev-2877/14-2 (see paragraph 26 above), the Supreme Court had reduced the points raised in the extraordinary appeals on points of law lodged by the applicant institution to their essence, but had not itself formulated a different point of law from those raised.

143. Lastly, the Government rejected the applicant institution's similar argument that in case no. Rev-650/14 (see paragraph 24 above), the Supreme Court should have declared inadmissible the extraordinary appeal on points

of law because the defendant had not raised a point of law. In that case, the Supreme Court had found that the second-instance court had delivered its judgment in accordance with section 373a of the Civil Procedure Act, in which case an ordinary appeal on points of law was admissible (see section 382(1)(3) of that Act, cited in paragraph 71 above), and that remedy did not require parties to raise a point of law important for the uniform application of the law. The Supreme Court had also done so in decision no. Rev-2309/15 (see paragraph 26 above), in which it had examined the extraordinary appeal on points of law lodged by the applicant institution as an ordinary appeal on points of law.

2. The Court's assessment

144. The relevant principles regarding alleged violations of Article 6 § 1 of the Convention on account of divergent case-law of domestic courts are summarised in the cases of *Nejdet Şahin and Perihan Şahin v. Turkey* ([GC], no. 13279/05, §§ 49-58, 20 October 2011) and *Lupeni Greek Catholic Parish and Others v. Romania* ([GC], no. 76943/11, § 116, 29 November 2016 (extracts)).

145. In particular, when dealing with allegations concerning conflicting decisions of domestic courts, the Court must determine in the first place whether the allegedly conflicting decisions concerned identical factual situations (see *Nejdet Şahin and Perihan Şahin*, cited above, § 61). Where the facts are identical but the application of the law by a domestic court or courts differs, the Court must be guided in its examination of the issue by the following criteria: whether "profound and long-standing differences" exist, whether the domestic law provides for machinery for overcoming these inconsistencies, and whether that machinery has been applied and, if appropriate, to what effect (ibid., § 53).

146. The present applications concern twenty sets of civil proceedings for unjust enrichment instituted by the applicant institution against various individuals seeking to retrieve fees which an employee of its finance department, A.K., had paid them on behalf of the applicant institution for work they had never carried out (see paragraphs 5, 8 and 12 above). In all of the cases, in judgments adopted in the period between 15 January 2013 and 22 September 2015, the Zagreb County Court and the Pula County Court, as appellate courts, ruled against the applicant institution (see paragraph 13 above).

147. The applicant institution brought in total more than a hundred proceedings for unjust enrichment against persons who had received those payments. It submitted that all of those cases which had been examined on appeal by the Zagreb County Court or the Pula County Court had ended in favour of the defendants, whereas in all the other cases – which had been decided by other county courts – the courts had ruled in its favour (see paragraphs 8-9 above).

148. In the present cases it appears that the difference the applicant institution complained of resides not in the factual situations examined by the different domestic courts, which were identical as they all concerned unjust enrichment resulting from A.K.'s conduct, but in the application of the substantive law (see paragraphs 10-11 above). This was not contested by the Government.

149. In view of this, the Court finds that, admittedly territorial, differences in the case-law of the domestic courts existed at the time when the county courts in the present cases adopted their judgments, namely in the period between 15 January 2013 and 22 September 2015 (see paragraphs 13 and 147 above). It thus remains to be established whether the domestic law provides for machinery for overcoming those inconsistencies, whether that machinery has been applied and to what effect (see paragraph 145 above).

150. In this regard the Court notes that in a number of cases, starting with its decision in case no. Rev-2800/15-5 of 3 November 2016, the Supreme Court set out in detail the relevant legal issues that had to be examined in unjust enrichment cases resulting from A.K.'s conduct. Since the lower courts had not addressed those issues and had thus not established all the relevant facts, the Supreme Court remitted the cases to the first-instance courts, as it could not establish those facts itself (see paragraph 24 above).

151. Moreover, in one of the present cases the Supreme Court held that all the relevant facts had been established by the lower courts and ruled that the substantive law had been correctly applied (see paragraphs 16-17 above).

152. This means that the domestic law provided for machinery for overcoming the above-mentioned inconsistencies in the case-law of the second-instance courts (see paragraphs 146-149 above) and that this machinery was applied.

153. The applicant institution did not argue and there is nothing to suggest that the above-mentioned Supreme Court decisions (see paragraphs 24 and 150 above) did not have the desired consolidating effect for the case-law of the second-instance courts. On the contrary, information available to the Court suggests otherwise (see paragraph 25 above).

154. Lastly, the Court is aware that the second-instance decisions in the present cases were delivered in the period between 15 January 2013 and 22 September 2015 (see paragraphs 13 and 149 above), that is, before the Supreme Court provided guidelines as to how all similar unjust enrichment cases should be dealt with (see paragraph 150 above), and that therefore they could not have been decided in accordance with those guidelines. However, that fact is not sufficient in itself to violate the principle of legal certainty (see, for example, *Albu and Others v. Romania*, nos. 34796/09 and 63 others, §§ 40-41, 10 May 2012, and *Schwarzkopf and Taussik v. the Czech Republic* (dec.), no. 42162/02, 2 December 2008).

155. In view of the above considerations, the Court does not attach particular importance to the alleged inconsistences in the case-law of the

Supreme Court itself, which were strongly emphasised by the applicant institution (see paragraphs 127-128 and 130 above), and which do not concern the application of substantive law rules on unjust enrichment but admissibility criteria for lodging an extraordinary appeal on points of law. Specifically, those alleged inconsistencies concern the assessment of whether a certain point of law is important for the uniform application of the law, that is, a statutory criterion linked to the public role of the Supreme Court in the application of which that court, in the nature of things, must enjoy a wide discretion.

156. In any event, the Court considers that, once the Supreme Court has provided relevant guidelines as to how a certain group of similar cases should be dealt with to achieve the uniform application of the law, it does not have to do so in every future such case (see the opinion cited in paragraph 77 above which suggests that the responsibility of supreme courts to ensure and maintain the uniformity of the case-law should not be understood as the supreme court being required to intervene as often as possible, and that the existence of conflicting judgments of lower courts cannot be cured simply by providing for unrestricted access to a supreme court).

157. There has accordingly been no violation of Article 6 § 1 of the Convention on account of divergent case-law.

IV. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION ON ACCOUNT OF THE LACK OF ACCESS TO A COURT

158. The applicant institution further complained, also under Article 6 § 1 of the Convention, about the Constitutional Court's decisions to declare inadmissible its constitutional complaints.

1. The parties' submissions

(a) The Government

159. The Government submitted that at the beginning of 2019 the Constitutional Court had extended its new, more restrictive, approach as regards the *locus standi* of public entities before that court to the applicant institution (see paragraph 20 above) and had consistently followed it since then. The resultant restriction had pursued the legitimate aim of preventing various public entities which were closely connected with the State to act as complainants and bearers of the constitutional rights, it being understood that the State was the guarantor of the human rights enshrined in the Constitution and thus could not at the same time be their holder. The restriction in question was proportionate to that aim because the access to a court of such entities, including the applicant institution, was secured before at least two levels of ordinary courts.

(b) The applicant institution

160. The applicant institution submitted that the Constitutional Court's new and restrictive approach as regards the *locus standi* of public entities had completely denied it access to that court. That approach had been based on the Court's case-law which the Constitutional Court had misunderstood and interpreted too extensively, as the applicant institution had explained in its submissions concerning its *locus standi* before the Court (see paragraphs 94-97 above).

2. The Court's assessment

161. The relevant principles emerging from the Court's case-law concerning the right of access to a court and, in particular, access to superior courts, are summarised in *Zubac v. Croatia* [GC], no. 40160/12, §§ 76-86, 5 April 2018. In particular, the right of access to courts is not absolute but may be subject to limitations, which must not restrict the access left to the individual in such a way or to such an extent that the very essence of the right is impaired (ibid., § 78).

162. The Court notes that section 72 of the Constitutional Court Act allows the Constitutional Court to declare inadmissible constitutional complaints lodged by legal entities which cannot be holders of constitutional rights (see paragraph 70 above). Relying on that provision the Constitutional Court declared inadmissible the applicant institution's constitutional complaints because it considered that Croatian Radio-Television was so closely organisationally and functionally connected with the State that it could not be considered as a bearer of the rights guaranteed by the Croatian Constitution and thus did not have standing to lodge a constitutional complaint (see paragraphs 19-20 above).

163. While the Court has found that the applicant institution is a non-governmental organisation within the meaning of Article 34 of the Convention (see paragraphs 98-121 above), thus having *locus standi* to lodge an application with the Court, this does not mean that the Constitutional Court should follow the same criteria when granting or restricting access to it. As already noted above (see paragraph 108), the conditions governing individual applications under the Convention are not necessarily the same as national criteria relating to *locus standi*. National rules in this respect may serve purposes different from those contemplated by Article 34 and, while those purposes may sometimes be analogous, they need not always be so (see *A.K. and L. v. Croatia*, cited above, § 46, and *Norris*, cited above, § 31).

164. It is not for the Court to question the interpretation by the Constitutional Court of the admissibility criteria for lodging constitutional complaints, which is a matter in the sole domain of that court (see, for example, *Janković and Others v. Croatia* (dec.), no. 23244/16 and 4 others, 21 September 2021, and the cases cited therein), but rather to ascertain

whether the effects of such an interpretation are compatible with the Convention (see *Zubac*, cited above, § 81). In so doing, regard should be had to the domestic proceedings as a whole and to the role played in them by the Constitutional Court, it being understood that the conditions for the admissibility of constitutional complaints may be stricter than for ordinary appeals (see, for example, *Arrozpide Sarasola and Others v. Spain*, nos. 65101/16 and 2 others, § 99, 23 October 2018).

165. Having regard to the proceedings as a whole, the Court notes that the applicant institution's cases were examined on the merits at two levels of court with full jurisdiction. Thus, it cannot be argued that the Constitutional Court declaring its constitutional complaints inadmissible restricted the applicant institution's right of access to a court in such a way or to such an extent that the very essence of the right was impaired.

166. It follows that this complaint is inadmissible under Article 35 § 3 (a) of the Convention as manifestly ill-founded and must be rejected pursuant to Article 35 § 4 thereof.

FOR THESE REASONS, THE COURT

1. *Decides*, unanimously, to join the applications;

2. *Declares*, by a majority, the complaint concerning the divergent case-law admissible;

3. *Declares*, unanimously, the remainder of the applications inadmissible;

4. *Holds*, unanimously, that there has been no violation of Article 6 § 1 of the Convention.

Done in English, and notified in writing on 2 March 2023, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Renata Degener Registrar	Marko Bošnjak President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the separate opinion of Judges Paczolay, Wojtyczek and Poláčková is annexed to this judgment.

M.B.
R.D.

JOINT PARTLY DISSENTING OPINION OF JUDGES PACZOLAY, WOJTYCZEK AND POLÁČKOVÁ

1. We respectfully disagree with the view that the complaint concerning divergent case-law is admissible. In our view, the applicant company does not have *locus standi* in the instant case.

2. The point of departure is the power of the State to define the organisation of its apparatus and different public services. The State may freely create entities providing public services, define their status, in particular the level of their autonomy, the scope of the formal guarantees for this autonomy and the extent to which they operate on a market. The State may decide to create entities without any autonomy, with wide autonomy, or with limited autonomy. It may decide that a specific entity will enjoy no fundamental rights, or a wide scope of fundamental rights, or only some specifically enumerated fundamental rights but not other rights. In these cases, the respective public entities derive their status from the decision of the State not from any nature pre-existing the State decision. The State may decide to place an entity outside the personal scope of fundamental rights. It may create and abolish State entities or modify their status. In particular, it may decide that some fundamental rights discretionarily granted to an entity in the past will no longer apply to such entity.

3. The majority rely on the existing case law concerning public radio and television companies (*Radio France and Others v. France* (dec.), no. 53984/00, ECHR 2003-X (extracts); *Österreichischer Rundfunk v. Austria*, no. 35841/02, 7 December 2006; *MacKay and BBC Scotland v. the United Kingdom*, no. 10734/05, 7 December 2010; *Schweizerische Radio- und Fernsehgesellschaft SRG v. Switzerland*, no. 34124/06, 21 June 2012; and *Schweizerische Radio- und Fernsehgesellschaft and publisuisse SA v. Switzerland*, no. 41723/14, 22 December 2020). If we understand this approach correctly, as endorsed and developed by the majority, the Convention sets forth limitations upon State power in defining its own structure. The State may create entities placed under Governmental control which are not holders of Convention rights. The State may also create entities with guarantees of autonomy and operating on the market. In this latter case, the entity automatically becomes a holder of Convention rights. The State is not empowered to extract such entities from the scope of protection of the Convention by creating entities which, while being autonomous and operating on the market, are not holders of Convention rights. Thus the Convention enters to some extent the domain of State internal organisation and governs the status of some State entities, whether the State decided to institute them as holders of Convention rights or not.

4. In our view, the Convention system is based *inter alia* on the implicit distinction between institutional autonomy and Convention rights and

freedoms. The two are mutually exclusive. Convention rights and freedoms belong to individuals and their groups, whereas institutional autonomy may be granted to State organs or other State or public law entities.

The status of Convention right-holder stems from the nature of an entity as a grouping of individuals and derives ultimately from human nature and human dignity. The status of Convention right-holder has to be respected by the State, it cannot be denied or withdrawn and it is not gradable. It encompasses the protection of the existence of the right-holder. The notion of human rights and fundamental freedom holders denotes separation from the State.

Institutional autonomy stems from the decision of the State and is gradable. It is matter of choosing the optimal State organisation for the purpose of best serving the citizen. Autonomy may be granted in a discretionary way by the State, which freely defines its scope and the relevant guarantees. It is not granted in the interest of the entity providing the service but in the interests of the persons to whom the entity will provide its services and this autonomy is instrumental to those interests. The very notion of institutional autonomy points to an indissoluble link with the State.

Holders of Convention rights do not need any institutional autonomy because such rights are much stronger, whereas entities with institutional autonomy cannot have Convention rights because of the existing indissoluble link with the State.

5. The approach adopted by the majority blurs the distinction between institutional autonomy and Convention rights and establishes a necessary link between the institutional autonomy granted to an entity and the status of Convention right-holder. Under this approach, institutional autonomy granted to entities operating on the market cannot be disconnected from the status of Convention right-holder. The Convention automatically converts institutional autonomy into a fundamental human right which can be invoked against the State. The Convention thus becomes an instrument protecting, without distinction, fundamentally different legal positions: rights and freedoms anchored in human dignity, principles of State organisation, empowerments granted to State bodies, relations between various State bodies, and so forth. As a result, fundamental human rights stemming from human dignity are diluted in a legal cocktail which becomes indigestible.

6. In the instant case, the respondent State decided to create a public radio and television company with some institutional autonomy and formal guarantees for this autonomy. At the same time, there are no clear indications that the State decided to institute this company as a holder of at least some constitutional rights, or at least some Convention rights. We further note that private radio and TV broadcasters enjoy broad freedom of expression and can in principle choose and change their political engagements and orientation. This freedom of choice belongs to the core of freedom of expression. The applicant company is bound by detailed guidelines regulating the content of

broadcasts and thus excluding such freedom of choice and interfering with the very core of the Convention freedom.

In our view, there are no sufficient reasons to contest the choice made by the respondent State in so regulating the status of the applicant company and to extend to it the scope of application of the Convention.

7. To sum up: how is it possible that a legal entity created by the State to serve citizens by providing services to them, owned by the State, and whose legal status has been defined by the State and can be redefined by the State, can have human rights protected by the Convention?

APPENDIX

List of cases:

No.	Application no.	Case name	Lodged on
1.	52132/19	Croatian Radio-Television v. Croatia	27/09/2019
2.	62085/19	Croatian Radio-Television v. Croatia	18/11/2019
3.	62358/19	Croatian Radio-Television v. Croatia	25/11/2019
4.	62941/19	Croatian Radio-Television v. Croatia	27/11/2019
5.	822/20	Croatian Radio-Television v. Croatia	19/12/2019
6.	1273/20	Croatian Radio-Television v. Croatia	23/12/2019
7.	1289/20	Croatian Radio-Television v. Croatia	23/12/2019
8.	1933/20	Croatian Radio-Television v. Croatia	23/12/2019
9.	1935/20	Croatian Radio-Television v. Croatia	02/01/2020
10.	1939/20	Croatian Radio-Television v. Croatia	02/01/2020
11.	1941/20	Croatian Radio-Television v. Croatia	02/01/2020
12.	1963/20	Croatian Radio-Television v. Croatia	02/01/2020
13.	1964/20	Croatian Radio-Television v. Croatia	02/01/2020
14.	1965/20	Croatian Radio-Television v. Croatia	02/01/2020
15.	1967/20	Croatian Radio-Television v. Croatia	02/01/2020
16.	3208/20	Croatian Radio-Television v. Croatia	27/12/2019

No.	Application no.	Case name	Lodged on
17.	3275/20	Croatian Radio-Television v. Croatia	16/12/2019
18.	9566/20	Croatian Radio-Television v. Croatia	12/02/2020
19.	10338/20	Croatian Radio-Television v. Croatia	14/02/2020
20.	10570/20	Croatian Radio-Television v. Croatia	13/02/2020