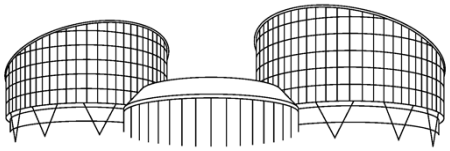

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

THIRD SECTION

CASE OF MARINA AUCANADA GROUP S.L. v. SPAIN

(Application no. 7567/19)

JUDGMENT

Art 6 § 1 (administrative) • Access to court • Lack of personal summoning of applicant company in context of judicial proceedings concerning annulment of a decision announcing a public tender • Publication of public notice in the Official Gazette constituting sufficient notice of proceedings in the circumstances • Applicant company failing to act with necessary diligence to keep informed of procedural developments

STRASBOURG

8 November 2022

FINAL

08/02/2023

This judgment has become final under Article 44 § 2 of the Convention.
It may be subject to editorial revision.

In the case of Marina Aucanada Group S.L. v. Spain,

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

Georges Ravarani, *President,*
Georgios A. Serghides,
María Elósegui,
Darian Pavli,
Anja Seibert-Fohr,
Andreas Zünd,
Frédéric Krenc, *judges,*
and Olga Chernishova, *Deputy Section Registrar,*

Having regard to:

the application (no. 7567/19) against the Kingdom of Spain lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a company registered under Spanish law, Marina Aucanada Group S.L. ("the applicant company"), on 28 January 2019;

the decision to give notice to the Spanish Government ("the Government") of the complaints concerning Article 6 § 1;

the parties' observations;

Having deliberated in private on 4 October 2022,

Delivers the following judgment, which was adopted on that date:

INTRODUCTION

1. The application concerns the applicant company's complaint that it was not directly served with a summons in the context of judicial administrative proceedings concerning the annulment of a decision announcing a public call for tenders.

THE FACTS

2. The applicant is a limited liability company registered on 15 April 2015 in Madrid. It was represented before the Court by Mr A.J. Hernández del Castillo, a lawyer practising in Malaga, and by Mr J.L. Almazan Garate, a lawyer practising in Madrid.

3. The Government were represented by their co-Agent, Mr L.E. Vacas Chalfourn, State Attorney.

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

5. On 4 February 2015 the Port Authority of the Balearic Islands (*Autoridad Portuaria de las Islas Baleares*) published its decision dated 22 January 2015 (EM 720) announcing a call for tenders for the management of moorings on the dock of the old Port of Alcúdia (Mallorca). According to the terms of the call for tenders, it related to the exploitation of a zone in the

port's public area, which included a water mirror as well as a land area with existing buildings and roads. The operation would take place by means of an administrative concession for the occupation of the public area and the authorisation to provide various commercial services.

6. At a plenary meeting held on 18 and 19 February 2015, the Alcúdia City Council ("the City Council") concluded that the call for tenders infringed an agreement signed in 2004 between the Port Authority and the City Council in so far as it affected certain buildings over which the City Council had acquired occupation rights on the basis of that agreement.

7. On 7 April 2015 the City Council brought judicial administrative proceedings (no. 113/2015) before the High Court of the Balearic Islands (*Tribunal Superior de Justicia de las Islas Baleares* – hereinafter "the High Court") against the Port Authority's decision of 22 January 2015, seeking its annulment.

8. On 20 April 2015 the judicial administrative proceedings brought by the City Council were declared admissible. At the same time the High Court requested that the Port Authority provide it with the administrative file in respect of the contested decision of 22 January 2015 and ordered that the file should also be provided "to any interested party" within five days, so that they could take part in the proceedings as interested parties within nine days.

9. The case was followed by the local press, which published several articles (on 20 February and 24 April 2015, among other occasions) mentioning the call for tenders and the judicial administrative proceedings.

10. As the public call for tenders was still ongoing, on 5 May 2015 the applicant company submitted a tender to the Registry of the Port Authority. On 18 May 2015 the applicant company's tender and three others were accepted for consideration (*apertura de plicas*).

11. In the meantime, on 7 May 2015, following the instructions of the High Court and relying on section 49 of Law 29/1998 of 13 July 1998 regulating judicial procedure in administrative matters (*Ley reguladora de la Jurisdicción Contencioso-administrativa*) and section 59 of Law 30/1992 on the rules governing public administrations and the common administrative procedure, the Port Authority published a public notice (*edicto*) in the Official Gazette of the Balearic Islands dated 27 April 2015 giving information about the proceedings and calling for any interested parties to take part in them. None of the three tenderers was directly served with a summons at that time or at a later date. On 24 June 2015 the Port Authority submitted the administrative file requested by the High Court.

12. A press article dated 8 June 2015 expressly mentioned that the call for tenders had been subject to a judicial administrative appeal by the City Council contesting the tender procedure, and it listed the applicant company as one of the tenderers.

13. On 13 July 2015 the City Council requested the suspension of the call for tenders as a precautionary measure while the judicial administrative

proceedings were pending. On 3 September 2015 the Port Authority raised objections to the interim suspension, stating that the tender proceedings had already begun, the sealed tenders had been opened and three tenders were already under consideration. The minutes of the meeting of 18 May 2015 (see paragraph 10 above) showing that the tenders had been submitted and identifying the tenderers were added to the case file. The Port Authority concluded its objections by stating that there was no reason to suspend the tender procedure, as any third party's rights that might have existed had already been affected and the suspension of the procedure would only cause greater prejudice to all parties.

14. On 18 May 2016, while judicial administrative proceedings no. 113/2015 were still pending, the Board of Directors of the Port Authority selected the applicant company's tender as the most advantageous. That decision was the subject of several objections by another tenderer, M., which brought judicial administrative proceedings (no. 27/2017) on that account. In the context of those proceedings, the applicant company requested access to the file containing the decision to announce the call for tenders in order to contest the application lodged by M., and it was granted access to that file on 29 November 2016. Judicial administrative file no. 113/2015 regarding the proceedings brought by the City Council seeking the annulment of the decision for the call for tenders was also included in the file.

15. In the meantime, several press articles dated 20 May and 14 June 2016 mentioned that the applicant company's tender had been successful although the judicial administrative proceedings brought by the City Council against the call for tenders were still pending.

16. On 31 March 2017 the High Court upheld the City Council's complaint, finding that the public call for tenders violated prior undertakings entered into by the Port Authority and the City Council. The call for tenders and other secondary acts were declared null and void.

17. On 20 April 2017 the applicant company lodged an application for leave to intervene in judicial administrative proceedings no. 113/2015 regarding the cancelled call for tenders and requested leave to be joined as an interested party in order to be able to appeal against the judgment of the High Court. The applicant company stated that it had only learned about those proceedings through the press.

18. On 11 October 2017 the applicant company lodged a cassation appeal with the Supreme Court against the High Court's judgment (see paragraph 16 above). The applicant company submitted that the obligation to summon interested parties as provided for in section 49 of the Law regulating judicial procedure in administrative matters required interested parties to be directly served with summonses to appear and requested that the Supreme Court examine the merits of the case.

19. On 17 April 2018 the Supreme Court found that the publication of the public notice in the Official Gazette had complied with the requirements of

section 49 of the Law regulating judicial procedure in administrative matters and dismissed the applicant company's appeal. The Supreme Court held that there was nothing preventing a party which *ex post facto* had acquired a legitimate interest from appearing in the proceedings. The appeal was rejected without an examination on the merits.

20. On 23 May 2018 the applicant company lodged a plea of nullity (*incidente de nulidad*) with the High Court, maintaining that it had not been directly served with a summons. The High Court declared the plea inadmissible on 14 June 2018, holding that the publication of the notice in the Official Gazette was sufficient in view of the requirements of section 49 of the Law regulating judicial procedure in administrative matters and that therefore the obligation to summon interested parties had been complied with.

21. The applicant company lodged an *amparo* appeal with the Constitutional Court on 26 July 2018 complaining that its right to be directly summoned to take part in the proceedings had been breached and arguing that the identity of the interested parties had been known to both the administrative authorities and the domestic courts. None of them had informed the applicant company about the progress of the pending judicial administrative proceedings, even though it had been successful in the call for tenders before any judgment had been given. The applicant company asserted that its right to a fair hearing had been violated. On 18 December 2018 the Constitutional Court declared inadmissible the *amparo* appeal on the grounds that the grievances lacked constitutional relevance.

22. On 27 February 2019 the Board of Directors of the Port Authority executed the judgment of 31 March 2017 (see paragraph 16 above) and cancelled the concession while simultaneously approving the conditions for a new administrative concession for a fixed term of twenty-five years. That decision was appealed against by the City Council, which opened new judicial administrative proceedings in which the applicant company was joined as a co-defendant.

23. On 18 September 2020, the applicant company brought a liability claim seeking damages from the Port Authority.

RELEVANT LEGAL FRAMEWORK

24. The relevant provision of the Spanish Constitution reads as follows:

Article 24 § 1

> "Every person has the right to obtain the effective protection of the judges and the courts in the exercise of his or her legitimate rights and interests, and in no case may he or she go undefended."

25. The relevant provision of Law 29/1998 of 13 July 1998 regulating judicial procedure in administrative matters (*Ley Reguladora de la Jurisdicción Contencioso-Administrativa*) reads as follows:

Section 49

"1. Notice of a decision ordering an administrative file to be sent to the court shall be given, within five days, to anyone who might appear to have an interest in the administrative proceedings, together with a summons to appear before the court as defendants within nine days. This notification shall be served in accordance with the rules regulating the ordinary administrative procedure.

...

2. Once the notifications have been served, the administrative file shall be sent to the court along with proof of the receipt of the summonses, unless they could not be served before the deadline for the submission of the administrative file, in which case the file shall be sent without delay and proof of the receipt of the summonses shall be sent to the court once they have been served.

3. Upon receipt of the administrative file, the registrar, in examining the file, the complaint and the appended documents, shall verify that the requisite summonses have been served, and if not, shall order the administrative authorities to take the necessary steps to ensure the defence of all interested parties that are identifiable.

4. If a summons cannot be served at the address included in the file, the registrar shall order the publication of a notice [*edicto*] in the corresponding Official Gazette, taking into account the territorial jurisdiction of the administrative body that gave the decision complained of. Those summoned by means of such a notice may appear in the judicial proceedings up to the point at which they are supposed to be called to respond to the complaint.

..."

26. The relevant provisions of Law 30/1992 of 26 November 1992 on the rules governing public authorities and the common administrative procedure (*Ley de Régimen Jurídico de las Administraciones Públicas y del Procedimiento Administrativo Común*), as in force at the relevant time, read as follows:

Section 31. Definition of an interested party

"1. The following shall be considered interested parties in administrative proceedings:

(a) those initiating the proceedings as holders of individual or collective rights or legitimate interests;

(b) those who, without having initiated the proceedings, have rights that may be affected by the decision adopted therein;

(c) those whose legitimate interests, whether individual or collective, may be affected by the decision and appear during the proceedings, as long as a final decision has not yet been delivered.

... "

Section 58. Notification

"1. The interested parties shall be notified of administrative decisions and acts affecting their rights and interests in accordance with the provisions set out in this section.

2. All notifications shall be sent within ten days of the date on which the act was issued and shall contain the full text of the decision, indicating whether or not it has final effect in respect of the administrative proceedings, and whether any appeals may be lodged, the body before which they must be lodged and the time-limit for lodging them, without prejudice to the interested parties being able to pursue any other remedy which they deem appropriate.

3. Notifications containing the full text of the act that omit any of the other requirements set out in the previous subsection shall take effect from the date on which the interested party carries out any actions that entail knowledge of the content and scope of the decision or act that is the subject of the notification or decision or lodges any appropriate appeal.

4. Without prejudice to the provisions of the previous subsection, and for the sole purpose of considering that the obligation to notify [the interested parties] of the proceedings within the time-limit has been fulfilled, a notification containing at least the full text of the decision, as well as a duly certified attempt at notification, shall be sufficient."

Section 59. Serving of the notification

"1. Notifications shall be served using any means which make it possible to establish receipt by the interested party or its representative, as well as the date, identity and contents of the act of which notification is given.

Proof of the notification having been served shall be incorporated in the file.

2. In proceedings initiated at the request of an interested party, the notification shall be served at the place it has indicated for that purpose in the application. When this is not possible, it shall be served at any location deemed appropriate for that purpose and by any means pursuant to the provisions in subsection 1 of this section.

...

3. (Repealed)

4. When an interested party or its representative rejects the notification of an administrative action, a record of the rejection shall be placed in the file, specifying the circumstances of the notification attempt; the process shall be deemed to have been fulfilled and the proceedings shall continue.

5. When the interested parties to proceedings are unknown, the place of notification or the means referred to in subsection 1 of this section are not known or there has been an unsuccessful attempt to serve the notification, the notification shall be carried out by means of a notice published in the Official State Gazette [*Boletín Oficial del Estado*].

Likewise, beforehand and on an optional basis, the administrative authorities may publish a notice in the official gazette of the Autonomous Community or province, on the notice board of the town council of the last known address of the interested party or of the consulate or consular section of the corresponding embassy, or on the notice boards referred to in section 12 of Law 11/2007 of 22 June on electronic access by citizens to public services.

The public authorities may establish complementary forms of notification through other means of dissemination, which shall not exclude the obligation to publish the corresponding notice in the Official State Gazette.

6. Publication under the terms of the following section shall replace notification and have the same effects in the following circumstances:

(a) when the act is addressed to an indeterminate plurality of parties or when the authorities consider that the notification served on a single interested party is insufficient to guarantee notification to all, [publication] being, in the latter circumstance, supplemental to the notification served;

(b) in the case of acts that form part of a selective or competitive procedure of any kind; in such case the notice of the procedure shall indicate the notice board or other means of communication to be used for the publication of successive notices, and any notices published in other places shall not be valid."

Section 60. Publication

"1. Administrative acts shall be published when provided by the rules regulating each procedure or when this is advisable, according to the competent body, for public-interest reasons.

2. The publication of an act shall include the same elements as those required for notifications as provided in section 58(2). The provisions of section 58(3) shall also apply to such publication.

When acts containing common elements are to be published, the corresponding aspects may be published jointly, with only the individual aspects of each act being specified."

THE LAW

ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION

27. The applicant company complained that it had not been served with a summons to intervene in judicial proceedings that affected its rights. It alleged a breach of Article 6 § 1 of the Convention, the relevant part of which reads as follows:

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

A. Admissibility

1. The Government's submissions

28. The Government contended that the applicant company was not a victim under Article 34 of the Convention of the alleged violation in so far as it had voluntarily chosen to disregard the judicial proceedings, whose existence had been known to it. It had suffered no significant disadvantage as defined in Article 34 § 3 (b) of the Convention in so far as its submissions in the main proceedings would not have affected their result, as the call for tenders had been cancelled for legal reasons which the applicant company could not have prevented. Therefore, the complaint should be declared inadmissible.

2. The applicant company's submissions

29. The applicant company contested the Government's arguments, submitting that the grounds of inadmissibility relied on by the Government could not be determined without examining the substance of the case.

3. The Court's assessment

30. The Court notes that the Government did not contest the applicability of Article 6 § 1 to the proceedings in question. However, since this is a matter which goes to the Court's jurisdiction, the Court has to examine it of its own motion (see *Blečić v. Croatia* [GC], no. 59532/00, § 67, ECHR 2006 III, and *Nylund v. Finland* (dec.), no. 27110/95, 29 June 1999).

31. The Court notes that the proceedings at issue concern an administrative dispute between two public authorities, namely the City Council and the Port Authority, in which the former asked that the latter's decision announcing a call for tenders be declared null and void. Even though the applicant company was not a party to those proceedings, it had an interest in them. While the proceedings were still pending, the applicant company submitted a tender to the Registry of the Port Authority which was accepted for consideration (see paragraph 10 above), and its tender was selected as the most advantageous (see paragraph 14 above).

32. It was thus conferred a civil right. Further to this, the Supreme court recognised that the applicant company had *ex post facto* acquired a legitimate interest to appeal in the proceedings (see paragraph 19 above).

33. The Court has already held that participants in public tenders enjoyed procedural guarantees under Article 6 § 1 of the Convention on condition that the advantage or privilege, once granted, gives rise to a civil right (see *Mirovni Inštitut v. Slovenia*, no. 32303/13, §§ 28 and 29, 13 March 2018, relying on *Regner v. the Czech Republic* [GC], no. 35289/11, § 105, 19 September 2017). Given the above considerations, the Court sees no reason to hold otherwise in the present case. It follows that Article 6 § 1 is applicable.

34. As to the Government's preliminary objections concerning the applicant company's victim status and whether it suffered a significant disadvantage, the Court considers that they are so closely related to the substance of the applicant company's complaint that it is appropriate to examine them together with the merits of the case. The Court further notes that the application is neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. It must therefore be declared admissible.

B. Merits

1. The applicant company's submissions

35. The applicant company submitted that the Government's claim that it had known about the proceedings at issue was based on mere conjecture, and that it had never received any formal service or notification of the proceedings. As the service of summons was a procedural right, external circumstances, such as press coverage, should have had no bearing on the matter. The applicant company argued that it could not be guaranteed that its intervention in the proceedings would have been fruitless, that also being mere conjecture on the Government's part, as was the Government's allegation that the applicant company could have consulted judicial administrative file no. 113/2015 concerning the proceedings brought by the City Council seeking the cancellation of the call for tenders (see paragraph 14 above).

36. The applicant company contended that, in not notifying it of the proceedings initiated by the City Council contesting the public tender procedure, the respondent State had violated its right to a court, as enshrined in Article 6 § 1 of the Convention.

2. The Government's submissions

37. The Government submitted that the applicant company had been aware of the judicial administrative proceedings but had voluntarily chosen to disregard them until the High Court had given a ruling against the applicant company's own interests. In particular, the applicant company had been informed of the pending proceedings through the publication of the public notice of 27 April 2015 in the Official Gazette dated 7 May 2015 (see paragraph 11 above), in accordance with domestic law. Furthermore, the applicant company had known of the proceedings because they had been extensively covered by the local press, as demonstrated by the documents provided (see paragraphs 9, 12 and 15 above). Lastly, on 29 November 2016 the applicant company had consulted the file on judicial administrative proceedings brought by another tenderer contesting the selection of the applicant company's tender, and that file had contained several references and documents concerning the proceedings to which the present complaint related (see paragraph 14 above). Thus, the applicant company itself had been responsible for the situation complained of and could have prevented it by simply appearing in the High Court proceedings.

38. The Government further argued that the result of the judicial administrative proceedings would have been the same whether the applicant company had participated in them or not, as the call for tenders had been cancelled for legal reasons which the applicant company could not have prevented.

3. The Court's assessment

(a) General principles

39. The relevant principles regarding the right of access to a court have been summarised in *Zubac v. Croatia* ([GC], no. 40160/12, §§ 76-78, 5 April 2018). The Court stresses that the right of access to a court may be subject to limitations, which, however, 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. Furthermore, a limitation will not be compatible with Article 6 § 1 if it does not pursue a legitimate aim and if there is not a reasonable relationship of proportionality between the means employed and the aim sought to be achieved (ibid., § 78). The right of access to a court is impaired when the rules cease to serve the aims of legal certainty and the proper administration of justice and form a sort of barrier preventing the litigant from having his or her case determined on the merits by the competent court (see *Kart v. Turkey* [GC], no. 8917/05, § 79, ECHR 2009 (extracts), and *Arrozpide Sarasola and Others v. Spain*, nos. 65101/16 and 2 others, § 98, 23 October 2018).

40. Concerning the matter of the notification of administrative and judicial decisions, the relevant principles set out by the Court were recently summarised in *Stichting Landgoed Steenbergen and Others v. the Netherlands* (no. 19732/17, §§ 42-45, 16 February 2021), which referred to *Naït-Liman v. Switzerland* ([GC], no. 51357/07, §§ 112-16, 15 March 2018, among many other authorities).

41. The Court has held, in particular, that the right of access to a court under Article 6 § 1 of the Convention entails the entitlement to receive adequate notification of administrative and judicial decisions, which is of particular importance in cases where an appeal may be sought within a specified time-limit (see, *mutatis mutandis*, *Šild v. Slovenia* (dec.), no. 59284/08, § 30, 17 September 2013).

42. It is not for the Court to determine the manner in which notifications of the type at issue are to be published; however, where an appeal lies against a decision by an administrative authority which may be to the detriment of directly affected third parties, a system needs to be in place enabling those parties to take cognisance of such a decision in a timely fashion. Consequently, the decision, or relevant information about it, should be made available in a predetermined and publicised manner that is easily accessible to all potentially directly affected third parties (see *Stichting Landgoed Steenbergen and Others*, cited above, § 47).

43. The Court has frequently determined the proportionality issue by identifying the procedural errors which occurred during the proceedings which eventually prevented the applicant from enjoying access to a court and by deciding whether the applicant was made to bear an excessive burden in respect of such errors. Where the procedural error in question occurred only

on one side, that of the applicant or the relevant authorities, notably the court(s), as the case may be, the Court would normally be inclined to place the burden on the one who has produced it. Where procedural errors have occurred both on the side of the applicant and that of the relevant authorities, the following considerations should instruct the Court's decision on whom the burden should lie: whether the applicant was represented and whether the applicant or his legal representative displayed the requisite diligence; whether the errors could have been avoided form the outset; and whether the errors are mainly or objectively attributable to the applicant or to the relevant authorities (see *Zubac*, cited above, §§ 90-95, with further references).

(b) Application of those principles in the present case

44. The parties are in agreement that the applicant company was at no point in time notified directly about the administrative proceedings as an interested party (see paragraphs 8 and 11 above).

45. The heart of the matter is whether the publication of the public notice in the Official Gazette and a number of other factual circumstances may allow the Court to conclude that there was a coherent system in place that struck a fair balance between the interests of the authorities and of the interested persons. Such a system must afford the latter a clear, practical and effective opportunity to challenge administrative acts, as is the case with the publication of a public notice in the Official Gazette (see *Geffre v. France* (dec.), no. 51307/99, ECHR 2003-I (extracts); and *Stichting Landgoed Steenbergen*, cited above, § 53) and information given in the local press. Whereas arrangements of this kind proved sufficient in the two cases cited above, in cases, such as the present one, where the interested parties' identities are fully available, that conclusion must be reconsidered.

46. In the case at hand, the Court has no reason to doubt that the applicant company was an "interested party" in the public proceedings at issue, as it was ultimately successful in the tender procedure. Moreover, the identity of the applicant company was accessible and there was sufficient information to enable the administrative authorities and the courts to identify it as an interested party (see *Aparicio Navarro Reverter and García San Miguel Y Orueta v. Spain*, no. 39433/11, § 40, 10 January 2017). Even though when the administrative process started on 20 April 2015, the applicant company had not yet submitted its tender, the High Court of the Balearic Islands could have submitted a new notification to the three companies which participated in the tender, including the applicant which submitted its tender in a sealed envelope to the Registry of the Port Authority on 5 May 2015.

47. In so far as the public notice is concerned, the Court observes that the Port Authority signed it on 27 April 2015. It was published on 7 May 2015 in the Official Gazette of the Balearic Islands and contained information about the proceedings at issue, calling for any interested parties to take part in them. The applicant company submitted its tender bid in a sealed envelope to the

Registry of the Port Authority on 5 May 2015 and its bid was accepted for consideration on 18 May 2015, the date on which the envelope containing the specific data identifying the applicant company was opened (see paragraph 10 above). Therefore, when the Port Authority signed the public notice on 27 April 2015, it could not have known that the applicant company would become an interested party. Thus, when the serving of the summonses was ordered by the High Court of the Balearic Islands on 20 April 2015, there was insufficient information in the file to allow the authorities and the courts to identify the interested parties in the above-mentioned administrative proceedings (contrast *Aparicio Navarro Reverter and García San Miguel Y Orueta*, cited above, §§ 39-42 and 45).

48. Section 49 of Law 29/1998 sets out the substantive and time-related terms of the obligation to summon the interested parties. It states that such an obligation on the part of the courts is limited to "anyone who might appear to have an interest in the administrative proceedings". It follows that it does not impose a strict legal requirement on the administrative authorities to summon all those who might later turn out to be interested parties. Nor does it appear reasonable to expect the authorities in the present case to have anticipated, when the serving of summonses was ordered, which parties might become interested in the proceedings in the future. To contend otherwise would severely disrupt the conduct of the administrative proceedings and would impose a disproportionate burden on the administrative authorities. Therefore, in the present case, by resorting to notification through publication in the Official Gazette, the authorities took the actions that could legitimately and reasonably have been expected of them, as there were no other available avenues to be pursued at the time that the serving of summonses was ordered (contrast *Dilipak and Karakaya v. Turkey*, nos. 7942/05 and 24838/05, §§ 77, 81-87, 90, 94-95 and 103-06, 4 March 2014; *Gyuleva v. Bulgaria*, no. 38840/08, §§ 40-42, 9 June 2016; and *Aždajić v. Slovenia*, no. 71872/12, § 58, 8 October 2015).

49. The Court further notes that, besides the publication of the public notice, the local press followed the case and published several articles on 20 February 2015, 24 April 2015, 8 June 2015, 20 May 2016 and 14 June 2016 mentioning the call for tenders and the judicial administrative proceedings to which the applicant company had been subject (see paragraphs 9, 12 and 15 above; see *Geffre*, cited above, and *Cañete de Goñi v. Spain*, no. 55782/00, § 39, ECHR 2002-VIII).

50. The Court reiterates that an applicant can contribute to a large extent, as a result of his or her inaction and lack of diligence, to bringing about the impugned situation, which he or she could have prevented (*Avotiņš v. Latvia* [GC], no. 17502/07, § 124, 23 May 2016). In the present case the applicant company could have learned of proceedings no. 131/2015 brought by the City Council when consulting the file in another set of proceedings brought by another tenderer contesting the selection of the applicant company's tender,

that is, judicial administrative proceedings no. 27/2017 (see paragraph 14 above).

51. Even though these avenues cannot be considered in themselves to constitute a sufficiently coherent system in terms of the procedural legal requirement at stake in the present case, the Court is led to conclude that the applicant company could reasonably have known about the existence of proceedings no. 131/2015 and that it was not completely oblivious to those proceedings.

52. The Court would add that companies that participate in public tenders can be expected to regularly inform themselves of their own initiative about the launch and procedural developments of tenders.

53. Accordingly, in the circumstances of the present case, the Court considers that the applicant company had notice of the proceedings in issue and that its failure to take part in those proceedings was due to a lack of diligence on its part (compare *Cañete de Goñi*, cited above, §§ 39-41).

54. The Court concludes that the authorities, by informing all persons potentially concerned through the public notice of the judicial administrative proceedings brought by the City Council seeking to cancel the call for tenders, afforded the applicant company a reasonable opportunity to have knowledge of the proceedings in which it was an interested party and therefore to participate in them.

55. Consequently, there has been no violation of Article 6 § 1 of the Convention.

56. The Court further finds that in the light of this conclusion it is not necessary to rule on the Government's objections as to the applicant company's victim status and whether it suffered non-significant disadvantage (compare *Juhas Đurić v. Serbia*, no. 48155/06, § 67, 7 June 2011; *Tomić and Others v. Montenegro*, nos. 18650/09 and 9 others, § 59, 17 April 2012; and *Y v. Poland*, no. 74131/14, § 84, 17 February 2022).

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Decides* to join to the merits the Government's preliminary objection concerning the applicant's victim status and the non-significant disadvantage and decides that it is not necessary to rule on them;

2. *Declares* the application admissible;

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

Done in English, and notified in writing on 8 November 2022, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Olga Chernishova Deputy Registrar	Georges Ravarani President