



Sanremo is Sanremo!

The ruling 5 December 2024 no. 843 of the T.A.R. Liguria on the organisation of the Sanremo Festival undoubtedly arouses a particular stir: for the first time ever, as of 2026, the Italian Song Festival could be organised by a television broadcaster other than RAI.

However, without prejudice to the epochal effects that such a judgment could cause in the Italian television panorama, it seems appropriate to note that the Ligurian Court has merely applied certain principles that, also in the light of national and European case law developed over time, must unequivocally be considered fundamental in public procurement law.

In the present case, JE S.r.l. – a company engaged in music publishing and in the production and realisation of events and works of a musical nature – has contested the legitimacy of all those measures whereby the Municipality of Sanremo entrusts RAI-Radiotelevisione Italiana S.p.A. with the exclusive use of the rights connected to the running of the Festival.

In particular, it is contested the legitimacy **(i)** of the resolution of the Municipal Council approving the draft agreement submitted by RAI and concerning the exclusive use of the trademark "*Festival della Canzone Italiana*" (hereinafter also referred to as "*Trademark*"), owned by the Municipality itself, and the running of the 74th and 75th edition of the Festival (ed., editions of 2024 and 2025) and **(ii)** the one containing, consequently, the declaration of improcedibility of the expression of interest submitted by JE in order to participate in a public tender procedure concerning this concession.

More specifically, the agreement between RAI and the Municipality of Sanremo

relating to the organisation and running of the 2022 and 2023 editions had expired and, in the claimant's view, the Municipal Administration should have initiated a public tender procedure for the grant of the exclusive use of the Trademark and the organisation of the Festival.

Since this is a contract having as its object an *utilitas* (the “*Festival della Canzone Italiana*” trademark) in the ownership of a public entity and capable of offering a profit opportunity to the counterpart of the municipal Administration, **the T.A.R. Liguria held that the signing of the aforementioned agreement in the absence of a public tender was unlawful.**

According to the Administrative Judge, the execution of a tender procedure was a due act by the municipal Administration of Sanremo.

On this point, according to the decision of the Ligurian Judge, it is worth recalling the provisions of Article 13, paragraphs 2 and 5, of Legislative Decree 31 March 2023 No. 36 pursuant to which, although the application of the Code is excluded in case of *contratti attivi* (such as the one in question), if the award of such contracts offers opportunities for economic gain to the private party, the general principles established by the Public Contracts Code must be applied.

In other words, the Municipality of Sanremo – on the basis of the principles of competition, impartiality, non-discrimination, publicity, transparency and proportionality set forth in the Code – should have issued a call for tenders in order to “*derive the highest possible utility from the concession of the use of the Trademark*” (T.A.R. Liguria, n. 843/2024, point 4.5).

Consequently, it is reiterated that, whenever public goods are granted for use that are economically contestable (such as, in the present case, a right to the exclusive use of a registered trademark owned by the Municipality), the assignment must take place at the end of a tender that has placed the good in a real competitive context.

In the light of the above, the annulment of the resolutions of the Municipal Council should automatically entail the termination of the existing agreement between the Municipality of Sanremo and RAI in relation to the 2025 edition of the Festival.

However, given that the organisation of the 75th edition of the Festival is at an advanced stage, such a termination would entail disruptive and wholly disproportionate effects, given that the time required for the preparation of the tender documents and for the running of the same, as well as for the organisation of the Festival and the collateral events by the concessionaire of the Trademark, is wholly incompatible with the holding of the event in February 2025.

Therefore, in adherence to the orientation of the Council of State, which has recognised the possibility for the Administrative Judge to modulate the effects of its decisions over time (see Council of State, Ad. Plen., ruling 22 December 2017 no. 13; Council of State, Sec. I, opinion 30 June 2020 no. 1233), the Court – without prejudice to the obligation to carry out a public tender – has excluded the termination of the agreement in place between the Municipality of Sanremo and RAI, thus saving the running of the next edition of the Festival.

The score, however, is not yet to the final notes.

According to RAI – which considers itself the exclusive owner of the copyright on the original intellectual property (*the format*), since it has borne all the creative and production costs of the Festival and has conceived and organised the same for decades – there is no risk that the singing event, in its current form, could be organised by third parties; indeed, the “*Festival della Canzone Italiana*” trademark could only be associated with the RAI format, constituting an integral part of it.

However, without taking a position on a ruling that could be challenged on appeal before the Council of State, it is worth specifying how, on the basis of the ruling by the court of first instance, nothing excludes that in the future, since there is no inseparable link between the “*Festival della Canzone Italiana*” trademark and the RAI format, another economic operator could “*obtain the concession for the exclusive use of the trademark and associate the trademark with its own format (other than that of RAI), exploiting both economically*” (T.A.R. Liguria, n. 843/2024, points 4.3.1.3 and 4.3.2); moreover, it could not be otherwise as, if this were not the case, one would not understand for what purpose the Municipality registered the Trademark.

All that remains is therefore to await the next steps... because Sanremo is Sanremo!

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