

European Court of Human Rights: radio licensing process in Azerbaijan not prescribed by law

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In a judgment of 18 February 2025, the European Court of Human Rights (Third Section) held unanimously that there had been a violation of Article 10 of the European Convention on Human Rights (ECHR) in the case of *Objective Television and Radio Broadcasting Company and Others v. Azerbaijan*. The case involved the refusal by the National Television and Radio Council (NTRC) to grant the applicants a broadcasting licence following a call for tenders.

In 2010, the NTRC announced a call for tenders for a broadcasting licence for the 103.3 FM radio frequency. The announcement set out a list of required documents to be submitted as part of any bid for the frequency, but it did not specify any preferences for the types of programmes to be broadcast. Three bids were received; the applicants' bid was unsuccessful. The NTRC informed the bidders orally about the decision. The applicants requested a copy of the NTRC's formal decision and received, in response, a letter explaining that the winning bid – a “purely news radio station” – would be a “novelty” vis-à-vis the existing radio and television offer. The letter included a relevant excerpt from the minutes of the NTRC meeting at which the outcome of the tender was decided.

In its consideration of the case, the European Court of Human Rights (the Court) recalled that the third sentence of Article 10(1) ECHR, expressly allows states to regulate broadcasting on their national territories by means of licensing schemes. The granting of licences may be subject to criteria such as: “the nature and objectives of a proposed station, its potential audience at the national, regional or local level, the rights and needs of a specific audience and the obligations deriving from international legal instruments”. The licensing process must provide sufficient guarantees against arbitrariness in the application of licensing criteria, including proper reasoning by the licensing authority of its decisions denying a broadcasting licence. The Court referred to relevant existing case-law in this regard, in particular, *Glas Nadezhda EOOD and Elenkov v. Bulgaria* (IRIS 2008-1:1/1) and *Meltex Ltd. and Movsesyan v. Armenia* (IRIS 2008-8:1/1).

In this case, the Court was not convinced that the NTRC had provided the applicants with (i) a duly reasoned decision (ii) within the time limit provided by law (15 days). The Court found that the NTRC's letter to the applicants stating that the successful station would be a novelty did not amount to a duly reasoned

decision. The appended copy of its decision in the form of an extract from the minutes of the meeting “contained no reasoning at all”. The Court also found that the NTRC had not indicated a prior preference for a news station in the call for tenders, which made it unforeseeable for bidders that this would later be the decisive criterion for the selection process. For the Court, by deciding at a later stage in the procedure to heavily favour a single factor in awarding the licence, the NTRC had “apparently exercised very wide, virtually unlimited discretionary powers”.

As to the selection criteria outlined by the relevant national law, eg. technical capabilities, staffing potential and broadcast concept, the Court found that it was not clear which specific standards or indicators were used for the assessment or what weighting was given to each of the criteria. All in all, the Court concluded that the interference did not meet the ECHR requirement of lawfulness, as the failure of the licensing authority to provide duly reasoned decisions does not ensure adequate protection against arbitrary interference by a public authority with the right to freedom of expression.

The Court proceeded to consider other allegations by the applicants pertaining to the licensing process and outcome. First, it noted, critically, that NTRC members are appointed directly by the president and “apparently without any public consultative process or prior nomination or selection procedures”. This practice is not in line with Council of Europe Committee of Ministers’ Recommendation Rec(2000)23 to member states on the independence and functions of regulatory authorities for the broadcasting sector. There was furthermore an undeclared conflict of interest due to a family relationship between a member of the NTRC and a member of the successful bidder. The business activities of the same NTRC member, and those of her immediate family, also raised questions about whether her NTRC membership was compatible with those business activities as some of them were in the media sector. The Court referred again to Recommendation Rec(2000)23 in this regard.

In light of all these considerations, the Court concluded that the interference with Objective TV’s right to freedom of expression was not “prescribed by law”, thus amounting to a violation of Article 10 ECHR, without any need to examine the other requirements of Article 10(2) (legitimate aim and necessary in a democratic society).

Objective Television and Radio Broadcasting Company and others v. Azerbaijan, No. 257/12, 18 February 2025 - ECLI:CE:ECHR:2025:0218JUD000025712

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