European Court of Human Rights: Case of Glas Nadezhda EOOD and Elenkov v. Bulgaria

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In 2000 Glas Nadezhda EOOD, managed by Mr. Elenkov, applied to the Bulgarian State Telecommunications Commission (STC) for a licence to set up a radio station to broadcast Christian programmes in and around Sofia. The STC refused to grant the licence, basing its refusal on the decision taken by the National Radio and Television Committee (NRTC) which found that, on the basis of the documents submitted by Glas Nadezhda EOOD, the proposed radio station would not meet its requirements to make social and business programmes or to target regional audiences. The proposal also failed to fully meet the requirements to produce original programmes, to ensure audience satisfaction and to provide the professional and technological resources required.

Glas Nadezhda EOOD brought proceedings before the Supreme Administrative Court for judicial review of the decisions of both STC and NRTC, but finally the Court held that the NRTC had total discretion in assessing whether an application for a broadcasting licence had met certain criteria and that this discretion was not open to judicial scrutiny. In the meantime, Mr. Elenkov attempted to obtain a copy of the minutes of the NRTC's deliberations, which were meant to be available to the public under the Access to Public Information Act 2000. Despite his requests and a court order, Mr. Elenkov was not given access to those minutes.

Relying on Articles 9 (freedom of thought, conscience and religion) and 10 (freedom of expression), the applicants complained that they had been refused a broadcasting licence. They also complained under Article 13 (right to an effective remedy) about the ensuing judicial review proceedings.

The Court is of the opinion that the interference in the freedom of expression of the applicants did not meet the requirements of lawfulness as prescribed by Article 10 § 2. The NRTC had not held any form of public hearing and its deliberations had been kept secret, despite a court order obliging it to provide the applicants with a copy of its minutes. Furthermore, the NRTC had merely stated in its decision that Glas Nadezhda EOOD had not, or had only partially, addressed a number of its criteria. No reasoning was given to explain why theNRTC came to that conclusion. In addition, no redress had been given for that lack of reasoning in the ensuing judicial review proceedings because it had been held that the NRTC's discretion was not subject to review. This, together with the NRTC's

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vagueness concerning certain criteria for programmes, had denied the applicants legal protection against arbitrary interference with their freedom of expression. The Court notes that the guidelines adopted by the Committee of Ministers of the Council of Europe in the broadcasting regulation domain call for open and transparent application of the regulations governing the licensing procedure and specifically recommend that "[a]ll decisions taken ... by the regulatory authorities ... be ... duly reasoned [and] open to review by the competent jurisdictions" (Recommendation Rec (2000)23 on the independence and functions of regulatory authorities for the broadcasting sector). Consequently, the Court concludes that the interference with the applicants' freedom of expression had not been lawful and held that there had been a violation of Article 10.

Having regard to its findings under Article 10, the Court considers that it is not necessary to additionally examine whether there has been a violation of Article 9 of the Convention. The Court on the other hand comes to the conclusion that there has been a violation of Article 13. The Court observes that the Supreme Administrative Court made it clear that it could not scrutinise the manner in which that body had assessed the compliance of Glas Nadezhda EOOD's programme documents with the relevant criteria, as that assessment was within the NRTC's discretionary powers. The Supreme Administrative Court thus refused to interfere with the exercise of the NRTC's discretion on substantive grounds and did not examine the issues relevant to the merits of the applicants' Article 10 grievance. Referring to its case law in similar cases, the Court concludes that the approach taken by the Supreme Administrative Court - refusing to interfere with the exercise of the NRTC's discretion on substantive grounds - fell short of the requirements of Article 13 of the Convention.

Judgment by the European Court of Human Rights (Fifth Section), case of Glas Nadezhda EOOD and Elenkov v. Bulgaria, Application no. 14134/02 of 11 October 2007

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