European Court of Human Rights: Case of Meltex Ltd. and Mesrop Movsesyan v. Armenia

IRIS 2008-8:1/1

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In a judgment of 17 June 2008 the European Court of Human Rights held unanimously that the refusal by the Armenian authorities, on several occasions, to grant the Meltex television company requests for broadcasting licences amounted to a violation of Article 10 of the European Convention on Human Rights. The Court firstly recognized that the independent broadcasting company Meltex was to be considered as a "victim" of an interference with its freedom of expression by the Armenian public authorities: by not recognising the applicant company as the winner in the calls for tenders it competed in, the NTRC (National Radio and Television Commission) effectively refused the applicant company's bids for a broadcasting licence and such refusals do indeed constitute interferences with the applicant company's freedom to impart information and ideas. The Court also made clear that States, however, are permitted to regulate by means of a licensing system the way in which broadcasting is organised in their territories, particularly in its technical aspects, and that the grant of a licence may also be made conditional on matters such as the nature and objectives of a proposed station, its potential audience at national, regional or local level, the rights and needs of a specific audience and the obligations deriving from international legal instruments. The compatibility of such interferences must be assessed in light of the requirements of paragraph 2 of Article 10 of the Convention, which means *inter alia* that the interference must be prescribed by law in a way that guarantees protection against arbitrary interferences by public authorities. Indeed, the manner in which the licensing criteria are applied in the licensing process must provide sufficient guarantees against arbitrariness, including the proper reasoning by the licensing authority of its decisions denying a broadcasting licence (see IRIS 2008-1: 3, ECtHR 11 October 2007, Glas Nadezhda EOOD and Elenkov v. Bulgaria).

The Court noted that the NTRC's decisions had been based on the Broadcasting Act (2000) and other complementary legal acts defining precise criteria for the NTRC to make its choice, such as the applicant company's finances and technical resources, its staff's experience and whether it produced predominately in-house Armenian programmes. However, the Broadcasting Act had not explicitly required at that time that the licensing body give reasons when applying those criteria. Therefore, the NTRC had simply announced the winning company without providing any explanation as to why that company, and not Meltex, had met the requisite criteria. There was no way of knowing on what basis the NTRC had

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exercised its discretion to refuse a licence. On this point, the Court noted 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 "all decisions taken ... by the regulatory authorities ... be ... duly reasoned" (Rec. (2000)23 - See also Declaration of the Committee of Ministers of 26 March 2008 on the independence and functions of regulatory authorities for the broadcasting sector). The Court further took note of the relevant conclusions reached by the PACE in its Resolution of 27 January 2004 concerning Armenia, where it stated that "the vagueness of the law in force had resulted in the NTRC being given outright discretionary powers". The Court considered that a licensing procedure whereby the licensing authority gives no reasons for its decisions does not provide adequate protection against arbitrary interferences by a public authority with the fundamental right to freedom of expression. The Court therefore concluded that the interference with Meltex's freedom to impart information and ideas, namely the seven denials of a broadcasting licence, had not met the requirement of lawfulness under the European Convention and hence violated Article 10 of the Convention.

Judgment by the European Court of Human Rights (Third Section), case of Meltex Ltd. and Mesrop Movsesyan v. Armenia, Application no. 32283/04 of 17 June 2008

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