



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

THIRD SECTION

PARTIAL DECISION

AS TO THE ADMISSIBILITY OF

Application no. 37784/02
by NOYAN TAPAN LTD
against Armenia

The European Court of Human Rights (Third Section), sitting on 21 October 2004 as a Chamber composed of:

Mr G. RESS, *President*,

Mr I. CABRAL BARRETO,

Mr L. CAFLISCH,

Mr R. TÜRMEŒ,

Mr B. ZUPANČIČ,

Mr J. HEDIGAN,

Mrs A. GYULUMYAN, *judges*,

and Mr V. BERGER, *Section Registrar*,

Having regard to the above application lodged on 18 October 2002,

Having deliberated, decides as follows:

THE FACTS

The applicant, Noyan Tapan Ltd, is a private Armenian news agency and television company that has its registered office in Yerevan. The applicant company is represented before the Court by Ms Anke Stock, a lawyer of the Kurdish Human Rights Project based in London.

A. The circumstances of the case

The facts of the case, as submitted by the applicant, may be summarised as follows.

1. Background to the case

a. The applicant company's involvement in television broadcasting

The applicant company was established in 1991 and initially operated as a news agency, with its own publishing house, newspaper and internet network.

The applicant company submits that since 1997 it had applied on several occasions to the relevant public authorities to obtain a broadcasting licence with the intention of getting involved in television broadcasting, but was repeatedly refused.

On 1 November 1999 the applicant company entered into an agreement with another private company, the “Lotus” television company (hereafter, Lotus), to jointly produce a set of the applicant company's television programmes, which included rebroadcasts of “TV6” Russian television channel and its own programmes, comprising news, political and economic analysis and constituting 25% of the whole content. Under the terms of the agreement, Lotus allowed the applicant company to broadcast over band 35 for which Lotus held a broadcasting licence. The agreement was concluded for three years (i.e. until 1 November 2002), subject to termination by either party on six months' prior notice.

b. Legislative changes and resulting provisional measures

Before the legislative changes, which were introduced in the sphere of television and radio broadcasting in 2000-2002, the regulator of broadcasting licences was the Ministry of Communication (*ՀՀ կապի նախարարություն*).

The Law on Television and Radio (hereafter, the Law; «*Հեռուստատեսության և ռադիոյի մասին*» ՀՀ օրենքը), adopted in October 2000, established a new authority, the National Commission of Television and Radio (hereafter, the Commission; *Հեռուստատեսության և ռադիոյի ազգային հանձնաժողով*), which was entrusted with regulating the licensing and monitoring the activities of private television and radio companies. The Commission was a public body composed of nine members appointed by the President of Armenia. The Law also introduced a new licensing procedure, according to which a broadcasting licence was granted on the basis of a competition conducted by the Commission pursuant to the list of available frequencies.

During 2001 all the existing broadcasting licences were temporarily re-registered by the Commission until the relevant licensing competitions were held.

On an unspecified date in 2001, the Commission decided to postpone the licensing competition for band 35 until the adoption of further laws and regulations, and to permit Lotus to continue to operate in band 35 for an indefinite period of time until such competition was held (the Lotus' broadcasting licence was due to expire on 22 January 2002).

c. The dispute between the applicant company and Lotus

In September 2001 Lotus complained to the applicant company about the quality and content of its production and demanded that changes be made to their agreement. In particular, Lotus demanded that the applicant company take various analytical news programmes off the air, including its "Fifth Microphone" programme, which gave the opportunity to the public to contact the studio directly and comment on the activities of Government agencies and public officials. The applicant company refused to agree to the changes to the agreement put forward by Lotus.

On 14 September 2001 Lotus applied to the Television Network of Armenia state-owned CJSC (*«Հայաստանի հեռուստատեսային ցանց» ՊՓԲԸ*), seeking to shut down the applicant company's transmitter. It appears that the Television Network of Armenia complied by cutting off the electricity supply to the transmitter.

The applicant company submits that the unilateral withdrawal from the agreement by Lotus was the result of Government pressure. It further submits that the management and shareholders of Lotus were assaulted and threatened by national security officers in September 2001 and were instructed to stop broadcasting the applicant company's television programmes.

On 14 December 2001 the applicant company instituted proceedings for damages against Lotus in the Commercial Court (*ՀՀ տնտեսական դատարան*), seeking also to oblige Lotus to resume its broadcasts.

On 28 February 2002 the Commercial Court partly granted the applicant company's claims, finding that Lotus had violated the agreement. The court awarded damages and legal costs in the amount of 2,234,209 Armenian drams (approx. 4,545 euros) and ordered Lotus to immediately resume the applicant company's broadcasts. No appeal was lodged so this judgment became final. On 5 April 2002 the court issued the execution order.

On 26 April 2002 the Yerevan Bailiff's Office instituted enforcement proceedings. On the same date, the Bailiff's Office ordered the seizure of the Lotus' assets and bank account in the amount of the court award. It further ordered that Lotus immediately resume the applicant company's broadcast.

On 11 June 2002 the Bailiff's Office terminated the enforcement proceedings following the payment by Lotus of 1,044,000 Armenian drams (approx. 2,125 euros). No appeal was lodged against this decision.

2. The licensing competition for band 35 and related court proceedings

On 19 February 2002 the Commission decided to announce licensing competitions for various broadcasting frequencies, including band 35. The Commission issued a Notice in which it defined the conditions for participation in the competition for band 35 and the information and documents to be submitted. The information required included data on technical facilities, financial sources, staff and programme policy of an applicant.

The applicant company and two other companies, "Shoghakat" and "Yan TV", submitted bids for band 35. Lotus did not participate in the competition. The applicant company submits that Shoghakat was a company producing predominantly clerical programmes, while Yan TV focused mostly on entertainment programmes.

On 2 April 2002 the Commission, in its decision no. 36, announced Shoghakat as the winner of the competition for band 35. The decision stated:

"Based on [the relevant provisions of the law] and taking into account the results of the licensing competition for television broadcasting in decimetric band 35 in the area of Yerevan, the [Commission] decides (1) to recognise "Shoghakat TV Company" Ltd as the winner of the licensing competition for television broadcasting in decimetric band 35 in the area of Yerevan, and (2) to grant a television broadcasting licence to "Shoghakat TV Company" Ltd."

No reasons were provided for this decision, nor did the applicant company receive a written notification from the Commission stating its reasons for refusal of the applicant company's bid. The applicant company submits that the refusal of its bid by the Commission was driven by the intention of the Government to limit and ultimately silence the applicant company's independent voice in the run up to the Armenian presidential elections in February 2003. It further contends that it is common practice for the Government to treat pro-State channels more favourably in order to control broadcasting content and to extinguish independent and dissenting voices in Armenia. It also submits that its bid was refused despite the fact that it had the necessary infrastructure and equipment to commence immediate broadcasting, whereas the winner of the competition, Shoghakat, had not even done so as of the date of introduction of the present application to the Court, i.e. 18 October 2002.

On an unspecified date, the applicant company applied to the Commercial Court, claiming that the competition had been conducted with violations of the law and seeking to invalidate its results. In particular, the applicant company argued that the Commission, by announcing separate

competitions for different bands as opposed to a single competition for all bands, restricted the applicant company's right to win a licence for any of the unoccupied bands. It further argued that the information required by the Commission had not been consistent with the information to be contained in a bid for a broadcasting licence as defined in Article 49 of the Law (see Relevant domestic law, below). Moreover, the Commission had not been authorised by the law to define the information to be contained in a bid. Furthermore, the applicant company submitted that the Commission had failed to inform it in writing about the reasons for the refusal of a licence as required by Article 51 of the Law (see Relevant domestic law, below). Finally, the applicant company argued that it possessed a contractual right to broadcast its programmes on band 35 until 1 November 2002, as recognised by the Commercial Court in its judgment of 28 February 2002.

On 24 May 2002 the Commercial Court examined the applicant company's claims. The applicant company was represented at the hearing by three counsel. The court decided to reject the applicant company's claims, finding that the fact that the Commission had announced separate competitions as opposed to a single competition did not contradict the law. Nothing had precluded the applicant company from submitting bids for all these competitions. The court further found that the Commission had been authorised by the law to define the procedures and conditions of the competition and that it had acted in accordance with the law in doing so. Nothing in the information required by the Commission in its Notice issued following the announcement of the competition on 19 February 2002 had conflicted with the requirements of Article 49 of the Law. As to the requirement to provide a written notification about the reasons for the refusal of a licence, the court found that the Commission, having recognised Shoghakat as the winner of the competition, had informed the applicant company about this in writing on 3 April 2002. The court finally stated that the applicant company's claims that its broadcasts on band 35 should continue until 1 November 2002 were groundless.

The applicant company lodged an appeal on points of law and procedure with the Court of Cassation (*ՀՀ վճարարի դատարան*) signed by the managing director of the applicant company, Mr T.H. In its appeal, the applicant company raised the same arguments as before the Commercial Court, claiming that the latter had not correctly interpreted the law and evaluated the circumstances of the case. It referred to numerous provisions of the broadcasting and licensing legislation, Articles 5 and 8 of the Constitution (see Relevant domestic law, below) and Articles 6, 10 and 17 of the Convention. The applicant company argued in greater detail that the Commission, following the consideration of its bid, had been obliged to take one of the following decisions: to grant a licence or to refuse a licence. The failure of the Commission to take such a decision indicated that the Commission had not examined the applicant company's bid at all.

Moreover, this prevented the applicant company from effectively contesting its unsuccessful participation in the competition before the courts. The applicant company, in addition to its above arguments, claimed that some paragraphs in the Commercial Court's judgment duplicated the text of another judgment previously adopted by the same court in similar proceedings instituted against the Commission by another television company, namely Meltex Ltd. This indicated that the court had not properly examined the applicant company's claims.

On 28 June 2002 the Court of Cassation notified the applicant company that its hearing was scheduled for 11h00 on 12 July 2002. On 10 July 2002 the counsel acting for the applicant company, Mr L.S., informed the Court of Cassation in writing that at 12h00 on 12 July 2002 he had to appear at another court hearing. In order to avoid an overlap between the two hearings, Mr L.S. requested that the Court of Cassation notify him of the exact time when the applicant company's claim would be examined. It appears that no reply was received to this letter.

On 12 July 2002, at 11 a.m., both Mr L.S. and Mr T.H. appeared at the Court of Cassation's hearing. It appears that the court had 85 cases scheduled for that date with all the parties involved being notified to appear at the same hour. The hearings started at 11 a.m. At 11.30 a.m. Mr L.S. addressed the court with a motion requesting that the presiding judge inform him as to when the hearing on the applicant company's claim would commence. The presiding judge replied that the hearing would commence "whenever the court found it necessary". The counsel repeated his request, explaining about the need to prevent any overlap between the two hearings, whereupon he was removed from the courtroom upon the instruction of the presiding judge for violation of discipline.

At 4 p.m. the Court of Cassation proceeded to examining the applicant company's case. The Commission was represented at the hearing by three counsel. The applicant company was represented by Mr T.H. The presiding judge decided to hold the hearing despite the absence of the applicant company's legal representative. The hearing lasted five minutes. The parties did not make any submissions because of the shortness of the hearing.

The Court of Cassation rendered its decision in which it first examined the circumstances of the case and the findings of the Commercial Court, and concluded by rejecting the applicant company's appeal, finding that:

"...the arguments put forward in the appeal concerning a violation by the Commercial Court of the [relevant legal acts] are groundless, as the Commission, acting within the authority vested in it by the above legal acts ... defined the competition procedure for licensing of television broadcasting, which contains the rules on the conditions, procedures and time-limits of the competition, submission of bids, recognising the winner of the competition and declaring the competition void. On 19 February 2002 the Commission ... announced separate licensing competitions for unoccupied frequencies and on 2 April 2002 in its decision no. 36 recognised

“Shoghakat” Ltd as the winner, about which it informed [the applicant company in its letter] of 3 April 2002.

...Article 10 [of the Convention] guarantees the right to freedom of expression. This Article, however, does “not prevent States from requiring the licensing of broadcasting, television or cinema enterprises”. The arguments [concerning a violation of Article 10] are also groundless, as the Commercial Court did not violate the requirements of [this Article].

The argument that ... the Commercial Court did not even take into account [the judgment of 28 February 2002], according to which [the applicant company] had the right to broadcast on band 35 until 1 November 2002, is also groundless ... [as] this judgment concerns “claims for damages and fulfilment of contractual obligations” in a dispute between [the applicant company and Lotus] and has no connection with the present case.

[As to the improper examination of the applicant company's claims by the Commercial Court, this argument is also groundless] ... as the [court] ... evaluated each piece of evidence of the case in a detailed, thorough and objective manner.”

3. Subsequent licensing competitions for bands 58, 63 and 56

On 15 October 2002 the Commission announced a new licensing competition for five other bands.

The applicant company submitted its bid for band 58.

On 18 July 2003 the Commission, in its decision no. 32-A, announced the winner of the competition for band 58. The applicant company was again refused a licence. The Commission's decision was identical in wording to its decision of 2 April 2002.

On 1 August 2003 the applicant company submitted a letter to the Head of the Commission, stating that pursuant to Article 51 of the Law “an applicant should be informed in writing about the reasons for the refusal of a licence within ten days from the date of the decision”. It requested that the Commission give reasons for the refusal of a licence and inform in which of the four criteria foreseen by Article 50 of the Law its bid was less successful compared to the bid of the winner organisation.

By a letter of 11 August 2003 the Commission informed the applicant company that, when granting a licence through a competition, the Commission in its decision should only indicate which of the participants of the competition had been recognised as the best organisation and whom to grant or refuse a licence. The applicant company, however, had not been recognised as the best organisation.

On an unspecified date, the Commission announced licensing competitions for band 63 and band 56.

The applicant company submitted its bids for both bands.

On 13 October and 29 December 2003 the Commission, in its decisions 75-A and 99-A respectively, announced the winners of the competitions.

The applicant company was again refused a licence. The Commission's decisions were identical in wording to its previous decisions.

On 15 March 2004 the applicant company requested the Commission to provide reasons for its decisions 75-A and 99-A.

By a letter of 16 March 2004 the Commission replied by referring to various legal provisions and the voting results as the basis for its decisions.

B. Relevant domestic law

1. The Constitution (adopted on 5 July 1995)

Article 5 of the Constitution provides that public authorities and officials are entitled to take only such actions as authorised by the law.

Article 8 guarantees to everyone right to own property. The State guarantees the free development and equal protection of all forms of property, the freedom of business activities and of economic competition.

Article 24 guarantees to everyone the freedom of speech, including the freedom to seek, receive and impart information and ideas through any information medium and regardless of frontiers.

According to Article 44, the freedoms guaranteed by Article 24 of the Constitution may be subject to such restrictions as are prescribed by law and are necessary for the protection of national security and public safety, of public order, of health and morals, and of rights, freedoms or reputation of others.

2. Law on Television and Radio (adopted on 9 October 2000)

Article 7 of the Law, as in force at the material time, provides that in order to conduct television broadcasting in Armenia it is necessary to have a licence.

Article 20 provides that each legal person can be licensed to operate only one television broadcasting company in the same coverage area.

According to Articles 37 and 39, the National Commission of Television and Radio is an independent body with the status of a public institution. The Commission is entrusted with licensing and monitoring of private television and radio companies. It has nine members appointed by the President of Armenia for a period of six years.

Article 47 provides that a television broadcasting licence is granted on the basis of a competition, according to the list of frequencies.

According to Article 49, a bid for a broadcasting licence shall contain information on the type and name of company, the type of broadcasting, the content and specialisation of programmes, the regularity and the maximum volume of programmes, the language of programmes, the territory covered and the population number, the technical facilities and equipment, a memo

about possible financial sources, the dates and hours of programmes and the number, education and level of professionalism of the staff.

According to Article 50, the Commission, when selecting the winner of the competition, shall take into account (a) the predominance of programmes of applicant company's own production; (b) the predominance of programmes of domestic production; (c) the technical and financial capacity of the applicant company; (d) the professional level of its staff.

Article 51 provides that the Commission must properly reason its decision to grant a licence, to refuse a licence or to invalidate a licence. An applicant should be informed in writing about the reasons for the refusal of a licence within ten days from the date of the decision. The refusal of a licence may be contested before the courts.

According to Article 54, a broadcasting licence is granted for a period of seven years. Two months prior to the expiration of the broadcasting licence, the Commission shall announce a licensing competition for the relevant frequency. In the licensing competition for an unoccupied frequency, if there are two or more bids submitted of equal quality, preference shall be given to: (a) the company that has never violated the law during its activities, (b) the company that has at least three years of experience in producing and broadcasting of television programmes.

3. Law on the Regulations of the National Commission of Television and Radio (adopted on 28 December 2001; «Հեռուստատեսության և ռադիոյի ազգային հանձնաժողովի կանոնակարգ» ՀՀ օրենքը)

According to Article 30 of the Law, the Commission shall define the procedure, the conditions and the time-limits of the licensing competition for television broadcasting.

According to Articles 63 and 67, following the consideration of a bid for a broadcasting licence, the Commission shall adopt one of the following decisions: (a) to grant a licence, or (b) to refuse a licence. A copy of the decision whether to grant or to refuse a licence shall be served on the applicant within ten days from the date of the decision.

4. The Commission's Decision No. 4 approving the Procedure of the Licensing Competition for Television Broadcasting (adopted on 24 January 2002; Հեռուստատեսության և ռադիոյի ազգային հանձնաժողովի թիվ 4 որոշումը «Հեռուստառադիոհաղորդումների հեռարձակման լիցենզավորման սրջույթի կարգը հաստատելու մասին»)

According to Paragraph 18 the Decision, the Commission, after considering each bid, shall hold an open ballot. The best organisation shall be selected based on the results of the ballot.

According to Paragraph 19, the Commission shall adopt a decision recognising the best organisation as the winner and granting it a broadcasting licence.

5. *The Law on Licensing (adopted on 30 May 2001; «Լիցենզավորման մասին» ՀՀ օրենքը)*

According to Article 10.8, the licensing procedures may include only such requirements as are necessary for the protection of national security and public safety, social order, public health and morals, and the rights, freedoms, honour and reputation of others. When including in the licensing procedures such requirements as are not prescribed by law, a reference must be made to one or more of the above grounds. A requirement which does not contain such a reference, as well as other restrictions which are not prescribed by law, have no legal force.

6. *The Code of Civil Procedure (in force since 1 January 1999)*

According to Article 225 of the Code, the Court of Cassation examines appeals on points of law and procedure.

Article 234 provides that the examination of the case in the Court of Cassation starts with the presentation of the judge rapporteur. The judge rapporteur presents the circumstances of the case, the substance of the appealed judgment and the arguments raised in the appeal. The judges of the Court of Cassation are entitled to ask questions to the judge rapporteur. The appellant has the right to be present at the hearing. If explanations are necessary, the appellant and other parties may be summoned to the hearing.

According to Articles 235 and 236, the Court of Cassation reviews the judgments of lower courts within the grounds presented in the appeal. The Court can either dismiss the appeal, or otherwise quash the whole or part of the judgment and remit the case for a new examination.

COMPLAINTS

1. The applicant company complains under Article 6 of the Convention that the Court of Cassation's decision of 12 July 2002 was not sufficiently reasoned as the court failed to properly address the arguments raised by the applicant company in its appeal. It further submits that the removal of its counsel from the courtroom in the proceedings before the Court of Cassation deprived it of effective legal representation and violated the principle of equality of arms.

2. The applicant company complains under Article 10 of the Convention that the decision of the Commission of 2 April 2002 interfered with its right to freedom of expression. It claims that the Commission did not act in a

manner prescribed by law, as it failed to give reasons in accordance with Article 10.8 of the Licensing Law when defining new requirements in the licensing procedure. The applicant company further submits that the Commission was obliged under Articles 50 and 51 of the Law to grant the licence to the organisation that offered the best technical and programme conditions required for a national private television broadcaster and to properly reason its decision. The Commission, by failing to provide any reasons for its decision, did not act in a manner prescribed by law and overstepped the margin of appreciation left to the national authorities. Furthermore, the interference did not pursue a legitimate aim and was not necessary in a democratic society. The applicant company further submits that the Commission's decision resulted in a continuous violation as the applicant company has been since prevented from broadcasting due to an unlawful competition. It remains unable to obtain a broadcasting licence in Armenia and has been precluded from its business activities in television broadcasting.

3. The applicant company complains that the unlawful decision of the Commission were the result of distrust by the Government towards the political content of the applicant company's broadcasts. The applicant company submits that the overarching objective of the Commission and the domestic courts is political in nature and influenced by the Government's intentions to suppress the voice of independent media companies and broadcast licences are used as a means to censor expression through media. It invokes Article 14 of the Convention in conjunction with Article 6 as far as the court proceedings that terminated with the decision of 12 July 2002 are concerned and in conjunction with Article 10 regarding the Commission's decision of 2 April 2002.

4. The applicant company complains under Article 1 of Protocol No. 1 that the decision of the Commission of 2 April 2002 unlawfully interfered with its right to peaceful enjoyment of its possessions. It submits that it enjoyed a possession in the broadcasting licence awarded to it. The failure of the Commission to lawfully consider the successor to the band 35 licence resulted in the applicant company continuing to possess the lawful right to broadcast its programmes on band 35 until 1 November 2002, as recognised by the judgment of the Commercial Court of 28 February 2002.

5. The applicant company complains about the refusals by the Commission to grant a broadcasting licence following the licensing competitions for bands 58, 63 and 56, and invokes Articles 6, 10 and 14 of the Convention and Article 1 of Protocol No. 1. The applicant company submits that it should be exempt from exhausting the domestic remedies, as it would be ineffective for it to dispute the same legal issues in the domestic courts such as those that were put forward by another private TV company, *Meltex Ltd* (see *Meltex Ltd v. Armenia*, no. 37780/02), all of which were rejected by the domestic courts by 23 April 2004.

THE LAW

1. The applicant company complains that the Court of Cassation did not sufficiently reason its decision of 12 July 2002. It further complains about the removal of its counsel from the courtroom. It invokes Article 6 § 1 of the Convention which, insofar as relevant, provides:

“In the determination of his civil rights and obligations ... everyone is entitled to a fair ... hearing ... by an independent and impartial tribunal...”

a) As to the Court of Cassation's decision of 12 July 2002, the Court recalls that Article 6 § 1 obliges the courts to give reasons for their judgments, but cannot be understood as requiring a detailed answer to every argument. The extent to which this duty to give reasons applies may vary according to the nature of the decision. It is moreover necessary to take into account, *inter alia*, the diversity of the submissions that a litigant may bring before the court and the difference existing in the Contracting States with regard to statutory provisions, customary rules, legal opinion and the presentation and drafting of judgments. That is why the question whether a court has failed to fulfil the obligation to state reasons can only be determined in the light of the circumstances of the case. (see *Hiro Balani v. Spain*, judgment of 9 December 1994, Series A no. 303-B, pp. 29-30, § 27).

In the present case, the applicant company, as plaintiff, raised a number of arguments in its application to the Commercial Court in support of its allegations that the decision of the Commission of 2 April 2002 had been unlawful. The Commercial Court examined in detail the applicant company's arguments and found them to be ill-founded. The applicant company raised the same arguments in its appeal on points of law and procedure to the Court of Cassation. The Court of Cassation, having examined the circumstances of the case and the findings of the Commercial Court, found that the latter had correctly interpreted the law and had come to correct conclusions. Having regard to the Court of Cassation's reasoning in its decision of 12 July 2002 and the margin of appreciation left to the domestic courts in such matters, the Court finds no indication that the Court of Cassation failed to fulfil its obligation to state reasons.

It follows that this part of the application is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

b) As to the removal of the applicant company's counsel, the Court considers that it cannot, on the basis of the file, determine the admissibility of this part of the application and that it is therefore necessary, in accordance with Rule 54 § 2 (b) of the Rules of the Court, to give notice of this complaint to the respondent Government.

2. The applicant company complains that the Commission's decision of 2 April 2002 unlawfully interfered with its right to freedom of expression guaranteed by Article 10 of the Convention which provides:

“1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.

2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.”

The Court considers that it cannot, on the basis of the file, determine the admissibility of this part of the application and that it is therefore necessary, in accordance with Rule 54 § 2 (b) of the Rules of the Court, to give notice of this complaint to the respondent Government.

3. The applicant company complains that the decisions of the domestic courts and the Commission concerning the licensing competition for band 35 were politically motivated. It invokes Article 14 in conjunction with Articles 6 and 10 of the Convention which, insofar as relevant, provides:

“The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as ... political or other opinion ...”

As to the decisions of the domestic courts, having considered the materials in its possession, the Court finds that there is no evidence to substantiate the applicant company's allegation that the domestic courts were being influenced by political considerations when deciding on the applicant company's claims.

It follows that this part of the application is, therefore, manifestly ill-founded within the meaning of Article 35 § 3 and must be rejected in accordance with Article 35 § 4.

As to the Commission's decision of 2 April 2002, the Court recalls that it may only examine complaints in respect of which domestic remedies have been exhausted (see, e.g., *Valasinas v. Lithuania* (dec.), no. 44558/98, 14 March 2000). It notes that the applicant company did not whatsoever raise this issue before the domestic courts.

It follows that the applicant company has failed to exhaust domestic remedies as required by Article 35 § 1 of the Convention, and that this part of the application must be rejected pursuant to Article 35 § 4 of the Convention.

4. The applicant company complains that the Commission's decision of 2 April 2002 unlawfully interfered with its right to peaceful enjoyment of its possessions. It further alleges that it had the right to broadcast on band 35 until 1 November 2002. The applicant company invokes Article 1 of Protocol No. 1 which, insofar as relevant, provides:

“Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.”

a) The Court recalls that withdrawal of a licence to run a business activity in certain circumstances may constitute an interference with the right to the peaceful enjoyment of one's possessions (see *Tre Traktörer AB v. Sweden*, judgment of 7 July 1989, Series A no. 159, § 53). In the present case, however, the applicant company never possessed and was never awarded or deprived of a broadcasting licence. The refusal by the Commission to grant a licence cannot be regarded as an interference with the applicant company's rights guaranteed by Article 1 of Protocol No. 1.

It follows that this part of the application is incompatible *ratione materiae* with the provisions of the Convention and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

b) As to the applicant company's allegation that it had the right to broadcast on band 35 until 1 November 2002, as allegedly recognised by the judgment of the Commercial Court of 28 February 2002, the Court notes that this part of the complaint is essentially directed against a private company, Lotus. The Commercial Court ordered Lotus, who held a broadcasting licence for band 35, to resume the applicant company's broadcasts. However, by the time the enforcement proceedings were instituted, Lotus did no longer possess a broadcasting licence, as it did not participate in the relevant licensing competition. In no way did the judgment of 28 February 2002 put an obligation on the Commission to allocate band 35 to the applicant company for the purposes of broadcasting. Nor did the bailiff's office bear any responsibility for the fact that the judgment of 28 February 2002 could not be enforced in this part, as this was the result of actions of Lotus and not the bailiff's office, which had duly instituted and conducted the enforcement proceedings.

It follows that this part of the application is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

5. The applicant company complains that the Commission's refusals to grant a broadcasting licence following the subsequent licensing competitions interfered with its rights guaranteed under Articles 6, 10 and 14 of the Convention and Article 1 of Protocol No. 1, cited above.

The Court recalls the rule of exhaustion of domestic remedies cited above. It further recalls that this rule is based on the assumption, reflected in

Article 13 of the Convention – with which it has close affinity – that there is an effective remedy available in respect of the alleged breach in the domestic system (see, among other authorities, *Selmouni v. France* [GC], no. 25803/94, § 74, ECHR 1999-V). In this context the Court recalls that Article 13 guarantees an effective remedy but not a successful outcome (see *Arrabal v. Spain*, no. 25787/94, Dec. 15.1.96).

In the present case, the applicant company had the opportunity to contest the subsequent refusals of a licence before the domestic courts, explicitly provided by Article 51 of the Law on Television and Radio. The fact that claims similar to those that the applicant company intended to put before the domestic courts had been previously rejected in proceedings involving another private TV company, i.e. Meltex Ltd, does not suggest that this remedy was ineffective and that the applicant company should be exempt from exhausting it. There is nothing else to suggest that the domestic courts would not have been able to provide an effective remedy if the applicant company had had recourse to them.

It follows that the applicant company has failed to exhaust domestic remedies as required by Article 35 § 1 of the Convention, and that this part of the application must be rejected pursuant to Article 35 § 4 of the Convention.

For these reasons, the Court unanimously

Decides to adjourn the examination of the applicant company's complaints concerning the removal of its counsel from the courtroom and an interference with its right to freedom of expression;

Declares the remainder of the application inadmissible.

Vincent BERGER
Registrar

Georg RESS
President