敬啓者：

本人於 2009 年 11 月 30 日以香港記者協會主席身分出席《2009 年電訊(修訂)條例草案》委員會會議，會議期間，有議員要求本人就本會論點提供補充資料，本人首先爲事隔一個月才能提交補充資料表示歉意，並在下文提供所須資料。

本人在席上提及的兩宗歐洲人權法庭個案，現將案件以附件形式提交。案件文本爲黑色字體，不同顏色的字體是本人爲閱讀方便而著色，可不予理會。另外，文中括弧內一些字體可能會變形，那是當地文字書寫的個案或條例名稱經電郵傳送後出現的情況，看不見也不會影響文意。

就發給牌照的條款，記協認爲應該更細緻地訂明考慮的方向，本人現舉例如下。

第 13C(4)(a)條中所指的適當人選，部分要求值得商榷，例如第 13C(5)(a)訂明的業務紀錄對首次申請人士不利，應予改善；第 13C(5)(b)條中「必須具誠信公正品格的情況下的紀錄」語意不清，是否指「必須具誠信公正品格」？若此，何不列明如何才屬不具誠信公正品格的紀錄？在同一條文中已列出申請人的刑事紀錄應予考慮，是否已經足夠？

簡單而言，可以考慮訂明何謂不適當人士，將更符合法例必須明晰的要求。現行的寫法是考慮，這容讓發牌機關過大的彈性，因爲當局「考慮」不同申請者的相同情況後，仍然可以作出不同的決定。

其實，第 13C(4)(j)條已賦予當局過大的彈性，第 13C(5)條實不宜再賦權當局這麼大的彈性。

第13C(4)(b)條中所指的財政穩健性，未知有否包括開始廣播後的廣告、捐贈等收入，若改爲「申請人的財務計劃，應與建議提供的廣播服務相適應」，將有較大空間容納小型/社區電台申辦者。

第 13C(4)(d)條中的「質素」要求應予廢除，質素好壞，是決定該電台能否生存的要素，聽眾自會作出決定，事前難以有客觀標準測度，難道要聽眾跟從批牌部門官員的品味？又或任憑申請者信口雌黃？

同理，第 13C(4)(e)條中的「質素」要求應予取消。並請參考保加利亞一案中第九頁的第四點：「提供節目的能力」的細項。

第 13C(4)(f)條中的服務開展速度，意思不明。若是害怕獲發牌者遲遲不展開服務，可訂明申請者獲發牌後一定年限內提供服務，否則收回牌照。

第 13C(4)(g)條的要求十分奇怪，建造工程必然對公眾造成不便，以此爲考慮標準，是否暗示凡對公眾帶來不便的電台建造工程都不批准？若是爲了環保，現行建築條例已有訂明，是否可以考慮不另立條款規管？

上述建議僅是本人補充記協的意見書內容，而補充是建基於不大肆修改草案結構，但一如記協意見書列明，草案的發牌條款必須重新全盤考慮，例如現行草案根本沒有考慮社區電台的設立，否則便會有人口比例、覆蓋範圍等考慮。

此外，現行建議亦難以解決若有多於可提供頻道的申請者申請開辦服務時的問題，因爲只說考慮而不是評分的話，若有兩人同時申請一個頻道時，當局便難

以有客觀的標準批出牌照給其中一人。就此，當局可參考保加利亞的方式，製訂評分表，以便讓申請者明確知道申請獲接納或被否決的原因，這才符合公開公平處理申請的原則。

此致

《2009 年電訊(修訂)條例草案》委員會成員

麥燕庭

2009 年 12 月 30 日

副本抄送：商務及經濟發展局副秘書長蕭如彬先生

THIRD SECTION

CASE OF MELTEX LTD AND MESROP MOVSESYAN v. ARMENIA

(Application no. 32283/04)

JUDGMENT

STRASBOURG

17 June 2008

FINAL

17/09/2008

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Meltex Ltd and Mesrop Movsesyan v. Armenia,

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

Josep Casadevall, *President,*
Elisabet Fura-Sandström,
Boštjan M. Zupančič,
Alvina Gyulumyan,
Ineta Ziemele,
Luis López Guerra,
Ann Power, *judges,*
and Santiago Quesada, *Section Registrar*,

Having deliberated in private on 27 May 2008,

Delivers the following judgment, which was adopted on that date:

PROCEDURE

1. The case originated in an application (no. 32283/04) against the Republic of Armenia lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a limited liability company, Meltex Ltd ("the applicant company"), and its chairman, Mr Mesrop Movsesyan ("the second applicant"), on 27 August 2004.

2. The applicant company and the second applicant (jointly, "the applicants") were represented by Mr M. Muller, Mr T. Otty, Mr K. Yildiz, Ms A. Stock and Ms L. Claridge, lawyers of the Kurdish Human Rights Project (KHRP) based in London, Mr T. Ter-Yesayan and Ms N. Gasparyan, lawyers practising in Yerevan, and Mr A. Ghazaryan. The Armenian Government ("the Government") were represented by their Agent, Mr G. Kostanyan, Representative of the Republic of Armenia at the European Court of Human Rights.

3. On 15 June 2006 the Court decided to give notice of the application to the Government. Under the provisions of Article 29 § 3 of the Convention, it decided to examine the merits of the application at the same time as its admissibility.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

4. The applicant company was established in 1995 and has its registered office in Yerevan. The second applicant was born in 1950 and lives in Yerevan.

A. Background to the case

1. The applicants' involvement in television broadcasting

5. The second applicant first became involved in TV broadcasting in January 1991 when he established the A1+ television company, the first independent television company in Armenia. Initially, A1+ operated as a collector, producer and disseminator of news and information. Information was gathered from and sent to all districts of Armenia, as well as foreign television broadcasting companies via satellite communication.

6. In 1994 A1+ acquired a State television licensed frequency on which it broadcast during assigned periods. According to the second applicant, in 1995 A1+ experienced difficulties with the State regarding its broadcasts: telephone calls were received from public officials on a daily basis threatening to deprive A1+ of its assigned broadcasting hours and criticising the contents of A1+ programmes perceived to be directed against Government policy. A1+ was informed that the broadcast frequencies were granted by the State in order to defend and further State interests rather than to criticise State authorities. During the run-up to the presidential election, A1+ refused to broadcast only pro-Government material. As a result, its State broadcasting operation was suspended in May 1995.

7. In 1995 the second applicant established and registered the applicant company. The applicant company was set up as an independent broadcasting company outside State control. Later the second applicant created the A1+ television company within the structure of the applicant company. On 1 January 1996, in preparation for broadcasting, the applicant company opened a school to train personnel, such as journalists, cameramen and technicians, who were later employed by the applicant company and other television companies. On 25 August 1996 the applicant company started television broadcasting, sharing capacity and content with Moscow “REN” TV, a Russian television company. Over time, the volume of the content produced by the applicant company increased significantly.

8. On 22 January 1997 the applicant company was granted a licence by the then Ministry of Communication (ՀՀ կապի նախարարություն) permitting it to install a television transmitter in Yerevan and to broadcast within the decimetric wave band via its A1+ television channel. The licence was granted for a period of five years.

9. In September 1999 the applicant company established “Hamaspyur”, a network of nine private licensed regional television companies, broadcasting 24 hours a day. According to the applicants, the television network was widely recognised as one of the few independent voices in television broadcasting in Armenia. The primary focus was upon the dissemination of independent, well-processed news information and analysis. The content of the broadcasts included international and domestic news analysis (30%), advertising (32%) and various entertainment programmes.

2. Legislative changes and resulting provisional measures

10. In 2000-2001 legislative changes were introduced in the sphere of television and radio broadcasting. The Television and Radio Broadcasting Act (*«Հեռուստատեսության և ռադիոյի մասին» ՀՀ օրենք* – "the Broadcasting Act"), passed in October 2000, established a new authority, the National Television and Radio Commission (*Հեռուստատեսության և ռադիոյի ազգային հանձնաժողով* – "the NTRC"), which was entrusted with regulating the licensing and monitoring the activities of private television and radio companies. The NTRC was a public body composed of nine members appointed by the President of Armenia. The Broadcasting Act also introduced a new licensing procedure, according to which a broadcasting licence was granted on the basis of a call for tenders conducted by the NTRC in respect of the list of available frequencies.

11. During 2001 all existing broadcasting licences were temporarily re-registered by the NTRC until the relevant calls for tenders were announced.

12. On 3 September 2001 the NTRC replaced the applicant company's licence with a new licence. The new licence was granted for band 37 and was due to expire on 22 January 2002.

13. On 23 November 2001 the NTRC decided to postpone the call for tenders for band 37 until the adoption of relevant rules and regulations and to permit the applicant company to continue to operate on band 37 for an indefinite period of time until such call for tenders was announced.

14. On 28 December 2001 the National Television and Radio Commission Regulations Act (*«Հեռուստատեսության և ռադիոյի ազգային հանձնաժողովի կանոնակարգ» ՀՀ օրենք* – "the NTRC Regulations Act") was passed.

15. On 24 January 2002 the NTRC adopted Decision no. 4 approving the Tendering Rules for Television and Radio Broadcasting Licences (*ՀՀ հեռուստատեսության և ռադիոյի ազգային հանձնաժողովի որոշում Հեռուստառադիոհաղորդումների հեռարձակման լիցենզավորման մրցույթի կարգը հաստատելու մասին* – "the Tendering Rules").

3. The call for tenders for band 37 and its effects

16. On 19 February 2002 the NTRC announced calls for tenders for various broadcasting frequencies, including band 37.

17. The applicant company and two other companies, Sharm Ltd and Dofin TV Ltd, submitted bids for band 37. The applicant company alleged that Sharm Ltd had never previously operated in the field of television broadcasting and its main focus had been as the organiser of entertainment shows for young people and students. None of its employees had a background in professional journalism and the company had no premises, equipment or financial or technical infrastructure to commence broadcasting at

the time of its bid. It further alleged that Dofin TV Ltd had been registered less than a month before the tender process took place and had had no previous experience of any sort in the field of broadcasting.

18. On 1 April 2002, before the winner of the tender process was announced, the applicant company instituted proceedings against the NTRC before the Commercial Court (*ՀՀ տնտեսական դատարան*), claiming that the NTRC had violated a number of legal provisions when announcing the call for tenders.

19. On 2 April 2002 the NTRC held a points-based vote and recognised Sharm Ltd as the winner of the call for tenders for band 37.

20. On 3 April 2002 the A1+ television channel ceased to broadcast.

21. On 16 April 2002 the applicant company lodged an additional claim with the Commercial Court seeking, *inter alia*, to annul the decision of 2 April 2002.

22. On 25 April 2002 the Commercial Court rejected the applicant company's claims.

23. On an unspecified date the applicant company lodged an appeal on points of law with the Court of Cassation (*ՀՀ վճռաբեկ դատարան*).

24. On 14 June 2002 the Court of Cassation dismissed that appeal. Those proceedings are the object of application no. 37780/02 before the Court, examined separately.

25. According to the applicants, due to their lack of broadcasting experience and sufficient resources, Sharm Ltd never managed to commence broadcasting and, after only nine months, sold a controlling interest in the company to another legal entity.

B. The calls for tenders for band 25, bands 31, 39 and 51, bands 3 and 63, and band 56

1. The call for tenders for band 25

26. On 27 May 2003 the NTRC put out a call for tenders for band 25. The applicant company and another company, Armenia TV, submitted tenders.

27. The bidding was held on 7 June 2003. The bidders were allowed 30 minutes each to make their presentations and a further 15 minutes each were allotted for questions from the NTRC.

28. On 11 June 2003 the NTRC held a points-based vote and recognised Armenia TV as the winner of the tender process. A copy of that decision was sent to the applicant company on 12 June 2003. It stated:

"Based on sections 37 and 50 of [the Broadcasting Act], sections 30, 31 and 63 of [the NTRC] Regulations Act and Paragraph 19 of Decision no. 4 of [the NTRC] of 24 January

2002 approving [the Tendering Rules], and taking into account the results of the call for tenders for television broadcasting on decimetric band 25 in the area of Yerevan, [the NTRC] decides (1) to recognise Armenia TV CJSC as the winner of the call for tenders for television broadcasting on decimetric band 25 in the area of Yerevan, and (2) to grant a television broadcasting license to Armenia TV CJSC."

29. On 24 June 2003 the second applicant submitted a letter to the Head of the NTRC requesting the latter to give reasons for the refusal of its bid.

30. By a letter of 1 July 2003 the NTRC informed the second applicant that:

"...when granting a licence through a tendering procedure, [the NTRC] only takes a decision recognising the best organisation as the winner and granting or refusing a broadcasting licence. [The applicant company] was not selected as the best organisation in the call for tenders for band 25."

2. The call for tenders for bands 31, 39 and 51

31. On 15 October 2002 the NTRC announced a new call for tenders for five other bands.

32. The applicant company submitted bids for three of the five bands, namely bands 31, 39 and 51.

33. On 18 November 2002 the tender process was suspended in connection with court proceedings instituted against the NTRC by some other participants in the call for tenders.

34. On 18 July 2003 the NTRC held points-based votes and recognised the winners of the call for tenders: band 31 was assigned to ArmenAakob TV, band 39 to TV 5 and band 51 to Yerevan TV. The NTRC's decisions were identical in wording to its decision of 11 June 2003. Copies of these decisions were sent to the applicant company on 19 July 2003.

35. On an unspecified date, the second applicant submitted a letter to the Chairman of the NTRC requesting the latter to inform him of the reasons for the refusal of a licence in accordance with section 51 of the Broadcasting Act. The second applicant also requested the NTRC to adopt a decision refusing a licence following its consideration of the applicant company's bid, as required by sections 63 and 67 of the NTRC Regulations Act. He further requested the NTRC to provide the results of the examination of the applicant company's bid, the minutes of its hearings and the separate opinions of its members.

36. In another letter, the second applicant requested the Chairman of the NTRC to provide copies of the bids submitted by the companies which submitted the winning tenders for bands 25, 31, 39 and 51.

37. By two letters, both dated 11 August 2003, the NTRC replied to the second applicant in terms identical to its letter of 1 July 2003. The letters added that the second applicant

could familiarise himself with the minutes of the hearings and the relevant bids at the NTRC's office, where he could also make photocopies of the bids with his own technical means.

3. The call for tenders for bands 3 and 63

38. On an unspecified date, the NTRC announced a call for tenders for bands 3 and 63.

39. The applicant company and two other companies, AR TV and Cinemax, submitted bids for both bands.

40. On 13 October 2003 the NTRC held points-based votes and selected the winning tenders: band 3 was assigned to AR TV and band 63 went to Cinemax. The NTRC's decisions were identical in wording to its previous decisions. Copies of these decisions were sent to the applicant company on 14 October 2003.

41. On 21 October 2003 the NTRC replied to the second applicant's request for a reasoned decision in the same manner as before.

4. The call for tenders for band 56

42. On 19 November 2003 the NTRC put out a call for tenders for the last vacant band, namely band 56.

43. The applicant company and three other companies submitted their bids.

44. On 29 December 2003 the NTRC held a points-based vote and awarded the licence to Yerkir Media TV. The NTRC's decision was identical in wording to its previous decisions. A copy was sent to the applicant company on 30 December 2003.

45. On 22 January 2004 the NTRC replied to the second applicant's request for a reasoned decision in the same manner as before.

5. The proceedings concerning reasons for refusal of the above bids

46. On 29 September 2003 the applicant company lodged two applications with the Commercial Court complaining about the NTRC's inaction. In particular, the applicant company submitted that the NTRC was obliged under Section 51 of the Broadcasting Act to notify in writing the reasons for the refusal of a licence in the calls for tenders for band 25 and bands 31, 39 and 51 within ten days after taking the relevant decisions, and under section 63 of the NTRC Regulations Act to take a decision to grant or refuse a licence in respect of each bid submitted. The applicant company sought, *inter alia*, a declaration that the failure of the NTRC to notify the reasons for the refusals and to take any decision in respect of its bids was unlawful, and an order obliging the NTRC to give reasons for the refusals.

47. On 22 March 2004 the applicant company lodged another application, supplementing the initial two with similar complaints in respect of the calls for tenders for bands 3 and 63 and band 56.

48. On 23 March 2004 the Commercial Court decided to dismiss the applicant company's applications as unfounded. In doing so, having examined the parties' arguments, the Commercial Court found, *inter alia*, that:

"It is understood from section 47 of [the Broadcasting Act], sections 30, 47, 61 and 63 of [the NTRC] Regulations Act, and Paragraphs 18 and 19 of [the Tendering Rules] that [the NTRC] must adopt only one of the decisions envisaged by section 63 of [the NTRC] Regulations Act, and in the cases in question [the NTRC] adopted the decision recognising the winner and granting a television and radio broadcasting licence not in respect of each bid but based on the results of the call for tenders. The above is also directly implied in the wording of section 61 Paragraph 2 of [the NTRC] Regulations Act, according to which decisions to award television and radio broadcasting licences shall be adopted by [the NTRC] based on the results of the tender process and not as a result of the examination of a bid.

The law actually distinguishes between cases where licences are awarded on the basis of the results of a tender process and cases where they are awarded without a call for tenders, as in the case of cable broadcasting licences. That being so, [the NTRC], based on the results of the tender process, adopted one of the decisions envisaged by section 63 of [the NTRC] Regulations Act, namely to grant a television and radio broadcasting licence.

...

[The NTRC's] decision to grant a licence to the winner of the call for tenders cannot be interpreted other than as a decision refusing a licence to the other participants in the bidding. Following the adoption of a decision by [the NTRC] determining the winner of the call for tenders and awarding a licence to it, there can be no uncertainty for the other participants in the tender process as to whether their bid has or has not been refused, since they are told who the winner is and, consequently, that they have not won.

...

It has been established in the court proceedings that [the NTRC], in keeping with the requirements of section 50 of [the Broadcasting Act], section 63 of [the NTRC] Regulations Act and Paragraph 19 of the Rules, adopted decisions granting television broadcasting licences and sent them to [the applicant company] within the period prescribed by section 67 of [the NTRC] Regulations Act and Paragraph 22 of the Rules, as evidenced by [the letters of 12 June, 19 July, 14 October and 30 December 2003].

The above-mentioned letters actually serve as evidence that [the NTRC] informed [the applicant company] that it was not selected as the best organisation in the tender process, and, having been informed of the decisions concerned, [the applicant company] also

learnt that it had not won the television broadcasting licences for decimetric bands 25, 31, 39, 51, 56 and 63, and metric band 3 in the Yerevan area, meaning that its bid was rejected, which substantiates the fact that [the applicant company] was informed of the reasons and legal grounds for the above-mentioned decisions of [the NTRC], and in particular that [the NTRC], in adopting its decision, was guided by the requirements of section 50 of [the Broadcasting Act], which establishes the selection criteria for licence holders.

Thus, in the light of the above the court concludes that [the second applicant] was informed in a timely and lawful manner about the decisions concerning the results of the television broadcasting licensing tender processes for decimetric bands 25, 31, 39, 51, 56 and 63, and metric band 3 in the Yerevan area, which in substance contained the grounds and reasons for the refusal of [the applicant company's] bids. Consequently, [the NTRC] did not display inaction and did not violate [the applicant company's] rights guaranteed by law, therefore these claims are unfounded and must be dismissed."

49. On 1 April 2004 the applicant company lodged an appeal on points of law, raising the same arguments as in its initial applications.

50. On 23 April 2004 the Court of Cassation dismissed that appeal, repeating verbatim the relevant findings of the Commercial Court and concluding that:

"In such circumstances the arguments raised in the appeal on points of law are unfounded because they are rebutted in detail by the findings contained in the Commercial Court's judgment."

6. The proceedings concerning the call for tenders for band 63

51. On 11 December 2003 the applicant company instituted proceedings in the Commercial Court against the NTRC, contesting its decision of 13 October 2003 awarding the licence for band 63 to Cinemax Ltd. The applicant company submitted, *inter alia*, that Cinemax Ltd had provided false, incomplete and misleading information in its tender which the NTRC had ignored when granting the licence. It further submitted that Cinemax Ltd had neither the means nor the intention to broadcast on that frequency and would effectively pass on its broadcasting licence to a company called Armnews TV, which was unregistered as a media entity.

52. In the proceedings before the Commercial Court, the applicant company lodged several requests for the NTRC to be ordered to provide certain documents which it allegedly had in its possession and which, according to the applicant company, were relevant to the outcome of the case, including an agreement signed between Cinemax Ltd and Armnews TV allegedly contained in the former's tender documents. It also requested the court to call Mr S., the head of Armnews TV, as a witness.

53. The Commercial Court examined and dismissed these requests. As to the request to order the provision of certain documents, the Commercial Court found that the applicant

company had failed to substantiate its inability to obtain this evidence on its own, as required by the law. Nor was it proven that the evidence in question was actually in the NTRC's possession. As to the request to call Mr S., the Commercial Court found this to be unnecessary because there was sufficient written evidence to decide on the disputed matters.

54. On 21 January 2004 the Commercial Court decided, in a judgment containing two and a half pages of legal reasoning, to reject the applicant company's claims as unfounded. In doing so, having examined the parties' arguments, the Commercial Court found, *inter alia*, that the relevant tender process had been conducted, and the resulting decision taken, in compliance with the law.

55. On 4 February 2004 the applicant company lodged an appeal on points of law, which it later supplemented on 10 February 2004, raising the same arguments as in its initial application.

56. On 27 February 2004 the Court of Cassation dismissed that appeal, repeating verbatim the relevant findings of the Commercial Court and concluding that:

"In such circumstances the arguments raised in the appeal on points of law are unfounded because they are rebutted in detail by the findings contained in the Commercial Court's judgment."

57. As to the dismissal of the applicant company's requests, the Court of Cassation found that the Commercial Court had examined and dismissed them in reasoned decisions, and that there was therefore no issue of equality of arms.

II. RELEVANT DOMESTIC LAW

A. The Code of Civil Procedure

58. The relevant provisions of the Code, as in force at the material time, read as follows:

Article 159: Grounds for annulling the unlawful acts of public authorities, local self-government bodies and their officials or for contesting their actions (inaction)

"Unlawful acts of public authorities, local self-government bodies and their officials can be annulled or their actions (inaction) can be contested (hereafter, annulling the unlawful act) if the act in question contradicts the law and if there is evidence that the applicant's rights and (or) freedoms guaranteed by the Armenian Constitution and laws have been violated."

B. The Television and Radio Broadcasting Act

59. The relevant provisions of the Broadcasting Act, as in force at the material time, read as follows:

Section 7: Television and radio broadcasting and the procedure for their implementation

“In Armenia television and radio broadcasting shall be conducted on the basis of a licence.”

Section 20: The anti-monopoly guarantee

“Physical or legal persons can be licensed to operate only one television and radio company or one television and/or one radio company having on-air broadcasting in the same coverage area.”

Section 37: The National Television and Radio Commission

“The National Television and Radio Commission (hereafter, the National Commission) is an independent body with the status of a public agency whose activity is regulated by this law, its regulations and the legislation of Armenia. The National Commission deals with licensing and monitoring of only private television and radio companies (television companies or radio companies).

The National Commission: (a) shall allocate broadcasting frequencies on a public and competitive basis and ensure the publication of complete information on the results of a call for tenders; ... (c) shall grant licences...”

Section 39: The composition of the National Commission

“The National Commission shall have nine members appointed by the President of Armenia for a term of six years, with the exception of the first composition...”

[Sections 37 and 39 following the amendments introduced on 26 February 2007

“...The Commission shall be composed of eight members.”

“The National Commission is an independent regulatory public authority half of whose members shall be elected by the National Assembly for a term of six years and the other half appointed by the President of the Republic for a term of six years with the exception of the first composition.”]

Section 47: Licensing. Licence-holder

“A licence shall be the only legal basis authorising the broadcast of television and radio programmes and the use of a particular frequency or a cable network for broadcasting in the territory of Armenia, except for the cases prescribed by law.

A television and radio broadcasting licence shall be granted for a particular available frequency on the basis of a call for tenders...”

Section 50: Selection of a licence-holder

"When selecting the licence-holder, the National Commission shall take into account:

(a) the predominance of programmes produced in-house;

(b) the predominance of programmes produced in Armenia;

(c) the technical and financial capacity of the applicant; and

(d) the professional level of the staff."

[Section 50 as supplemented on 3 December 2003 with effect on 31 January 2004

"...The National Commission shall give proper reasons for its decisions to select a licence-holder, refuse a licence or invalidate a licence"]

Section 51: Grounds for refusing a licence

"A licence shall not be granted if:

(a) the applicant cannot be a licence-holder pursuant to this law;

(b) the information contained in the bid is inaccurate; or

(c) the technical capacity for television and radio broadcasting is lacking or the declared technical capacity is insufficient.

An applicant shall be informed in writing of the reasons for the refusal of a licence within ten days from the date of the decision.

The refusal of a licence can be contested before the courts."

Section 54: Validity period of a licence

"...A licence to broadcast television and radio programmes or to produce and broadcast [such programmes] shall be granted to television and radio companies: (a) ...; (b) for a period of five years for on-air television and radio broadcasting."

C. The National Television and Radio Commission Regulations Act (in force from 28 December 2001)

60. The relevant provisions of the NTRC Regulations Act read as follows:

Section 30

"The Commission shall define the procedure, conditions and time-limits of the tender process for television and radio broadcasting licences.

Two months before the expiry of a television and radio broadcasting licence or once a vacant (unassigned) frequency becomes available, the Commission shall announce a call for tenders for a licence to broadcast on that frequency."

Section 31

"The Commission shall: ... (c) grant licences..."

Section 61

"...

In order to grant a broadcasting licence, the Commission, at its meeting and within the period prescribed by the tendering rules, shall adopt a decision on the basis of the results of a call for tenders.

The Commission shall publish information on the place, time and agenda of its meeting in the press not later than five days before the date of the meeting."

Section 63

"Following the consideration of a bid, the Commission shall adopt one of the following decisions: (a) to grant a licence; or (b) to refuse a licence."

Section 67

"A copy of the decision granting or refusing a licence shall be duly sent to the applicant within ten days from its adoption."

D. Decision no. 4 of the National Television and Radio Commission of 24 January 2002 Approving the Tendering Rules for Television and Radio Broadcasting Licences *(ՀՀ հեռուստատեսության և ռադիոյի ազգային հանձնաժողովի 2002 թ. հունվարի 24-ի որոշում N 4 Հեռուստառադիոհաղորդումների հեռարձակման լիցենզավորման մրցույթի կարգը հաստատելու մասին)*

61. The relevant provisions of the Tendering Rules, as in force at the material time, read as follows:

"18. The Commission shall hold an open point-based vote in the order in which the bids are examined. The best organisation shall be selected according to the results of the point-based vote.

19. The Commission shall adopt a decision recognising the best organisation as the winner and granting a television and radio broadcasting licence.

20. The Commission shall deliver its decision immediately after its adoption.

...

22. A copy of the Commission's decision shall be duly sent to the participants in the tender process within ten days after its adoption."

III. RELEVANT COUNCIL OF EUROPE DOCUMENTS

A. Committee of Ministers Recommendation Rec(2000)23

62. On 20 December 2000 the Committee of Ministers of the Council of Europe adopted Recommendation Rec(2000)23 to Member States on the independence and functions of regulatory authorities for the broadcasting sector, in which it recommended that the Member States, *inter alia*, "include provisions in their legislation and measures in their policies entrusting the regulatory authorities for the broadcasting sector with powers which enable them to fulfil their missions, as prescribed by national law, in an effective, independent and transparent manner, in accordance with the guidelines set out in the appendix to this recommendation".

63. The guidelines appended to the recommendation, provide, as relevant:

"...

3. The rules governing regulatory authorities for the broadcasting sector, especially their membership, are a key element of their independence. Therefore, they should be defined so as to protect them against any interference, in particular by political forces or economic interests.

4. For this purpose, specific rules should be defined as regards incompatibilities in order to avoid that:

– regulatory authorities are under the influence of political power;

– members of regulatory authorities exercise functions or hold interests in enterprises or other organisations in the media or related sectors, which might lead to a conflict of interest in connection with membership of the regulatory authority.

5. Furthermore, rules should guarantee that the members of these authorities:

– are appointed in a democratic and transparent manner;

– may not receive any mandate or take any instructions from any person or body;

– do not make any statement or undertake any action which may prejudice the independence of their functions and do not take any advantage of them.

...

13. One of the essential tasks of regulatory authorities in the broadcasting sector is normally the granting of broadcasting licences. The basic conditions and criteria governing the granting and renewal of broadcasting licences should be clearly defined in the law.

14. The regulations governing the broadcasting licensing procedure should be clear and precise and should be applied in an open, transparent and impartial manner. The decisions made by the regulatory authorities in this context should be subject to adequate publicity.

...

27. All decisions taken and regulations adopted by the regulatory authorities should be:

– duly reasoned, in accordance with national law;

– open to review by the competent jurisdictions according to national law;

– made available to the public."

B. Declaration of the Committee of Ministers on the independence and functions of regulatory authorities for the broadcasting sector *(Adopted by the Committee of Ministers on 26 March 2008 at the 1022nd meeting of the Ministers' Deputies)*

64. The relevant extracts of this Declaration provide as follows:

"13. In most Council of Europe member states, the members of regulatory authorities are appointed by the parliament or by the head of state at the proposal of parliament. In some member states, in order to ensure that the membership of the regulatory authority reflects the country's social and political diversity, part or all of the members are nominated by non-governmental groups which are considered to be representative of society. Further, in a few member states, the law provides objective selection criteria for the appointment of members.

By contrast, in a number of countries, members are appointed by sole decision of one state authority, e.g. the head of state or a state department, often without clearly specified selection criteria. The appointment of members of regulatory authorities by the head of state and/or parliament has sometimes been criticised advancing that, in such cases, membership would represent or reproduce political power structures.

14. Concerns have often been raised that the nominating or appointing bodies could exert pressure on the members after their appointment. In fact, in some member states, the members of regulatory authorities are frequently accused of acting on behalf of the state body that designated them or political formation behind the designating or appointing authority."

C. Resolution 1361 (2004) of the Parliamentary Assembly of the Council of Europe (PACE): Honouring of obligations and commitments by Armenia, 27 January 2004

65. In paragraph 19 of this Resolution the PACE stated:

"As regards freedom of expression and media pluralism, the Assembly is concerned at developments in the audiovisual media in Armenia and expresses serious doubts as to pluralism in the electronic media, regretting in particular that the vagueness of the law in force has resulted in the National Television and Radio Commission being given outright discretionary powers in the award of broadcasting licences, in particular as regards the television channel A1+."

THE LAW

I. THE SECOND APPLICANT'S VICTIM STATUS

66. The Court first considers it necessary to decide on the victim status of the second applicant. It reiterates that the term "victim" used in Article 34 of the Convention denotes the person directly affected by the act or omission which is at issue (see, among other authorities, *Vatan v. Russia*, no. 47978/99, § 48, 7 October 2004). The Court further reiterates that a person cannot complain about a violation of his or her rights in proceedings to which he or she was not a party, even if he or she was a shareholder and/or executive director of the company which was party to the proceedings (see, among other authorities, *F. Santos Lda. and Fachadas v. Portugal* (dec.), no. 49020/99, 19 September 2000, and *Nosov v. Russia* (dec.), no. 30877/02, 20 October 2005). Furthermore, while in certain circumstances the sole owner of a company can claim to be a "victim" within the meaning of Article 34 of the Convention in so far as the impugned measures taken with regard to his or her company are concerned (see, among other authorities, *Ankarcrona v. Sweden* (dec.), no. 35178/97, 27 June 2000; and *Glas Nadezhda EOOD and Anatoliy Elenkov v. Bulgaria*, no. 14134/02, §§ 40, ECHR 2007-...), when that is not the case the disregarding of an applicant company's legal personality can be justified only in exceptional circumstances, in particular where it is clearly established that it is impossible for the company to apply to the Convention institutions through the organs set up under its articles of incorporation or – in the event of liquidation – through its liquidators (see *Agrotexim and Others v. Greece*, judgment of 24 October 1995, Series A no. 330, p. 25, § 66; *CDI Holding Aktiengesellschaft and Others v. Slovakia* (dec.), no. 37398/97, 18 October 2001; and *Amat-G Ltd and Mebaghishvili v. Georgia*, no. 2507/03, § 33, ECHR 2005-...).

67. The Court notes at the outset that no such exceptional circumstances have been established in the present case (see, by contrast, *G.J. v. Luxembourg*, no. 21156/93, § 24, 26 October 2000). The Court further notes that the second applicant did not produce any evidence to show that he was indeed a shareholder of the applicant company, let alone its sole owner. Nor did he even submit any argumentation in support of the application on his behalf. All the materials in the Court's possession, however, indicate that it was the applicant company alone, as a legal entity, which applied for and was denied a licence, and was later a party to the relevant court proceedings. All the decisions of the NTRC and the domestic courts were delivered in respect of the applicant company and not the second applicant, who did not even represent the applicant company in the domestic proceedings. Consequently, all the materials indicate that the refusals of a licence and the ensuing court proceedings directly affected only the interests of the applicant company and there is no material before the Court which would prompt it to regard the second applicant as a "victim" within the meaning of Article 34.

68. That being so, the Court considers that the application, in so far as it concerns the second applicant, is incompatible *ratione personae* with the provisions of the Convention within the meaning of Article 35 § 3, and must be rejected in accordance with Article 35 § 4 of the Convention.

69. The Court will therefore limit its examination of the complaints raised in the application to those which concern the applicant company.

II. ALLEGED VIOLATION OF ARTICLE 10 OF THE CONVENTION

70. The applicant company complained that the refusals of a broadcasting licence amounted to a violation of its freedom of expression under Article 10 of the Convention, which reads as follows:

"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."

A. Admissibility

71. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. Whether there was an interference with the applicant company's freedom to impart information and ideas

72. The Government submitted that there had been no interference with the applicant company's rights guaranteed by Article 10. A broadcasting licence was granted by comparing the various bids entered following a call for tenders. Unsuccessful applicants were not refused a licence but rather were not recognised as the winners of the call for tenders, which was what had happened in the applicant company's case. The NTRC had not taken any decisions refusing a licence to the applicant company, but had simply announced the winners of the calls for tenders.

73. The applicant company submitted that the decision not to award a licence, whether on the basis of an individual application or through a tender process, amounted to a refusal of a licence. In effect, the announcement of the winner of a call for tenders amounted to a refusal of a licence to all other bidders.

74. The Court considers that it is not an essential difference whether a broadcasting licence is refused on the basis of an individual application or whether such licence is not obtained as a result of a failure to win a call for tenders. By not recognising the applicant company as the winner in the calls for tenders it competed in, the NTRC effectively refused the applicant company's bids for a broadcasting licence. Such refusals constituted interferences with the applicant company's freedom to impart information and ideas (see *Grauso v. Poland*, no. 27388/05, Commission decision of 9 April 1997, unreported; and also, *mutatis mutandis*, *Verein Alternatives Lokalradio Bern and Verein Radio Dreyeckland Basel v. Switzerland*, no. 10746/84, Commission decision of 16 October 1986, Decisions and Reports (DR) 49, p. 126; *Informationsverein Lentia and Others v. Austria*, judgment of 24 November 1993, Series A no. 276, p. 13, § 27; *Radio ABC v. Austria*, judgment of 20 October 1997, *Reports of Judgments and Decisions* 1997-VI, p. 2197, § 27; *Brook v. the United Kingdom* (dec.), no. 38218/97, 11 July 2000; *United Christian Broadcasters Ltd v. the United Kingdom* (dec.), no. 44802/98, 7 November 2000; and *Demuth v. Switzerland*, no. 38743/97, § 30, ECHR 2002-IX).

75. It must therefore be determined whether these interferences were “prescribed by law”, pursued one or more legitimate aims under the third sentence of paragraph 1 of Article 10 or under paragraph 2 thereof, and were “necessary in a democratic society”.

76. When doing so, the Court will bear in mind that under the third sentence of Article 10 § 1 States 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. The grant of a licence may also be made conditional on such matters 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. This may lead to interferences whose aims will be legitimate under the third sentence of paragraph 1, even though they may not correspond to any of the aims set out in paragraph 2. However, the compatibility of such interferences must be assessed in the light of the requirements of paragraph 2 (see *United Christian Broadcasters Ltd* and *Demuth*, §§ 33, cited above).

2. Whether the interferences were justified

(a) The parties' submissions

77. The Government submitted that the criteria for awarding a broadcasting licence were stipulated by law. The winner of a call for tenders was the bidder who totalled the highest number of points following the assessment of those criteria. Thus the applicant company had been informed of the reasons for its failure to win in the calls for tenders in question since it was aware that it had scored fewer points than other competitors and that it had not been recognised as the winner. Furthermore, the representative of the applicant company had been present at all the stages of the proceedings before the NTRC, which were public, including when various competitive bids had been presented and when the points-based vote had been held. This showed that the applicant company had had the possibility to be informed of the grounds on which it had been denied broadcasting licences.

78. The applicant company submitted that the NTRC was obliged under the law to inform it of the reasons for denying it a licence. The mere presence of its representative during the presentation of competitive bids and a points-based vote which, moreover, indicated only a total score did not constitute proper provision of a reasoned decision. The NTRC's letters announcing the outcome of the calls for tenders could not be considered as notification of reasons either, since they failed to state the grounds for the relevant decisions but simply announced them. By failing to provide reasons for its decisions explaining the assessment of the competitive bids, the NTRC made it impossible to establish whether the licensing criteria contained in section 50 of the Broadcasting Act were met when it awarded broadcasting licences. This rendered the licensing process arbitrary and not as prescribed by law.

79. The applicant company further submitted that, in established democracies, transparency and openness as to how a public authority arrived at a decision played a crucial role in ensuring accountability, public confidence and fairness in the procedures of public authorities, especially when those authorities determined issues relating to fundamental rights. In the absence of a reasoned decision, fairness, lack of bias and adherence to the law could not be demonstrated. Furthermore, the failure to provide reasons prevented unsuccessful applicants from ascertaining the exact reasons for the failure of their proposal bids and from effectively challenging a refusal. Where a public authority, such as the NTRC, had jurisdiction over rights and was able to make decisions

interfering with them, a points-based system without the additional provision of a reasoned decision was inadequate.

(b) The Court's assessment

80. The first step in the Court's examination is to determine whether the denial of a broadcasting licence was "prescribed by law", within the meaning of Article 10. According to its settled case-law, this expression, which is also used in Articles 9 and 11 of the Convention, and the expression "in accordance with the law", used in Article 8 of the Convention, not only require that an interference with the rights enshrined in these Articles should have some basis in domestic law, but also refer to the quality of the law in question. That law should be accessible to the persons concerned and formulated with sufficient precision to enable them – if need be, with appropriate advice – to foresee, to a degree that is reasonable in the circumstances, the consequences which a given action may entail (see, among many other authorities, *Maestri v. Italy* [GC], no. 39748/98, § 30, ECHR 2004-I).

81. In addition, domestic law must afford a measure of legal protection against arbitrary interferences by public authorities with the rights guaranteed by the Convention. In matters affecting fundamental rights it would be contrary to the rule of law, one of the basic principles of a democratic society enshrined in the Convention, for a legal discretion granted to the executive to be expressed in terms of an unfettered power. Consequently, the law must indicate the scope of any such discretion conferred on the competent authorities and the manner of its exercise with sufficient clarity, having regard to the legitimate aim of the measure in question, to give the individual adequate protection against arbitrary interference (see *Rotaru v. Romania* [GC], no. 28341/95, § ..., ECHR 2000-V, and *Hasan and Chaush v. Bulgaria* [GC], no. 30985/96, § 84, ECHR 2000-XI). As regards licensing procedures in particular, the Court reiterates that 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 *Glas Nadezhda EOOD and Anatoliy Elenkov v. Bulgaria*, cited above, §§ 49-51).

82. Turning to the present case, the Court notes that the NTRC's decisions granting broadcasting licences to companies other than the applicant company were based on the Broadcasting Act and other complementary legal acts. Section 50 of that Act defined the criteria on which the NTRC was to base its choice in granting a broadcasting licence. These included "the predominance of programmes produced in-house", "the predominance of programmes produced in Armenia", "the technical and financial capacity of the applicant" and "the professional level of the staff". While these criteria in themselves appear to be sufficiently precise, the Broadcasting Act did not explicitly require at the material time that any reasons be given by the licensing authority in applying these criteria. Thus, the licensing authority, in the instant case the NTRC, gave no reasons whatsoever for its decisions repeatedly denying the applicant company a broadcasting licence. On each occasion the NTRC simply announced the winner of each call for tenders, providing no reasons as to why this or that company's bid met the

requisite criteria more than those of the applicant company. Even though the NTRC held public hearings, no decisions containing reasons for the grant or the denial of a licence were announced at such hearings. The competing companies simply presented their bids, following which a points-based vote was taken with no reasoning being given. The applicant company and the public were thus not made aware on what basis the NTRC had exercised its discretion to deny broadcasting licences.

83. In this connection, 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" (see paragraph 63 above). The Court further takes 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 ha[d] resulted in the [NTRC] being given outright discretionary powers" (see paragraph 65 above). The Court considers 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.

84. The Court therefore concludes that the interferences with the applicant company's freedom to impart information and ideas, namely the seven denials of a broadcasting licence, did not meet the Convention requirement of lawfulness. That being so, it is not required to determine whether these interferences pursued a legitimate aim and, if so, whether they were proportionate to the aim pursued.

85. There has accordingly been a violation of Article 10 of the Convention.

III. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION

86. The applicant company complained that in both sets of proceedings the domestic courts had failed to deliver reasoned judgments. Furthermore, in the proceedings concerning the tender process for band 63, the Commercial Court had violated the principle of equality of arms. The applicant company relied on 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 [a] ... tribunal..."

Admissibility

1. Right to a reasoned judgment

87. The Court reiterates 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). Furthermore, in dismissing an appeal, an appellate court may, in principle, simply endorse the reasons for the lower court's decision (see, *mutatis mutandis*, *Helle v. Finland*, judgment of 19 December 1997, *Reports* 1997-VIII, §§ 59-60; *García Ruiz v. Spain* [GC], no. 30544/96, § 26, ECHR 1999-I; and *Hirvisaari v. Finland*, no. 49684/99, § 30, 27 September 2001).

88. In the present case the applicant company claimed that the judgments were unreasoned because the Commercial Court fully agreed with the submissions of the NTRC, while the Court of Cassation repeated the findings of the Commercial Court. The Court notes, however, that it transpires from the relevant judgments that in both sets of proceedings the Commercial Court carefully examined both the written and the oral submissions of the parties. The judgment of 23 March 2004 contained five pages and the judgment of 21 January 2004 – two and a half pages of legal reasoning as to why the applicant company's claims were unsubstantiated. The fact that the Commercial Court in its conclusions agreed with the submissions of one of the parties, in this case the NTRC, does not suggest that these conclusions were unreasoned. As to the reasoning provided by the Court of Cassation, the arguments raised by the applicant company before that court were practically identical to the ones raised before the Commercial Court. Furthermore, the Court of Cassation's competence was limited only to examination on points of law. In such circumstances, it cannot be said that the Court of Cassation failed to provide reasons merely because it endorsed the findings of the lower court and incorporated them in its decisions.

89. 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.

2. Equality of arms

90. The applicant company claimed that, in the proceedings concerning the tender process for band 63, the Commercial Court had violated the principle of equality of arms because it had dismissed the applicant company's requests and thereby prevented the applicant company from producing evidence in support of its claim.

91. The Court reiterates that it is the domestic courts which are best placed to assess the relevance of evidence to the issues in the case. Furthermore, Article 6 leaves it to them, again as a general rule, to assess whether it is appropriate to call witnesses (see, among other authorities, *Vidal v. Belgium*, judgment of 22 April 1992, Series A no. 235-B, § 33; and *Wierzbicki v. Poland*, no. 24541/94, § 45, 18 June 2002).

92. In the present case, the requests lodged by the applicant company were examined by the Commercial Court and reasons were given for their dismissal which do not appear to

be arbitrary. Furthermore, the applicant company was able to contest the relevant dismissals in its appeal to the Court of Cassation which additionally examined and confirmed the reasons given by the Commercial Court. That being so, there is no appearance of a violation of the fair trial guarantees of Article 6 § 1 of the Convention in this respect. Nor is there any evidence that the applicant company was placed at a substantial disadvantage vis-à-vis its opponent in any other way.

93. 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.

IV. ALLEGED VIOLATION OF ARTICLE 14 OF THE CONVENTION IN CONJUNCTION WITH ARTICLES 6 AND 10 OF THE CONVENTION

94. Lastly, the applicant company complained that the NTRC's decisions and those of the domestic courts had been politically motivated. It claimed that the NTRC was not an independent and impartial body since all its nine members were appointed by the President of Armenia. The applicant company relied on 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 ..."

Admissibility

95. The Court notes that the applicant company did not raise the issue of the alleged political discrimination and the manner of appointment of the NTRC's members in its application to the domestic courts.

96. 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.

97. As regards the court proceedings, having considered all the materials in its possession, the Court similarly finds that there is no evidence to substantiate the applicant company's allegation that the domestic courts were influenced by political considerations when deciding on its applications.

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

V. APPLICATION OF ARTICLE 41 OF THE CONVENTION

99. Article 41 of the Convention provides:

"If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only

partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party."

A. Pecuniary Damage

100. The applicant company claimed a total of 1,357,828 United States dollars (USD) (approx. EUR 1,050,137) in respect of pecuniary damage. This amount included lost anticipated income from advertising and investors, the loss of unused equipment and lost contractual income regarding which the applicant company submitted that, after it had been permitted by the NTRC on 23 November 2001 to operate on band 37 for an indefinite period of time, it had entered into a number of contractual agreements which it had had to terminate following the withdrawal of its licence for band 37.

101. The Government submitted that there was no causal link between the alleged violation of Article 10 and the pecuniary damage claimed. That claim was based solely on the speculation that, had the NTRC delivered a reasoned decision, the applicant company would have been granted a broadcasting licence. Furthermore, the part of the claim concerning lost contractual income was beyond the scope of the present application.

102. The Court considers that the claims for lost anticipated income are of a speculative nature (see, among other authorities, *Informationsverein Lentia and Others*, cited above, § 46; and *Radio ABC*, cited above, § 41). Furthermore, it does not discern any causal link between the violation found and the pecuniary damage alleged in connection with the loss of unused equipment. Finally, as regards the contractual income allegedly lost, that claim is beyond the scope of the present application, since the latter does not concern the call for tenders for band 37 or any possible damage sustained as a result of that tender process. That issue, as already indicated above, is being examined by the Court in another application lodged by the applicant company and registered under no. 37780/02. Based on the above, the Court rejects the applicant company's claims for pecuniary damage.

B. Non-pecuniary damage

103. The applicant company also claimed USD 50,000 (approx. EUR 38,670) in respect of non-pecuniary damage. In particular, the NTRC's continued denial of a broadcasting licence and refusal to provide a reasoned decision had had a negative effect on its reputation and image. Furthermore, the applicant company's employees and its chairman had suffered severe anxiety, frustration, stress, inconvenience and uncertainty as a result of the violation of the Convention and the failure of the domestic courts to address that violation.

104. The Government submitted that the finding of a violation should, in itself, constitute sufficient just satisfaction. There was no causal link between the alleged violation and the non-pecuniary damage claimed. Furthermore, referring to the cases of *Comingersoll S.A. v. Portugal* [GC], no. 35382/97, § 36, ECHR 2000-IV; and *Freedom and Democracy Party* (*ÖZDEP*) *v. Turkey* [GC], no. 23885/94, § 57, ECHR 1999-VIII, the Government claimed that the Court's judgments in which non-pecuniary damage had

been awarded on account of any frustration and uncertainty caused to directors and members of a legal person were not applicable to the present case as they concerned other articles of the Convention and situations distinguishable from the present case.

105. The Court reiterates that, if the rights guaranteed by the Convention are to be effective, it must necessarily be empowered to award pecuniary compensation for non-pecuniary damage also to commercial companies. In such cases, account should be taken of the company's reputation, uncertainty in decision-planning, disruption in the management of the company (for which there is no precise method of calculating the consequences) and lastly the anxiety and inconvenience caused to the members of the management team (see, *mutatis mutandis*, *Comingersoll S.A*, cited above, § 35). The Court considers that the failure of the NTRC to apply the licensing criteria on each occasion in a manner compatible with Article 10, in particular its failure to give any reasons for its repeated denials of the applicant company's bids, must have caused frustration and uncertainty to the company's management team which cannot be compensated by a finding of a violation alone (see, *mutatis mutandis*, ibid., § 36; and *Freedom and Democracy Party* (*ÖZDEP*), cited above, § 57). The Court therefore, ruling on an equitable basis, awards the applicant company EUR 20,000 in respect of non-pecuniary damage.

C. Costs and expenses

106. The applicant company also claimed USD 11,959 (approx. EUR 9,250) and 10,736.48 pounds sterling (GBP) (approx. EUR 16,050) for the costs and expenses incurred before the Court. These claims comprised:

(a) USD 9,775 for the fees of its two domestic representatives (42.5 and 51 hours at USD 50 and 150 per hour respectively);

(b) USD 2,184 for translation costs;

(c) GBP 9,112.48 for the fees of its four United Kingdom-based lawyers, including three KHRP lawyers and one barrister (totals of about 32 and 28 hours respectively at GBP 150 per hour);

(d) GBP 260 for administrative costs incurred by the KHRP; and

(e) GBP 1,364.00 travel expenses incurred by two KHRP lawyers on their trip to Yerevan.

The applicant company submitted detailed time sheets stating hourly rates in support of its claims.

107. The Government firstly insisted that the amounts claimed were to be reduced by half because only the applicant company was entitled to just satisfaction and not the second applicant. Secondly, the applicant company had used the services of an excessive

number of lawyers, despite the fact that the case was not so complex as to justify such a need. Lastly, the claims in respect of the domestic lawyers were not duly substantiated with documentary proof, since the applicant company had failed to produce any contract certifying that there was an agreement with those lawyers to provide legal services at the alleged hourly rate. Moreover, the hourly rates allegedly charged by the domestic lawyers were excessive.

108. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum. In the present case, the Court notes at the outset that no invoice has been submitted to substantiate the translation costs. As regards the lawyers' fees, it considers that not all the legal costs claimed were necessarily and reasonably incurred, including a trip to Yerevan by the KHRP lawyers and considerable duplication in the work carried out by the foreign and the domestic representatives, as set out in the relevant time sheets. Furthermore, a reduction must also be applied in view of the fact that part of the initial application was declared inadmissible. Making its own estimate based on the information available and deciding on an equitable basis, the Court awards the applicant company EUR 10,000 in respect of costs and expenses, to be paid in pounds sterling into its representatives' bank account in the United Kingdom.

D. Default interest

109. The Court considers it appropriate that the default interest should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the applicant company's complaint concerning Article 10 of the Convention admissible and the remainder of the application inadmissible;

2. *Holds* that there has been a violation of Article 10 of the Convention;

3. *Holds*

(a) that the respondent State is to pay the applicant company, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts:

(i) EUR 20,000 (twenty thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage, to be converted into the national currency of the respondent State at the rate applicable at the date of settlement;

(ii) EUR 10,000 (ten thousand euros), plus any tax that may be chargeable to the applicant company, in respect of costs and expenses, to be paid in pounds sterling into its representatives' bank account in the United Kingdom;

(b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

4. *Dismisses* the remainder of the applicant company's claim for just satisfaction.

Done in English, and notified in writing on 17 June 2008, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Santiago Quesada Josep Casadevall
Registrar President

MELTEX LTD AND MESROP MOVSESYAN v. ARMENIA JUDGMENT

FIFTH SECTION

CASE OF GLAS NADEZHDA EOOD AND ELENKOV v. BULGARIA

(Application no. 14134/02)

JUDGMENT

STRASBOURG

11 October 2007

FINAL

11/01/2008

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Glas Nadezhda EOOD and Elenkov v. Bulgaria,

The European Court of Human Rights (Fifth Section), sitting as a Chamber composed of:

Mr P. Lorenzen, *President*,
Mrs S. Botoucharova,
Mr K. Jungwiert,
Mr V. Butkevych,
Mrs M. Tsatsa-Nikolovska,
Mr R. Maruste,
Mr M. Villiger, *judges*,
and Mrs C. Westerdiek, *Section Registrar*,

Having deliberated in private on 18 September 2007,

Delivers the following judgment, which was adopted on that date:

PROCEDURE

1. The case originated in an application (no. 14134/02) against the Republic of Bulgaria lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by Glas Nadezhda EOOD, a single-member limited liability company having its registered office in Sofia, and its sole member and manager, Mr Anatoliy Elenkov, a Bulgarian national ("the applicants"), on 18 October 2001.

2. The applicants were represented before the Court by Mr Y. Grozev, a lawyer practising in Sofia. The Bulgarian Government ("the Government") were represented by their Agent, Ms M. Karadzhova, of the Ministry of Justice.

3. The applicants complained about the refusal of the competent body to grant Glas Nadezhda EOOD a radio broadcasting licence and about the refusal of the Supreme Administrative Court to review the merits of the decision made by this body. They alleged that these had breached their rights under Articles 9, 10 and 13 of the Convention.

4. On 8 December 2005 the Court decided to give notice of the application to the Government. Under the provisions of Article 29 § 3 of the Convention, it decided to examine the merits of the application at the same time as its admissibility.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

A. Background

5. Mr Elenkov, who was born in 1972 and lives in Sofia, is a Christian and a follower of the Protestant Church in Bulgaria. In 2000 he decided to set up Glas Nadezhda EOOD, through which he would apply for a broadcasting licence for a religious radio station. He obtained support for this initiative from many domestic and foreign religious figures of various denominations, as well as from the Directorate of Religious Denominations at the Council of Ministers.

B. The application for a broadcasting licence and its denial

6. On 1 June 2000 the Council of Ministers announced that a number of frequencies for local radio broadcasting would be made available to private operators in several cities. Ten such licences were available for Sofia.

7. On 16 August 2000 Glas Nadezhda EOOD applied to the State Telecommunications Commission ("the STC" – see paragraphs 24 and 25 below) for a broadcasting licence for a radio station with Christian religious programming for the Sofia City Region. In support of its application it presented, *inter alia*, a business plan, a programme project, a programme concept, a programme profile, and a programme scheme. It was apparent from these that it intended to broadcast mainly Christian religious programming.

8. In line with the established procedure, the application was forwarded to the National Radio and Television Committee ("the NRTC" – see paragraph 27 below). After deliberating on the application on 26 September 2000, the Committee refused in a decision of 2 October 2000, which was not notified to Glas Nadezhda EOOD, to grant a broadcasting licence. It stated, without adding further detail, that although the company had submitted all the requisite documents, its programme documents did not correspond to points 3.4, 3.5 and 4.3 of the NRTC's criteria for licensing regional over-the-air radio operators, and only partly corresponded to points 3.1, 3.2, 3.3, 4.1 and 4.2 (see paragraph 28 below). Furthermore, Glas Nadezhda EOOD had no prior experience of creating programmes in the region.

9. In accordance with the established procedure (see paragraph 26 below), this decision was sent to the STC.

10. In a decision of 2 November 2000 the STC refused to grant a broadcasting licence to Glas Nadezhda EOOD. It stated that its refusal was based on the NRTC's decision of 2 October 2000.

C. The application for judicial review of the STC's decision

11. Glas Nadezhda EOOD lodged an application for judicial review of the STC's decision with the Supreme Administrative Court. It submitted that, since it was not clear whether the NRTC's decision was subject to direct review, the court should first examine its lawfulness before ruling on the lawfulness of the STC's decision. Glas Nadezhda EOOD further argued that it had produced all of the requisite documents, each of which corresponded to the NRTC's criteria. The fact that no reasons had been given on how, in

the NRTC's view, these documents failed to meet the criteria, was in breach of the rules of procedure and the requirement that administrative decisions be reasoned. On the contrary, all of the NRTC's criteria had been complied with. The decisions had also been in breach of the substantive law and did not correspond to the latter's object and purpose. In a supplementary memorial Glas Nadezhda EOOD made detailed submissions in respect of each of its alleged failures to comply with the relevant NRTC criteria.

12. In a judgment of 12 March 2001, a three-member panel of the Supreme Administrative Court dismissed the application. It held that the NRTC's decision was subject to review in separate proceedings. However, Glas Nadezhda EOOD had not sought such review, whereas indirect review of that decision in proceedings against the STC's decision was impossible. The court went on to say that the STC's decision concerned the allocation of the radio spectrum, whereas the NRTC's decision related to the broadcasting content. It was therefore impossible to grant a broadcasting licence without a prior finding by the NRTC that it would be used for broadcasting quality programmes. In issuing its decision, the STC was therefore bound by the NRTC's decision and the latter's refusal had effectively precluded the former from granting the requested licence.

13. Glas Nadezhda EOOD appealed on points of law to a five-member panel of the Supreme Administrative Court. It argued, *inter alia*, that while it could be accepted that the NRTC's refusal was binding on the STC, the former was bound to give reasons for its decision.

14. In a final judgment of 11 July 2001 the five-member panel of the Supreme Administrative Court upheld the three-member panel's judgment, holding, *inter alia*, that the STC was bound by the NRTC's decision and could not have reviewed its lawfulness. Nor could the court, in proceedings against the STC's decision, examine the lawfulness of the NRTC's decision. It could do so only pursuant to an application for judicial review of the latter's decision.

D. The application for judicial review of the NRTC's decision

15. Having been apprised of the tenor of the NRTC's decision in the course of the proceedings for judicial review of the STC's decision, on 1 March 2001 Glas Nadezhda EOOD made an application for its judicial review. It submitted that it had provided all necessary documents, thus establishing that it had complied with the NRTC's licensing criteria. However, that body had not pointed out any perceived deficiencies, thus failing to provide a duly reasoned decision and acting in breach of the rules of administrative procedure.

16. In a judgment of 21 March 2002 a three-member panel of the Supreme Administrative Court dismissed the application. It held that the NRTC's assessment of whether the licence application met its criteria was not subject to judicial scrutiny, since the NRTC enjoyed discretion in that respect. In the instant case it had found that the programme documents submitted by Glas Nadezhda EOOD did not meet its requirements

for regional targeting, societal function and business perspective of the programming, and only partially met its criteria regarding the justification and uniqueness of its programme profile, conformity with the audience's expectations and professional and technological resources. These findings fell within the exclusive province of the NRTC.

17. Glas Nadezhda EOOD appealed on points of law to a five-member panel of the Supreme Administrative Court, reiterating its arguments.

18. In a final judgment of 28 December 2002 the five-member panel of the Supreme Administrative Court upheld the three-member panel's judgment, fully endorsing its reasoning.

E. The attempt to obtain a copy of the minutes of the NRTC's deliberations

19. On 16 November 2000 Mr Elenkov, acting on behalf of Glas Nadezhda EOOD, requested the NRTC to provide it with a copy of the minutes of the deliberations at which it had examined its application for a broadcasting licence. He relied on the Access to Public Information Act 2000 ("*Закон за достъп до обществена информация*").

20. As the NRTC did not reply within the statutory time-limit, Mr Elenkov asked the Sofia City Court to review its tacit refusal.

21. In a judgment of 2 July 2001 the Sofia City Court quashed the NRTC's tacit refusal and ordered it to reply to the request for information. It held that the minutes of the NRTC's deliberations were public information within the meaning of the Access to Public Information Act 2000.

22. The NRTC did not appeal and shortly afterwards the judgment entered into force. However, at the time of the latest receipt of information from the applicants (26 June 2006) the NRTC had still not complied with the judgment and had not replied to the applicants' request for information.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. The Constitution

23. The relevant provisions of the Constitution of 1991 read as follows:

Article 37

"1. Freedom of conscience, freedom of thought and choice of religion or of religious or atheistic views shall be inviolable. The State shall assist in the maintenance of tolerance and respect between the adherents of different denominations, and between believers and non-believers.

2. Freedom of conscience and religion shall not be exercised to the detriment of national security, public order, public health and morals, or of the rights and freedoms of others."

Article 39

"1. Everyone is entitled to express an opinion or to publicise it through words, written or oral, sound, or image, or in any other way.

2. This right shall not be used to the detriment of the rights and reputation of others, or for the incitement of a forcible change of the constitutionally established order, the perpetration of a crime, or the incitement of enmity or violence against anyone."

Article 40

"1. The press and the other mass media shall be free and not subject to censorship.

2. Printed matter or another information medium may be stopped or confiscated only pursuant to an act of the judicial authorities, where it encroaches on good morals or incites to a forcible change of the constitutionally established order, the perpetration of a crime or an act of violence against the person. ..."

Article 41

"1. Everyone has the right to seek, receive and impart information. The exercise of that right may not be directed against the rights and the good name of other citizens, nor against national security, public order, public health or morals.

2. Citizens shall have the right to information from state bodies or agencies on any matter of legitimate interest to them, unless the information is a state secret or a secret protected by law, or it affects the rights of others."

B. The Telecommunications Act 1998

24. At the material time the Telecommunications Act 1998 ("*Закон за далекосъобщенията*") regulated all forms of telecommunication, such as telephony and radio and television broadcasting. The main regulatory body having authority under the Act was the STC (renamed Telecommunications Regulation Commission in February 2002). At the relevant time it had the power to, *inter alia*, grant, amend, supplement, freeze, discontinue and withdraw radio and television broadcasting licences, following a decision by the NRTC (section 27(5) of the Act, as in force at the material time).

25. The STC was a collective body attached to the Council of Ministers (section 22(1) of the Act, as in force at the material time). It had five members, nominated by the Council of Ministers and appointed by the prime minister for a term of seven years, renewable once (section 23(1) and (2) of the Act, as in force at the material time). The members could be dismissed prematurely only if they resigned, seriously breached the provisions

of the Act, seriously or systematically violated their official duties, committed a wilful publicly prosecutable criminal offence, or were unable to perform their duties for more than six months (section 23(4) of the Act, as in force at the material time). The organisation and the operation of the STC and of its secretariat were laid down in regulations issued by the Council of Ministers (section 26(1) of the Act, as in force at the material time).

C. The Radio and Television Act 1998

26. Under section 105(1) of the Radio and Television Act 1998 ("*Закон за радиото и телевизията*"), as in force at the relevant time, radio and television broadcasting was only allowed under a licence granted by the STC. The application for a licence had to be filed with the STC and accompanied by, as relevant, a programme project, a programme concept, a programme profile and a programme scheme (section 111 of the Act, as in force at the relevant time). A STC official checked the submitted documents and, if he or she found any irregularities, advised the applicant, which then had seven days to rectify them. If the applicant failed to do so, the application was not considered (section 112 of the Act, as in force at the relevant time). The STC was to transmit the accepted application, plus enclosures, to the NRTC (section 113 of the Act, as in force at the relevant time), which then had to make a reasoned decision on the application within one month (section 115(1) of the Act, as in force at the relevant time). The decision was then transmitted to the STC within seven days (section 115(2) of the Act, as in force at the relevant time), which issued the licence, where appropriate, within one month (section 115(4) of the Act, as in force at the relevant time).

27. The NRTC was an independent body responsible for protecting freedom of expression, the independence of radio and television operators and the interests of the audience (section 20(1) of the Act, as in force at the relevant time). Five of its nine members were elected by the National Assembly, and the remaining four were appointed by the President of the Republic (section 24(1) of the Act, as in force at the relevant time). Alongside some consultative powers, it was entrusted with supervising the activities of radio and television operators and granting, modifying and withdrawing broadcasting licences (section 32(1)(1) and (9) of the Act, as in force at the relevant time). In November 2001 the NRTC was renamed the Electronic Media Council.

D. Programme criteria of the NRTC

28. In issue 5/6 of 2000 of its bulletin, the NRTC published its "Programme criteria for the licensing of regional over-the-air radio operators". They read as follows:

"1. Legal status

1.1. Conformity to the requirements of section 105 of the Radio and Television Act 1998. *Note: compliance with this criterion is mandatory for admitting the applicant to assessment under the remainder of the criteria.*

1.2. Transparency and structure of the [operator's] capital 0 to 5 points

2. Experience in setting up radio programmes

2.1. Degree of legality of the previous experience 0 to 10 points

Note: the assessment is made on an inverse scale; an applicant which has received 0 points is not assessed under criteria 2.2., 2.3. and 2.4.

2.2. Population coverage ratio of the [radio station's] communication 0 to 5 points

Note: the population coverage ratio of the communication is assessed on the basis of the audience for the region in percentage points.

2.3. Uniqueness of the form of communication 0 to 3 points

2.4. Societal function 0 to 3 points

– information and commentary

– culture and education

– programming for disadvantaged groups

2.5. Previously established violations of the [Radio and Television Act] 0 to 5 points

Note: the assessment is made on an inverse scale, on the basis of a report by the NRTC's monitoring department.

3. Programme aims

3.1. Justification of the selected programme profile 0 to 10 points

Note: [If awarded] 0 points the applicant is not assessed under the other criteria.

3.2. Uniqueness (for the region) of the programme profile 0 to 10 points

3.3. Conformity with the audience's expectations 0 to 5 points

3.4. Regional targeting of the programme 0 to 5 points

3.5. Societal function 0 to 10 points

– information and commentary

– culture and education

– programming for disadvantaged groups

4. Capacity to produce the programme

4.1. Professional resources 0 to 5 points

4.2. Technological resources 0 to 5 points

4.3. Business perspective 0 to 10 points

5. Setting up of radio networks in more than one region

5.1. Programme capabilities for supra-regional communication

5.2. Regional targeting of the individual programmes

Note: the assessment under [criteria] 5.1. and 5.2. is from 0 to 3 points and is made by multiplying the two results.

The maximum number of points under all criteria is 100."

E. Judgment no. 10 of 1999 of the Constitutional Court

29. On 25 June 1999 the Constitutional Court gave judgment (*реш. № 10 от 25 юни 1999 г. по к.д. № 36 от 1998 г., обн. ДВ, бр. 60 от 2 юли 1999 г.*) in proceedings brought by fifty-two members of Parliament who considered that a number of provisions of the Radio and Television Act 1998 should be declared contrary to the Constitution. The court held, as relevant:

"Under the Telecommunications Act [1998], licences are granted by the STC and approved by the Council of Ministers. Whereas this licensing relates to the setting up of telecommunication networks and to the use of the radio frequency spectrum and its allocation, the NRTC's decision under the [Radio and Television Act 1998] relates to the content of the services which will be broadcast. The provisions of the [Telecommunications Act 1998] relate to licensing for the setting up of telecommunications networks and the provision of services through the radio frequency spectrum. Supervision of the preparation, creation and broadcasting of radio and television programmes ... falls outside the competence of the STC.

As regards the media, and radio and television in particular, there exists the instruction [implicit] in Article 40 § 1 of the Constitution that they be transformed into autonomous public institutions, freed of the tutelage of a specific government agency. For this reason the regulation of radio and television is entrusted ... to the NRTC, which is not a government agency.

Over recent years Bulgarian law has for the first time differentiated between the regimes for establishing telecommunications operators and those for establishing radio and television operators. The licensing of telecommunication operators is governed by the [Telecommunications Act 1998], whereas the licensing in respect of programme content is governed by the [Radio and Television Act 1998]. These are two differing types of activity: the first mainly monitors compliance with technological requirements under the [Telecommunications Act 1998], whereas the second monitors aesthetical and artistic qualities under the [Radio and Television Act 1998]. At the same time, the media law does not allow the independence of the procedure for issuing radio and television licences to be called into question, because section 115 of the [Radio and Television Act 1998] instructs the NRTC to make a reasoned decision on each application for a licence for electronic media broadcasting. If the NRTC's decision is to allow the application, it encloses the draft licence. The assertion ... that 'the STC is not bound by the decision of the NRTC [and that i]t may grant a licence or deny one irrespective of the positive decision of the NRTC' is unfounded. The [STC] has no right to review compliance with the criteria laid down in the [Radio and Television Act 1998]. All questions relating to the granting, modification, or withdrawal of radio and television broadcasting licences, respectively to guaranteeing freedom of expression through the media, fall within the mandate of the NRTC.

This court has many times ruled on the relations between the communications rights and the regulatory bodies in the information field. The connection between freedom of speech and the powers of the STC were examined in judgment no. 33 of 1998 [(*решение № 33 от 8 декември 1998 г. по к.д. № 30 от 1998 г., обн., ДВ, брой 147 от 15 декември 1998 г.*)], whose reasoning is also applicable in the instant case. This judgment states: 'As already found by [this court] in its judgment no. 7 of 1996 [(*решение № 7 от 4 юни 1996 г. по к.д. № 1 от 1996 г., обн., ДВ , брой 55 от 28 юни 1996 г.*)], State interference in the allocation of the radio frequency spectrum is inevitable. It follows that the freedom of the electronic media under Article 40 § 1 of the Constitution does not exclude State interference. The underlying principles of Article 40 § 1 may be complied with by making the licensing conditions and procedure public, accessible and preordained.'"

F. Judicial review of the decisions of the STC and the NRTC

30. Under section 25(3) of the Telecommunications Act 1998, the decisions of the STC were subject to review by the Supreme Administrative Court.

31. Section 38 of the Radio and Television Act 1998, as worded at the material time, provided that the NRTC's decisions to grant, amend or withdraw a broadcasting licence were also subject to review by the Supreme Administrative Court.

32. Under section 41(3) of the Administrative Procedure Act 1979 ("*Закон за административното производство*"), which at the material time regulated, *inter alia*, the procedure for judicial review of administrative decisions, the reviewing court had to verify whether an administrative decision was lawful, that is, made by a competent body

in due form, in compliance with the relevant procedural and substantive rules, and in conformity with the object and purpose of the law. Similarly, section 12 of the Supreme Administrative Court Act 1997 ("*Закон за Върховния административен съд*"), as in force at the relevant time, provided that the grounds for annulling administrative decisions were lack of competence of the body which had made the decision, its failure to make the decision in due form, a material breach of the rules of administrative procedure, a breach of the substantive law or non-conformity with the object and purpose of the law.

III. RELEVANT COUNCIL OF EUROPE DOCUMENTS

33. On 20 December 2000 the Committee of Ministers of the Council of Europe adopted Recommendation no. R (2000) 23 to Member States on the independence and functions of regulatory authorities for the broadcasting sector, in which it recommended that the Member States, *inter alia*, "include provisions in their legislation and measures in their policies entrusting the regulatory authorities for the broadcasting sector with powers which enable them to fulfil their missions, as prescribed by national law, in an effective, independent and transparent manner, in accordance with the guidelines set out in the appendix to this recommendation".

34. The guidelines, featuring as an appendix to the recommendation, provide, as relevant:

"...

3. The rules governing regulatory authorities for the broadcasting sector, especially their membership, are a key element of their independence. Therefore, they should be defined so as to protect them against any interference, in particular by political forces or economic interests.

4. For this purpose, specific rules should be defined as regards incompatibilities in order to avoid that:

– regulatory authorities are under the influence of political power;

– members of regulatory authorities exercise functions or hold interests in enterprises or other organisations in the media or related sectors, which might lead to a conflict of interest in connection with membership of the regulatory authority.

5. Furthermore, rules should guarantee that the members of these authorities:

– are appointed in a democratic and transparent manner;

– may not receive any mandate or take any instructions from any person or body;

– do not make any statement or undertake any action which may prejudice the independence of their functions and do not take any advantage of them.

...

13. One of the essential tasks of regulatory authorities in the broadcasting sector is normally the granting of broadcasting licences. The basic conditions and criteria governing the granting and renewal of broadcasting licences should be clearly defined in the law.

14. The regulations governing the broadcasting licensing procedure should be clear and precise and should be applied in an open, transparent and impartial manner. The decisions made by the regulatory authorities in this context should be subject to adequate publicity.

...

27. All decisions taken and regulations adopted by the regulatory authorities should be:

– duly reasoned, in accordance with national law;

– open to review by the competent jurisdictions according to national law;

– made available to the public."

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 10 OF THE CONVENTION

35. The applicants complained under Article 10 of the Convention that the authorities' refusal to grant Glas Nadezhda EOOD a broadcasting licence had not been justified under paragraph 2 of that Article.

36. Article 10 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."

A. The parties' submissions

37. The Government conceded that the denial of a broadcasting licence to Glas Nadezhda EOOD had amounted to an interference with the applicants' freedom to impart information and ideas. In their view, however, this interference had been authorised under the third sentence of paragraph 1 of Article 10 of the Convention. The licensing of radio broadcasters had been specifically envisioned by the Radio and Television Act 1998. It had been entrusted to a special body, the NRTC, charged with protecting freedom of expression. Moreover, the law regulating licensing had been sufficiently clear in its terms. The NRTC's decision had been based on quite detailed and publicly announced criteria. The NRTC had clearly indicated, as could also be seen from the judgment of the Supreme Administrative Court of 21 March 2002, which of those criteria had not been met by Glas Nadezhda EOOD. Some of the criteria were formal, while others had related to the utility and the feasibility of the proposed radio station. This could not be seen as unlawful, arbitrary or discriminatory, as indicated by the former Commission in its decision in the case of *Verein Alternatives Lokalradio Bern et Verein Radio Dreyeckland Basel v. Switzerland* (no. 10746/84, Commission decision of 16 October 1986, Decisions and Reports 49). The decision to refuse the licence had been based on the failure by Glas Nadezhda EOOD to meet a number of the announced criteria. This decision had been the result of a detailed examination and had been reviewed by two levels of court.

38. The applicants submitted that the manner in which the NRTC had applied its criteria for evaluating candidates for broadcasting licences had been arbitrary. Firstly, those candidates had had no direct contact with the NRTC, which had engendered delay and confusion. Secondly, the points system adopted by the NRTC had not been properly operated. It was natural to expect that each candidate would be allotted a certain number of points, that later a ranking would be made, and that the candidate obtaining the highest number of points would be granted a licence. However, the NRTC had eschewed such allotting of points, instead merely informing the candidates that they would or would not be granted a licence. The procedure followed had not been public and transparent. The NRTC had not disclosed the reasons for its decisions and the candidates had not been told why some of them had been approved and others not. Their evaluations had never been made public. These deficiencies had not been addressed or remedied in the ensuing judicial review proceedings, which had deprived judicial review of all practical meaning. For all these reasons, the applicants were of the view that the interference with their freedom of expression had not been prescribed by law.

39. The applicants further argued that the NRTC's decision in their particular case had exemplified the flaws outlined above. The decision had also failed to strike a proper balance between the various interests at stake. The decision had found that Glas Nadezhda EOOD had not met a number of the NRTC's criteria. However, some of these criteria had not been legitimate requirements in a democratic society, while others had been clearly unfounded. Thus, the requirement of “regional targeting” had been unclear. The requirement of “business perspective” had been inapposite, as the radio station had not been envisaged as a business venture. The requirement to serve a “societal function”, as set out in the NRTC's programme criteria, had not been a legitimate one in a democratic society. The NRTC's programme criteria had specified this to mean that the

radio had to provide “information and commentary”, “culture and education” and “programming for disadvantaged groups”. As the NRTC's decision had not elaborated on how Glas Nadezhda EOOD had failed to meet these requirements and as the applicants could not obtain information on the NRTC's deliberations, they inferred this to mean that religious programming had been deemed unacceptable in itself. In their view, such a policy would be in breach of both Articles 9 and 10. Finally, the finding that the radio's programme would lack uniqueness had been clearly unfounded, as no Christian religious radio existed on the territory of Sofia or anywhere in Bulgaria, despite sociological evidence that the audience would welcome such broadcasting.

B. The Court's assessment

1. Admissibility

40. The Court notes at the outset that it was only the applicant company, Glas Nadezhda EOOD, which applied for and was denied a licence (see paragraphs 8 and 10 above). The issue thus arises whether the second applicant, Mr Elenkov, who is its sole member and manager, may himself claim to be a victim within the meaning of Article 34 of the Convention. The Court notes that in the case of *Groppera Radio AG and Others v. Switzerland* it found that the sole shareholder and statutory representative of a company could also be considered as a victim as regards a ban on broadcasting (see *Groppera Radio AG and Others v. Switzerland*, judgment of 28 March 1990, Series A no. 173, p. 21, § 49). Since the case at hand is indistinguishable in this respect, the Court considers that Mr Elenkov may also claim to be a victim of a violation. Indeed, the Government did not dispute this.

41. The Court further finds that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It also considers that it is not inadmissible on any other grounds. It must therefore be declared admissible.

2. Merits

(a) Has there been an interference with the applicants' freedom of expression?

42. The refusal to grant Glas Nadezhda EOOD a broadcasting licence constituted an interference with both applicants' freedom to impart information and ideas (see *Verein Alternatives Lokalradio Bern et Verein Radio Dreyeckland Basel*, cited above, p. 126; *Informationsverein Lentia and Others v. Austria*, judgment of 24 November 1993, Series A no. 276, p. 13, § 27; *Radio ABC v. Austria*, judgment of 20 October 1997, *Reports of Judgments and Decisions* 1997-VI, p. 2197, § 27; *Leveque v. France* (dec.), no. 35591/97, 23 November 1999; *Brook v. the United Kingdom* (dec.), no. 38218/97, 11 July 2000; *United Christian Broadcasters Ltd v. the United Kingdom* (dec.), no. 44802/98, 7 November 2000; and *Demuth v. Switzerland*, no. 38743/97, § 30, ECHR 2002-IX; and also, *mutatis mutandis*, *Groppera Radio AG and Others*, cited above, p. 22, § 55; *Autronic AG v. Switzerland*, judgment of 22 May 1990, Series A no. 178, p. 23, § 47;

Tele 1 Privatfernsehgesellschaft mbH v. Austria, no. 32240/96, § 24, 21 September 2000; and *Murphy v. Ireland*, no. 44179/98, § 61, 10 July 2003).

43. It must therefore be determined whether this interference was "prescribed by law", pursued one or more legitimate aims under the third sentence of paragraph 1 of Article 10 or under paragraph 2 thereof, and was "necessary in a democratic society".

44. When doing so, the Court will bear in mind that under the third sentence of Article 10 § 1 States 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. The grant of a licence may also be made conditional on such matters 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. However, the compatibility of such interferences must be assessed in the light of the requirements of paragraph 2 (see *United Christian Broadcasters Ltd*; and *Demuth*, §§ 33-35, both cited above).

(b) Was the interference justified?

45. The first step in the Court's inquiry is to determine whether the denial of a broadcasting licence was "prescribed by law", within the meaning of Article 10. According to its settled case-law, this expression, which is also used in Articles 9 and 11 of the Convention, and the expression "in accordance with the law", used in Article 8 of the Convention, not only require that an interference with the rights enshrined in these Articles should have some basis in domestic law, but also refer to the quality of the law in question. That law should be accessible to the persons concerned and formulated with sufficient precision to enable them – if need be, with appropriate advice – to foresee, to a degree that is reasonable in the circumstances, the consequences which a given action may entail (see, among many other authorities, *Maestri v. Italy* [GC], no. 39748/98, § 30, ECHR 2004-I).

46. Domestic law must also afford a measure of legal protection against arbitrary interferences by public authorities with the rights guaranteed by the Convention. In matters affecting fundamental rights it would be contrary to the rule of law, one of the basic principles of a democratic society enshrined in the Convention, for a legal discretion granted to the executive to be expressed in terms of an unfettered power. Consequently, the law must indicate with sufficient clarity the scope of any such discretion and the manner of its exercise (see *Hasan and Chaush v. Bulgaria* [GC], no. 30985/96, § 84, ECHR 2000-XI). It must furthermore provide adequate and effective safeguards against abuse, which may in certain cases include procedures for effective scrutiny by the courts (see, *mutatis mutandis*, *Lupsa v. Romania*, no. 10337/04, § 34, 8 June 2006).

47. Turning to the present case, the Court notes at the outset that the interference with the applicants' freedom of expression stemmed entirely from the NRTC's decision, which

by law was considered binding on the STC (see paragraphs 12, 14 and 29 above). The Court may thus confine its examination to that decision.

48. The Court observes that the grant or refusal of a broadcasting licence was premised on the applicants' compliance with a number of criteria published by the NRTC in its bulletin. Some of these criteria – such as the requirement to have sufficient "experience in setting up radio programmes" and "technological resources" – seem quite clear, while others – such as the serving of a "societal function" – less so (see paragraph 28 above). Most of the criteria could, despite the points system adopted, be subject to a highly subjective assessment.

49. The Court is prepared to accept that these criteria were, in the special context, sufficiently accessible and precise to comply with the Convention requirement of lawfulness (see, *mutatis mutandis*, *Groppera Radio AG and Others*, cited above, p. 26, § 68). However, it must further verify whether the manner in which the NRTC applied them in the licensing process provided sufficient guarantees against arbitrariness.

50. In this respect, the Court notes that the NRTC did not hold any form of public hearings and that its deliberations were kept secret, despite a court order to provide to the applicants a copy of the minutes of these deliberations (see paragraphs 8 and 19-22 above). Furthermore, in its decision the NRTC did not give reasons why it considered that Glas Nadezhda EOOD did not correspond or only partially corresponded to a number of its criteria; it merely stated that this was so (see paragraph 8 above). The applicants or the public were thus not made aware on what basis the NRTC had exercised its discretion to deny a broadcasting licence.

51. This lack of reasons was not made good in the ensuing judicial review proceedings, because the Supreme Administrative Court held that NRTC's discretion was unreviewable (see paragraphs 16 and 18 above). This, coupled with the somewhat vague purport of certain of the NRTC's programme criteria, denied the applicants legal protection against arbitrary interferences with their freedom of expression. In this connection, 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" (see paragraphs 33 and 34 above).

52. In view of the foregoing considerations, the Court concludes that the interference with the applicants' freedom of expression did not meet the Convention requirements of lawfulness. That being so, it is not required to determine whether this interference pursued a legitimate aim and, if so, whether it was proportionate to the aim sought to be attained.

53. There has therefore been a violation of Article 10 of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 9 OF THE CONVENTION

54. The applicants complained under Article 9 of the Convention that the authorities' refusal to grant Glas Nadezhda EOOD a broadcasting licence had substantially restricted their possibility to communicate their religious ideas to others and had thus infringed their freedom to manifest their religion. In their view, this refusal had not been justified under the second paragraph of that Article for the same reasons as the ones indicated under paragraph 2 of Article 10 of the Convention.

55. Article 9 provides:

"1. Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief and freedom, either alone or in community with others and in public or private, to manifest his religion or belief, in worship, teaching, practice and observance.

2. Freedom to manifest one's religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others."

A. The parties' submissions

56. The Government submitted that the criteria on which the NRTC had based its denial of a broadcasting licence had not included a religious element. Nor had the NRTC grounded its decision on the religious nature of the radio's proposed programme. On the contrary, it could be seen from the documents in the file that the authorities with competence for religious issues had endorsed Glas Nadezhda EOOD's licence application. However, that application, like any other, had to comply with the criteria published by the NRTC. The denial of the licence on the basis of its failure to meet these criteria had not amounted to an interference with the applicants' right to manifest their religion or belief.

57. The applicants relied on the same arguments as those presented under Article 10 of the Convention.

B. The Court's assessment

58. The Court notes that this complaint is linked to the one examined above. It must therefore likewise be declared admissible.

59. However, having regard to its findings under Article 10 (see paragraphs 42-53 above), the Court considers that it is not necessary to additionally examine whether there has been a violation of Article 9 of the Convention (see *United Christian Broadcasters Ltd*; and *Murphy*, §§ 60 and 61, both cited above).

III. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

60. The applicants complained under Article 13 of the Convention in conjunction with Articles 9 and 10 about the refusal by the Supreme Administrative Court to review the merits of the decisions of the STC and the NRTC. They also claimed that they had been denied an effective remedy on account of the need to go through two separate sets of proceedings.

61. Article 13 provides:

"Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity."

A. The parties' submissions

62. The Government submitted that in the domestic proceedings Glas Nadezhda EOOD had not pleaded an infringement of its religious rights, but solely of its freedom of expression. Its grievances in this respect had been examined twice by two levels of court. The Supreme Administrative Court had not proceeded any differently than in any other case submitted to it – it had reviewed the legality of the administrative decision in line with the relevant criteria. It was a well-known fact that judicial review concerned solely the lawfulness of an administrative decision. This had been done by all levels of court which had examined the case.

63. The applicants submitted that the refusal by the domestic courts to examine the merits of the application for judicial review of the NRTC's decision had deprived them of an effective remedy. They referred to the Court's judgment in the case of *Hasan and Chaush v. Bulgaria* (cited above), and argued that the Supreme Administrative Court's holding that the competent bodies enjoyed unreviewable discretion when examining applications for licences had been contrary to Article 13 of the Convention, which required a remedy allowing full examination of the necessity of the interference with their Article 9 and Article 10 rights.

B. The Court's assessment

1. Admissibility

64. The Court considers that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further finds that it is not inadmissible on any other grounds. It must therefore be declared admissible.

2. Merits

65. According to the Court's settled case-law, Article 13 guarantees the availability of a remedy at national level to enforce – and hence to allege non-compliance with – the

substance of the Convention rights and freedoms in whatever form they may happen to be secured in the domestic legal order. However, such a remedy is only required in respect of grievances which can be regarded as “arguable” in terms of the Convention (see, among many other authorities, *Boyle and Rice v. the United Kingdom*, judgment of 27 April 1988, Series A no. 131, p. 23, § 52).

66. In light of the finding of a violation of Article 10 above, the complaint is clearly arguable. The Court must thus verify whether the applicants had a remedy at national level to enforce the substance of their Convention rights.

67. In this connection, the Court notes that in the first set of judicial review proceedings the Supreme Administrative Court held that it was precluded from examining the lawfulness of the NRTC's decision and could only scrutinise the STC's decision (see paragraphs 12 and 14 above). This may be seen as problematic, in that the NRTC's decision was never officially communicated to Glas Nadezhda EOOD on account of the two-tier procedure under domestic law (see paragraphs 8 and 26 above). However, the Court considers that the obtaining situation did not fall foul of Article 13, as the applicants were later able to challenge the NRTC's decision in direct review proceedings (see paragraphs 15-18 above). In certain circumstances the aggregate of remedies provided by national law may satisfy the requirements of Article 13 (see, among many other authorities, *Leander v. Sweden*, judgment of 26 March 1987, Series A no. 116, p. 30, § 77).

68. Turning to the proceedings against the NRTC's decision, 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, that assessment being within the NRTC's discretionary powers (see paragraphs 16 and 18 above). It thus refused to interfere with the exercise of NRTC's discretion on substantive grounds and did not examine the issues going to the merits of the applicants' Article 10 grievance.

69. The Court was faced with comparable situations in the cases of *Smith and Grady v. the United Kingdom* and *Peck v. the United Kingdom*. In these cases, the English courts had not taken into account the applicants' arguments based on the Convention, but had confined their inquiry to whether the authorities which had interfered with their Convention rights had acted in an “irrational” manner in exercising their discretion (see *Smith and Grady v. the United Kingdom*, nos. 33985/96 and 33986/96, § 136 and 137, ECHR 1999-VI; and *Peck v. the United Kingdom*, no. 44647/98, § 105, ECHR 2003-I). The Court held in both cases that this approach fell short of the requirements of Article 13, because the effective remedy required by this Article was one where the domestic authority examining the case had to consider the substance of the Convention complaint. In these cases that meant an examination of whether the interferences with the applicants' rights had answered a pressing social need and had been proportionate to the legitimate aims pursued (see *Smith and Grady*, § 138; and *Peck*, § 106, both cited above). In the more recent case of *Hatton and Others v. the United Kingdom* the Court found a violation of Article 13 because the scope of review by the domestic courts had been limited to the

classic English public-law concepts, such as irrationality, unlawfulness and patent unreasonableness, and had not allowed consideration of whether the measures impinging on the applicants' Convention rights had amounted to a justifiable limitation (see *Hatton and Others v. the United Kingdom* [GC], no. 36022/97, § 141, ECHR 2003-VIII). Similarly, in the case of *Hasan and Chaush v. Bulgaria* the Court found a breach of Article 13 because, *inter alia*, in reviewing an administrative decision the former Bulgarian Supreme Court had refused to study the substantive issues, considering that the authority which had interfered with the applicants' Convention rights had enjoyed full discretion (see *Hasan and Chaush*, cited above, § 100).

70. In the light of the foregoing, the Court concludes that, as in the cases just cited, the approach taken by the Supreme Administrative Court in the instant case – refusing to interfere with the exercise of NRTC's discretion on substantive grounds – fell short of the requirements of Article 13 of the Convention.

71. There has therefore been a violation of this provision.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

72. Article 41 of the Convention provides:

"If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party."

A. Damage

73. The applicants claimed 10,000 euros (EUR) in respect of non-pecuniary damage. They submitted that the setting up of a religious radio station had been intended not as a business, but as a not-for-profit initiative. Eight proponents of this initiative had donated their time and efforts to prepare the documents for obtaining a broadcasting licence for this radio. The authorities' unwarranted denial of such a licence, accompanied by the impossibility to meaningfully challenge that denial, had frustrated all of them, as well as many other supporters of their religious community.

74. The Government did not express an opinion on the matter.

75. The Court notes that in awarding just satisfaction it can only take into account the damage sustained by the applicants, not by third parties. Having regard to the circumstances of the case and its case-law concerning claims for non-pecuniary damages made on behalf of legal persons or organisations (see *Supreme Holy Council of the Muslim Community v. Bulgaria*, no. 39023/97, § 116, 16 December 2004, with further references), the Court considers that an award under this head is appropriate to both Mr Elenkov and Glas Nadezhda EOOD. The unjustified denial of a radio broadcasting licence, followed by the refusal of the domestic courts to examine the substance of the

applicants' grievances, must have caused non-pecuniary damage to both applicants. Deciding on an equitable basis, the Court awards them jointly EUR 5,000, plus any value-added or other tax that may be chargeable.

B. Costs and expenses

76. The applicants sought the reimbursement of EUR 3,600 for the costs and expenses incurred before the Court. They submitted a fees agreement between them and their representative and a time-sheet.

77. The Government did not express an opinion on the matter.

78. According to the Court's case-law, applicants are entitled to reimbursement of their costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and were reasonable as to quantum. In the present case, regard being had to the information in its possession and the above criteria, the Court considers it reasonable to award the sum of EUR 2,500, plus any value-added or other tax that may be chargeable.

C. Default interest

79. The Court considers it appropriate that the default interest should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the application admissible;

2. *Holds* that there has been a violation of Article 10 of the Convention;

3. *Holds* that there is no need to examine separately the complaint under Article 9 of the Convention;

4. *Holds* that there has been a violation of Article 13 of the Convention in conjunction with Article 10;

5. *Holds*

(a) that the respondent State is to pay the applicants, within three months from the date on which the judgment becomes final according to Article 44 § 2 of the Convention, the following amounts, to be converted into Bulgarian levs at the rate applicable at the date of settlement:

(i) EUR 5,000 (five thousand euros) in respect of non-pecuniary damage;

(ii) EUR 2,500 (two thousand five hundred euros) in respect of costs and expenses;

(iii) any tax that may be chargeable on the above amounts;

(b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

6. *Dismisses* the remainder of the applicants' claim for just satisfaction.

Done in English, and notified in writing on 11 October 2007, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia Westerdiek Peer Lorenzen
Registrar President

GLAS NADEZHDA EOOD AND ELENKOV v. BULGARIA JUDGMENT