



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

THIRD SECTION

CASE OF OBJECTIVE TELEVISION AND RADIO BROADCASTING COMPANY AND OTHERS v. AZERBAIJAN

(Application no. 257/12)

JUDGMENT

Art 10 • Freedom to impart information and ideas • Refusal by the National Television and Radio Council (NTRC) to grant the applicants a radio broadcasting licence following a call for tenders • Relevant domestic law, including selection criteria, sufficiently accessible and precise • Failure to provide a duly reasoned decision and to carry out a comprehensive and objective evaluation • NTRC exercised, in the licensing procedure at issue, very wide and virtually unlimited discretionary powers • Absence of adequate protection against arbitrary interferences by a public authority with freedom of expression • Apparent conflict of interest of one of the NTRC's members never adequately disclosed, seriously undermining the NTRC's impartiality and rendering arbitrary the entire licensing procedure • Interference not "prescribed by law"

Prepared by the Registry. Does not bind the Court.

STRASBOURG

18 February 2025

FINAL

18/05/2025

*This judgment has become final under Article 44 § 2 of the Convention.
It may be subject to editorial revision.*

In the case of Objective Television and Radio Broadcasting Company and Others v. Azerbaijan,

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

Ioannis Ktistakis, *President*,

Peeter Roosma,

Lətif Hüseynov,

Darian Pavli,

Oddný Mjöll Arnardóttir,

Diana Kovatcheva,

Mateja Đurović, *judges*,

and Milan Blaško, *Section Registrar*,

Having regard to:

the application (no. 257/12) against the Republic of Azerbaijan 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, Objective Television and Radio Broadcasting Company (*Obyektiv Televiziya və Radio Yayım Şirkəti* – “the applicant company”), and three Azerbaijani nationals, Mr Mehman Yadulla oğlu Aliyev (*Mehman Yadulla oğlu Əliyev* – “the second applicant”), Mr Emin Rafik oğlu Hüseynov (*Emin Rafik oğlu Hüseynov* – “the third applicant”) and Mr Rasul Agahasan oğlu Jafarov (*Rəsul Ağahəsən oğlu Cəfərov* – “the fourth applicant”) (collectively, “the applicants”), on 25 November 2011;

the decision to give notice of the application to the Azerbaijani Government (“the Government”);

the parties’ observations;

Having deliberated in private on 28 January 2025,

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

INTRODUCTION

1. The application, raising issues under Article 10 of the Convention, concerns the refusal to grant to the applicants a radio broadcasting licence.

THE FACTS

2. The personal details of the applicants are set out in the appended table. The second and third applicants were journalists and founders of the applicant company, which was registered in 2010. At the material time, the second applicant was also the owner and director of the Turan Information Agency, as well as the founder and editor of Internet media resources *contact.az* and *top.az*, and the third applicant was the chairman of an NGO, the Institute for Reporters’ Freedom and Safety (“IRFS”). The fourth applicant was a civil

society activist. The applicants were represented by Mr R. Hajili, a lawyer based in Strasbourg.

3. The Government were represented by their Agent, Mr Ç. Əsgərov.

4. The facts of the case may be summarised as follows.

I. CALL FOR TENDERS FOR THE 103.3 FM RADIO FREQUENCY

5. On 23 November 2010 the National Television and Radio Council (“the NTRC”) decided to announce a call for tenders for a broadcasting licence for the 103.3 FM radio frequency. The announcement mentioned a list of required documents to be submitted by bidders. It did not indicate any preferences for the types of programmes to be broadcast on the radio station, stating only that the broadcasting zone would cover the city of Baku and the Absheron peninsula.

6. A total of three bids were submitted. The applicant company submitted a bid for a radio station named Objective Radio (*Obyektiv Radio*). It noted that its programming would consist of daily news programmes (20% of broadcasting time), analytical programmes (10%), culture news (10%), concerts and other arts programmes (15%), educational programmes (20%), music programmes and talk shows (15%) and sports news (5%). It also submitted the names of five staff members to be employed by the station – including the second applicant as chief editor and the third applicant as producer.

7. The fourth applicant, in an individual capacity, submitted a bid to operate a radio station named Alternative Radio (*Alternativ Radio*), which would broadcast news programmes (25%), talk shows (15%), culture news (5%), sports news (5%), educational and intellectual programmes (20%) and music programmes (25%). It would employ eight persons.

8. The final bid was submitted by a company named Golden Prince LLC for a radio station named Free News Radio (“*Azad Xəbər*” *radiosu* – later changed to Araz FM Radio), whose proposed broadcasting content would mainly consist of news programmes (90% of the total broadcasting time), which would be further subdivided into segments on various types of news – including political news (50%), cultural news (20%), educational news (12%), scientific news (5%) and sports news (3%), with the remaining 10% of the broadcasting time dedicated to other programming, such as music and advertisements. It would have twelve staff members.

9. All bidders also submitted information on the relevant equipment that they owned and would use for broadcasting.

II. THE NTRC MEETING

10. On 18 January 2011 the NTRC held a meeting to determine the winner of the call for tenders. The meeting was held in two parts: an open meeting

with the participation of the bidders, followed by a closed meeting of the NTRC members only. All three bidders were invited to participate and were given an opportunity to make very brief presentations of their respective proposals and respond to questions by the NTRC members, of whom seven were present. The proceedings, as reflected in the minutes of the meeting, can be summarised as follows.

11. In the open meeting, the second and third applicants, who spoke on behalf of the applicant company, said that the field of television and radio broadcasting currently suffered from a lack of sufficient “objectivity” and pluralism of opinions, that for that reason many radio stations preferred focusing on entertainment programmes, that available social and political news programmes were politically one-sided, and that Objective Radio aimed at introducing innovation in respect of social and political programming. The second and third applicants were asked by the NTRC members when they planned to begin broadcasting if awarded the licence and how they would manage to produce the proposed volume of programmes, given that there would only be five staff members. In response, the second and third applicants noted that they would start broadcasting within six months of the licence being awarded (the maximum period set by the relevant legislation) and that, if awarded the licence, they would hire more employees – in particular by inviting to join their staff some of the current staff of the Turan Information Agency which was owned and headed by the second applicant at that time.

12. The fourth applicant said, among other things, that the submitted list of staff members in respect of his station was not complete (owing to the short time frame for submission of documents for the competition), but that there would be more staff and that negotiations with potential new employees were underway. Responding to a question from an NTRC member, he further noted that, if awarded the licence, his radio station could begin broadcasting in less than six months.

13. The representatives of Golden Prince LLC said that their company had procured “very high-quality” equipment for their radio station. It was aiming for a high standard of radio broadcasting that would be on a par with the best broadcasting companies in the world. Their radio station would be almost exclusively dedicated to broadcasting news, with very few music and entertainment programmes. They also noted that their company could begin broadcasting within three months, if awarded the licence.

14. Having heard the bidders, the NTRC proceeded to deliberate in a closed meeting.

15. The NTRC chairman, N.M., asked the other members if they wished to discuss each bid separately or all bids together. It was then decided that they would discuss all bids together. Five NTRC members then took the floor:

- G.J. said that Objective Radio (the applicant company’s bid) had only five employees (including only one reporter), and that it was unclear how it

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could achieve the proposed production volumes. He further noted that he was “satisfied” with the presentation made by the representatives of Golden Prince LLC, because they were more prepared than the other bidders and could begin broadcasting sooner. For those reasons, he was in favour of awarding the licence to Golden Prince LLC;

- A.A. said that he concurred with G.J. and that Golden Prince LLC merited being awarded the licence because it possessed better creative and technical capabilities;

- A.K. said that Golden Prince LLC had better and more modern equipment than the other bidders and that, whereas the already existing radio stations were all very similar in their broadcasting content, this bidder could bring something different to radio in Azerbaijan; and that for those reasons it merited being awarded the licence more than the other two bidders;

- M.E. said that he concurred with his colleagues and that he favoured Golden Prince LLC’s bid because of its broadcasting concept, better and more modern equipment, and its staffing potential (*kadr potensialı*);

- S.V. said that she considered that two conditions had to be met by a bidder in order to have a chance of securing the licence: namely, a high technical capability and a high staffing potential; Golden Prince LLC was ahead of the other bidders in terms of both of these conditions.

16. The chairman then put the matter to a vote and Golden Prince LLC was selected as the winning bidder by a unanimous vote.

III. ANNOUNCEMENT OF THE RESULTS AND THE APPLICANTS’ CORRESPONDENCE WITH THE NTRC

17. Immediately after the closed meeting, the bidders were orally informed of this decision. They were not provided with a copy of the decision or the minutes of the meeting at this time.

18. On 21 January 2011 the applicant company requested a copy of the NTRC’s formal decision.

19. By a letter of 31 January 2011, the NTRC informed the applicant company and the fourth applicant of the results of the call for tenders. In particular, it noted that, being guided by the requirements of Article 15.5. of the Law on Television and Radio Broadcasting of 25 June 2002 (“the Broadcasting Law”) and in view of the fact that “a purely news radio station would be a novelty for the television and radio space” (“*sırf xəbər radiosunun telradio məkanı üçün yenilik olacağını nəzərə alaraq*”), it had selected Golden Prince LLC as the winner and awarded it the new broadcasting licence. Enclosed with the NTRC’s letter was an extract from the minutes of its meeting of 18 January 2011 containing only the operative part concerning its decision on the result of the selection, which stated as follows:

“EXTRACT

**from the minutes of meeting no. 1 of the National Television and Radio Council
of 18 January 2011**

Decision:

1. Golden Prince LLC shall be declared as the winner of the call for tenders for the 103.3 FM radio frequency announced by the decision of the National Television and Radio Council of 23 November 2010.

2. Golden Prince LLC shall be issued a special permit (licence) for radio broadcasting for a period of six years.”

20. On 2 February 2011 the applicant company lodged a request to be provided with a full copy of the minutes of the meeting of 18 January 2011. By a letter of 9 February 2011 the NTRC refused that request, noting that it was not “expedient” (*məqsədəməvafiq*) to provide a copy of the minutes because they were intended for internal use and also taking into account “the interests of other legal persons”.

21. On 4 February 2011 the applicant company wrote to the NTRC that, from the information provided to it by the NTRC to date, it was not clear what the reasons had been for selecting Golden Prince LLC as the winner. It requested a copy of Golden Prince LLC’s bid and the documents enclosed therewith (those documents were required, by law, to include a copy of Golden Prince LLC’s State registration document – in this case, a charter), and a copy of documents authorising the persons who had participated at the NTRC meeting of 18 January 2011 on behalf of Golden Prince LLC to represent that company at the meeting. On 15 February 2011 the NTRC responded by letter, informing the applicant company of the names of the two representatives of Golden Prince LLC who had attended the meeting of 18 January 2011, but noting that – taking into account “the interests of other legal persons” – it was not “expedient” to provide copies of the requested documents.

IV. COURT PROCEEDINGS

22. On 2 March 2011 the second and third applicants, in their capacity as the founders of the applicant company, lodged an appeal against the NTRC’s decision with the Baku Court of Appeal, requesting the court to annul the results of the call for tenders and to order the NTRC to announce a new one. The fourth applicant also appealed separately.

23. The applicants argued, *inter alia*, that the NTRC’s decision had not complied with the requirements of Article 32 of the Broadcasting Law; nor had it complied with Article 4.7 of the Rules for a competition for a special permit (licence) in the field of television and radio broadcasting, which had been issued by the NTRC (“the Licensing Rules”). In particular, the assessment of the bids had not been carried out in accordance with the criteria

established in those legal provisions – including the requirement of Article 32.0.1 of the Broadcasting Law that priority be given to educational and cultural programmes and that overloading the air with the same types of programmes should be prevented. The NTRC's stated preference for a station broadcasting mainly news programmes in selecting the winner had not been announced in advance, was contrary to the above-mentioned criteria and was arbitrary.

24. Moreover, they submitted that, contrary to the requirements of Article 18.5 of the Broadcasting Law, the NTRC had not sent them a copy of its decision refusing to award the licence in the form required by law (made in writing and containing the reasons for that refusal) within fifteen days of the announcement of the results of the call for tenders, but had instead sent it to them in the form of an extract from the minutes of the meeting of 18 January 2011; that extract did not specify any reasons for the decision.

25. Furthermore, the applicants argued that the NTRC's past decisions had fostered the creation of "monopolistic" conditions in the broadcasting sector, as it had previously awarded licences for new television stations to a single entity – the State-controlled Azerbaijan Television and Radio Broadcasting Closed Joint-Stock Company – under (in the applicants' view) legally questionable circumstances.

26. It appears that at an unspecified time in the course of the judicial proceedings the applicants were provided with full copies of the minutes of the NTRC meeting of 18 January 2011 (summarised in paragraphs 10-16 above). It also appears that they were provided with Golden Prince LLC's charter and the documents submitted by it with its bid.

27. By a judgment of 28 March 2011 the Baku Court of Appeal dismissed the applicants' appeals after examining them together, finding that the NTRC's decision was lawful. It noted that, under Article 18.4.1 of the Broadcasting Law, not being chosen as the winner of a call for tenders constituted grounds for refusal to grant a licence and that the NTRC had informed the applicants of that fact in its above-mentioned letter of 31 January 2011, within thirteen days of its decision. That letter had further specified that Golden Prince LLC had been selected as the winner, in compliance with Article 15.5 of that Law and taking into account the consideration that a proposed purely news-based radio station would constitute a "novelty" within the Azerbaijani television and radio sphere. Moreover, as to the applicants' arguments that the assessment had not been carried out in a manner complying with the criteria set out in the relevant legislation, the court noted that although Golden Prince LLC's programming would be mainly news, 32% of its broadcasting time would be dedicated to educational and cultural news – which was in compliance with Article 32.0.1 of the Broadcasting Law. The court also referred to the minutes of the NTRC meeting of 18 January 2011, noting that various criteria set out in the relevant legislation – such as the originality of a proposed broadcasting concept, the

creative staff's potential and experience, and the technical and financial capabilities – had been discussed and considered by the NTRC members.

28. The second and third applicants – as well as the fourth applicant separately – lodged a further appeal with the Supreme Court, reiterating their arguments. They also disagreed with the appellate court's assessment of the compliance of Golden Prince LLC's proposed programming with Article 32.0.1 of the Broadcasting Law, noting that it had been proposed that 90% of its broadcasting would be expressly dedicated to news – including the 32% of the “cultural and educational news” (which the applicants also considered to constitute “news programmes”). As to Golden Prince's staff potential and experience, the second and third applicants highlighted their own respective experience in the media field and noted that it was not clear why the NTRC gave preference to Golden Prince LLC's staff, (which, although numerically superior, included such non-creative-staff members as a driver, a technician, a treasurer, a chief accountant and a director). Lastly, the second and third applicants argued that the general trend in the country was that the NTRC did not allow access by well-known independent media to television and radio broadcasting, instead favouring such “new” companies as Golden Prince LLC that were unknown and had no prior media experience.

29. By a final decision of 25 May 2011 (sent to the applicants on 31 May 2011), the Supreme Court dismissed the applicants' appeals, upholding the appellate court's reasoning.

V. OTHER CIRCUMSTANCES AND DEVELOPMENTS RELEVANT TO THE CASE

30. The applicants submitted to the Court (see also paragraphs 64-65 below) that, at the time of the above-mentioned procedures relating to the call for tenders, “no one knew who [had] founded Golden Prince, who its owners were, who had effective control of the company, or who financed its operations”. However, subsequently (after the applicants obtained a copy of Golden Prince LLC's charter) it was revealed that its formal owner was A.V., who had been previously associated with other businesses that “were believed to be owned by family members” of A.H., the head of the Department of Public Policy Issues (*İctimai-siyasi məsələlər şöbəsi*) of the President's Office (*Azərbaycan Respublikası Prezidentinin Administrasiyası*).

31. According to publicly available information, A.H. was the head of the Department of Public Policy Issues of the President's Office (and of that department's predecessor) from the mid-1990s until November 2019. A.H.'s wife, S.V. (see paragraph 15 above), was appointed as a member of the NTRC in 2007. Between 2011 and 2018 she was the deputy chairman of the NTRC.

32. On 24 June 2014, after the present application had been lodged, the Organized Crime and Corruption Reporting Project (OCCRP) published the results of an investigation carried out by journalists under the title

“Azerbaijan: Media and Regulators a Family Affair”. The report stated, among other things, that S.V. managed a newspaper (*Kaspi*), was a member of the NTRC, and owned and managed several companies dealing with education and university-preparation courses. She also “happen[ed] to be the wife of [A.H.] ..., who [was] one of the key figures defining the government’s policies regarding media, freedom of speech and political liberties”. It was stated that S.V. and her family “benefited from regulating many of the businesses they own[ed]”, which created a number of conflicts of interest.

33. Furthermore, the OCCRP report stated that A.H. and S.V.’s son, S.H., was also involved in a number of businesses – including as a director of a radio station named in the article as both “Araz Radio” and “Araz FM”. Araz FM was linked to A.H.’s family and in 2011 had been awarded a licence for the 103.3 FM frequency (previously used for broadcasting by the BBC’s Azerbaijani service, whose licence had been revoked in 2009). In particular, Araz FM was owned by a company named Araz Teleradio, which had in turn been incorporated by Golden Prince LLC and an individual named E.K. Golden Prince LLC itself had been incorporated in 2008 by an Iranian citizen (S.G.) and an Azerbaijani citizen (A.V., who was reportedly a relative of S.V. and her business partner in respect of several entities). Araz Teleradio was registered at the same address as all the other companies with links to A.H.’s family. At the opening ceremony for one of Araz FM’s studios, S.H. had been introduced as the general director of the radio station and had cut the ribbons. The report went on to describe A.H.’s family’s links with a number of other companies.

34. Media reports about the investigation were also published by Radio Free Europe/Radio Liberty and other news outlets.

35. On 27 June 2014 BBC News’ Azerbaijani service published an article entitled “[A.H.]: ‘I am proud of the companies reportedly owned by my family’” (“[Ə.H.]: ‘*Ailəmin malik olduğu adı çəkilən şirkətlərlə fəxr edirəm*’”). As reported by the BBC, A.H. confirmed that the companies in question – including Golden Prince LLC – belonged to his family and stated that those companies had been created through his family’s hard work, that his wife and his son had created them and were involved in their functioning, and that there was nothing that he had to be ashamed of in this respect.

36. According to publicly available information, N.M. (who was the NTRC chairman from 2003 to 2020) had previously worked at the Department of Public Policy Issues of the President’s Office during the period between 1996 and 2003.

37. In 2022, following legislative amendments, the NTRC was abolished and replaced by the Audiovisual Council as its successor.

RELEVANT LEGAL FRAMEWORK

I. RELEVANT DOMESTIC LAW

38. The relevant extracts of the Broadcasting Law, as in force at the material time, provided as follows:

“Article 14. Special permit (licence) for broadcasting

14.1. Television and radio broadcasting within the territory of the Republic of Azerbaijan is carried out on the basis of a special permit (licence) issued in accordance with this Law. ...

Article 15. Competition for a special permit (licence)

15.1. A special permit (licence) for broadcasting is granted on the basis of a competition, with the exception of State and public television and radio broadcasting.

15.2. The rules and terms of the competition are published in the official press at least one month before the expiry of the period for the submission of applications to participate in the competition.

15.3. When defining the terms of the competition for a special permit (licence), the interests of viewers, listeners and the State shall be taken into account.

...

15.5. When conducting a competition for a special permit (licence), the following are taken into account:

15.5.1. compliance of the applicant’s parameters with the terms of the competition;

15.5.2. the applicant’s creative and technical capacity to carry out television and radio broadcasting;

15.5.3. the results of open hearings and other competition procedures.

...

Article 18. Refusal to accept documents and to grant a special permit (licence)

18.4. A bidder whose documents have been accepted for the [purposes of the] competition shall be refused a special permit (licence) only in the following cases:

18.4.1. if it was not chosen as the winner according to the results of the competition;

...

...

18.5. A decision to refuse to grant a special permit (licence) shall be submitted within fifteen days of the day of the announcement of the results of the competition. A decision to refuse to grant a special permit (licence) is sent to the bidder in writing, [setting out] the reasons for the refusal. An appeal may be made administratively and (or) to a court within one month from the date of delivery of this decision.

...

Article 32. Requirements in respect of programming

32.0. When preparing programmes for broadcasting, the following requirements must be met:

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32.0.1. priority should be given to educational and cultural issues – overloading the air with commercial [or] informational [programmes] or other programmes of the same type should be prevented by way of balancing the programming;

32.0.2. everyone should be afforded conditions [in which] to freely express their opinions and views, provided that:

32.0.2.1. the principles of impartiality, unbiasedness, comprehensiveness, completeness and truthfulness of information are respected;

32.0.2.2. the programme developers are directly responsible before the law;

32.0.3. denigrating the honour and dignity of people and tarnishing their business reputation should not be allowed – the rights and freedoms of individuals, as determined by the Constitution of the Republic of Azerbaijan, should be respected;

32.0.4. facts and events should be interpreted fairly – one-sidedness should not be allowed;

32.0.5. terrorism, violence, cruelty, and ethnic, religious and racial discrimination should not be promoted;

32.0.6. the use of the State language in programmes (broadcasts) should be ensured;

32.0.7. State technical standards in the field of television and radio broadcasting must be followed;

32.0.8. social broadcasts of an educational and informational nature should be organised for the deaf and hard of hearing;

32.0.9. the protection of national and moral values should be ensured consistently;
...”

39. The relevant extracts from Rules for a competition for a special permit (licence) in the field of television and radio broadcasting, adopted by the NTRC (“the Licensing Rules”) – as in force at the material time – provided as follows:

“2.1. The [NTRC] has the right:

2.1.1. to hold a competition for a licence;

2.1.2. to grant licences to competition winners;

2.1.3. to prolong the term of a licence;

2.1.4. to refuse to grant a licence; ...

...

4.7. The [NTRC] shall evaluate [bids] according to the following criteria in determining the winners of a licence competition:

- the originality of the broadcasting concept and its ability to ensure the development of local television and radio broadcasting;

- the quality of documents submitted for the competition ...;

- the quantity, volume (in percentage terms) and diversity of cultural and educational programmes [aired] on the broadcasting network;

- the preference (in percentage terms) given to local television and radio broadcasting productions in the general [field of] broadcasting;

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- the coverage [given] to local events and the lifestyle of the population living in the area covered by the [broadcast network];
- the preference [given] to the use of the State language and to broadcasting programmes in the State language, in strict observance of the requirements in respect of its use;
- strict observance of the principles of freedom of speech and pluralism;
- advocacy for universal values such as mercy, humanism, honour, conscience, friendship, respect for the historical past, love for the motherland and protection of the environment;
- the broadcasting of cultural, creative, educational, moral, ethical and other socially-oriented programmes;
- regular reflection of our people's struggle for the defence of the sovereignty and territorial integrity of our country;
- respect [given] to the rights of the ethnic minorities;
- advocacy for ethnic-minority cultures and universal culture;
- advocacy for democratic values, legal knowledge and a healthy lifestyle;
- the broadcasting of educational programmes for children and minors;
- the regular broadcasting of programmes on youth topics: vocational training, healthy lifestyle and sex education;
- the regular broadcasting of programmes advocating for the prevention of violence, criminality, cruelty, prostitution and drug use;
- the prevention of the broadcasting of pornographic material and the (limitation in a manner defined by law) of the broadcasting of programmes depicting erotica and cruelty to children and minors;
- the possession of a creative staff [with] potential and experience in the field of television and radio broadcasting to ensure the effective realisation of the programme concept;
- possession of the modern technical and financial resources necessary for broadcasting;
- the application of modern television and radio technologies;
- the compliance of the documents submitted for obtaining the licence with the terms of the competition;
- the broadcasting of programmes, telecasts and topics that cannot be broadcast by other broadcasters;
- strict observance of the laws of the Republic of Azerbaijan and having a perfect reputation;
- the results of public hearings and other competition procedures.”

40. Regulations on the National Television and Radio Council, adopted by a Presidential decree of 5 October 2002, provided as follows:

“1. The [NTRC] was established by the Decree of the President of the Republic of Azerbaijan dated 5 October 2002, in accordance with Article 11.2 of the Law of the Republic of Azerbaijan ‘On Television and Radio Broadcasting’. The NTRC was

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created to ensure the implementation of State policy in the field of television and radio broadcasting and the regulation of this activity.

...

3. The [NTRC] is financed from the State budget and is independent in its activities.

4. The [NTRC] has an independent balance sheet, a seal [that bears] the State Emblem of the Republic of Azerbaijan and its name, corresponding stamps, letterheads and bank accounts.

...

8. The [NTRC] carries out the following functions, in accordance with its obligations provided by these Regulations:

...

8.3. determines the rules and conditions for a competition for a special permit (licence) ...

...

11. The [NTRC] is created by the President of the Republic of Azerbaijan and consists of nine members.

12. Persons with dual citizenship, persons who have an obligation to other States, persons serving within the systems of the executive or the judiciary powers, persons engaged in paid activities (with the exception of teaching and creative activities), clerics, persons whose legal incapacity has been confirmed by a court [and] persons convicted of serious crimes cannot be appointed as members of the [NTRC].

13. Three of the members are appointed for two years, three for four years, and three for six years. [NTRC] members are eligible for re-appointment. A new member of the [NTRC] who is appointed to replace a member whose term of office has ended or whose membership is terminated before the expiration of the term of office is appointed for a six-year term.

14. Until the end of their [respective] terms of office, the members of the [NTRC] cannot be removed from their office, except in the following circumstances:

(i) at their own request,

(ii) upon termination of their citizenship of the Republic of Azerbaijan or acceptance of the citizenship of another State,

(iii) in the event of committing a criminal offence and the existence of a final court judgment in this regard,

(iv) in the event that they hold a position at the State bodies, are a cleric, [or] are engaging in entrepreneurial, commercial or other paid activities (except for scientific, pedagogical and creative activities).

15. The [NTRC] members cannot make a statement or take part in an event that casts doubt on their independence and impartiality.

16. No official person or body may issue orders or instructions to the members of the [NTRC]. ...”

II. RELEVANT INTERNATIONAL DOCUMENTS

A. Committee of Ministers of the Council of Europe

41. 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”.

42. The guidelines appended to the recommendation provide, *inter alia*:

“...

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;

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- open to review by the competent jurisdictions according to national law;
- made available to the public.”

43. Other relevant Committee of Ministers recommendations (namely Recommendation No. R(99)1 of the Committee of Ministers to member States on measures to promote media pluralism, Recommendation Rec(2003)9 of the Committee of Ministers to member States on measures to promote the democratic and social contribution of digital broadcasting, and Recommendation CM/Rec(2007)2 of the Committee of Ministers to member States on media pluralism and diversity of media content) are cited in *Centro Europa 7 S.r.l. and Di Stefano v. Italy* [GC] (no. 38433/09, §§ 70-72, ECHR 2012).

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*)

44. 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. Other relevant documents

45. The following are extracts from the Report by the Council of Europe Commissioner for Human Rights on his visit to Azerbaijan from 3 to 7 September 2007 (CommDH(2008)2, 20 February 2008):

“66. Electronic media are naturally the key providers of information and opinion to the citizen. There are 7 national and about 14 regional TV channels as well as 10 radio channels. Five of the TV channels are private, and only one TV channel is generally considered as independent, which raises the issue of access to frequencies and licenses. In Azerbaijan, there is a National Television and Radio Council (hereafter NTRC), in

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charge of allocating frequencies. Though the institution is meant to be independent, it is not perceived as such. The NTRC is often portrayed as impeding rather than favouring the development of a free media market, failing to rely on objective criteria for the choice among bidders and for delaying processes of genuine competition by means of all sort of administrative hindrances. The long procedure about the granting of license to the ANS channel, months ago, was a sad example. Another obstacle stems from the law, which requires that founders of television and radio broadcasters be citizens of Azerbaijan. As a result, foreign radio outlets were exceptionally issued with licenses, and then only for a short duration. In talks with the Commissioner, the chair of the Council dismissed many of the complaints and insisted that the main problems were the lack of good media professionals and the little respect paid by some bidders towards procedures. Nevertheless, the Commissioner strongly feels that major improvements are needed here in order to strengthen both the legal guarantee of independence, a state of mind of actual independence, and a better representation of society at large.

67. The Commissioner also wants to recall the recommendation of the Committee of Ministers of the Council of Europe concerning regulatory bodies [Recommendation(2000)23]. In essence, the general legislative framework should clearly define the appointment of the members. It should ensure a democratic and transparent appointment. The members should not receive mandate or instructions from anyone. Their dismissal should only occur in exceptional circumstance clearly defined by the law. The granting of licences should be decided in line with specific criteria. ...

...

SUMMARY OF RECOMMENDATIONS

...

16. Review the composition and function of the NTRC by clearly defining the general legislative framework regulating the appointment of the members, and by ensuring a democratic and transparent appointment and full independence;

17. Secure that the granting of licences is decided in line with impartial criteria and that the monitoring of programmes takes place *a posteriori*; ...”

THE LAW

I. STRIKING OUT OF THE APPLICATION IN SO FAR AS IT CONCERNS THE FOURTH APPLICANT

46. The Court received friendly-settlement declarations, signed by the Government and by the fourth applicant’s representative on 19 and 28 November 2021 respectively, under which the fourth applicant agrees to waive any further claims against Azerbaijan in respect of the facts giving rise to this application, subject to an undertaking by the Government to pay him 2,500 euros (EUR) to cover any pecuniary and non-pecuniary damage, plus any tax that may be chargeable, and EUR 500 to cover any and all costs and expenses, plus any tax that may be chargeable to the applicant. These amounts will be converted into the currency of the respondent State at the rate applicable on the date of payment, and will be payable within three months from the date of notification of the Court’s decision. In the event of

failure to pay these amounts within the above-mentioned three-month period, the Government undertake to pay simple interest on them, from the expiry of that period until settlement, at a rate equal to the marginal lending rate of the European Central Bank during the default period, plus three percentage points. Such payment will constitute the final resolution of the case in respect of the fourth applicant.

47. The Court takes note of the friendly settlement reached between the Government and the fourth applicant (Article 39 of the Convention). It is satisfied that the settlement is based on respect for human rights as defined in the Convention and the Protocols thereto and finds no reasons to justify a continued examination of the application.

48. In view of the above-noted points, it is appropriate to strike the application out of the list in so far as it concerns the fourth applicant.

II. ALLEGED VIOLATION OF ARTICLE 10 OF THE CONVENTION

49. The remaining applicants complained that the authorities' refusal to grant the applicant company a broadcasting licence had amounted to a violation of their right to 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

1. Victim status of the second and third applicants

50. The Government submitted that the second and third applicants, who were the founders of the applicant company, could not claim to have been victims of the alleged violation, and that only the applicant company itself could claim to be a victim. It was the applicant company that had submitted a bid for the licence, and not the second or third applicants in their individual capacities.

51. The applicants submitted that the second and third applicants were the founders and owners of the applicant company and that the company had no other owners. They had both represented the applicant company in the procedures related to its bid for the licence – including at the relevant NTRC

meeting. Moreover, the second and third applicants had lodged a joint complaint with the domestic courts in respect of the NTRC's refusal to award the licence to their company; in that complaint they had specified that they were the founders and owners of the applicant company and that they were contesting the NTRC's refusal to award the licence to their company. The domestic courts recognised that the second and third applicants were persons entitled to contest the NTRC's decision concerning the applicant company.

52. The Court reiterates that as a general rule a shareholder of a company cannot claim to be a victim of an alleged violation of that company's rights under the Convention (see *Agrotexim and Others v. Greece*, 24 October 1995, §§ 59-72, Series A no. 330-A). The piercing of the "corporate veil" or the disregarding of a company's legal personality will be justified only in exceptional circumstances – in particular, where it is clearly established that it is impossible for that 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 (*ibid.*, § 66). However, 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 disputed measures taken with regard to his or her company are concerned, because in the case of a sole owner there is no risk of differences of opinion among shareholders or between shareholders and a board of directors as to the existence and nature of infringements of the Convention rights or the most appropriate way of reacting to such infringements (see *Ankarcrona v. Sweden* (dec.), no. 35178/97, ECHR 2000-VI, and *Albert and Others v. Hungary* [GC], no. 5294/14, §§ 135-37, 7 July 2020).

53. Turning to the present case, the Court notes that the second and third applicants were the founders and owners of the applicant company. There were no other owners except for them. In such circumstances – taking note of the fact that the present application has been submitted by the applicants jointly, and having regard to the absence of competing interests that could create difficulties, and in the light of the circumstances of the case as a whole – the Court considers that the second and third applicants were so closely identified with the applicant company, which is fully owned by both of them, that it would be artificial to distinguish between them and the applicant company within the context of the present case. Moreover, the Court notes that, in the relevant domestic judicial proceedings, the second and third applicants were the complainants, and that their joint appeal was accepted and examined by the domestic courts (see paragraph 27 above). For these reasons, the Court considers that the second and third applicants can claim to be victims of the alleged violation within the meaning of Article 34 of the Convention (compare *Ankarcrona*, cited above; *Eugenia Michaelidou Developments Ltd and Michael Tymvios v. Turkey*, no. 16163/90, § 21, 31 July 2003; *Jafarli and Others v. Azerbaijan*, no. 36079/06, §§ 38-41, 29 July 2010; *Madžarović and Others v. Montenegro*, nos. 54839/17 and

71093/17, §§ 72-73, 5 May 2020; and *Akshin Garayev v. Azerbaijan*, no. 30352/11, §§ 37-38, 2 February 2023). The Government's objection must therefore be rejected.

2. Exhaustion of domestic remedies by the applicant company

54. The Government argued that the applicant company had failed to exhaust the available domestic remedies, as it had not been party to the relevant domestic judicial proceedings. As a legal entity, the applicant company could have itself lodged an appeal (a "claim") with the domestic courts in connection with the NTRC's refusal to award it the licence. Such an appeal by the company would have had to be lodged either by its director or legal representative. However, in the present case the domestic appeal had been lodged by the second and third applicants on their own behalf, as shareholders of the company.

55. The applicants submitted that the second and third applicants had lodged the appeal both on their own behalf and on behalf of the applicant company. They had acted as the founders of the company and had been defending the rights of their company – an argument that was accepted by the domestic courts. Moreover, the director of the applicant company, G.I., had also participated in the court hearings.

56. The Court reiterates that the rule of exhaustion of domestic remedies referred to in Article 35 § 1 of the Convention obliges applicants to use first the remedies that are normally available and sufficient in the domestic legal system to enable them to obtain redress for the breaches alleged. Article 35 § 1 also requires that complaints intended to be brought subsequently before the Court should have been made to the appropriate domestic body – at least in substance and in compliance with the formal requirements laid down in domestic law – but not that recourse should be had to remedies that are inadequate or ineffective (see *Aksoy v. Turkey*, 18 December 1996, §§ 51-52, *Reports of Judgments and Decisions* 1996-VI, and *Akdivar and Others v. Turkey*, 16 September 1996, §§ 65-67, *Reports* 1996-IV).

57. The Court has frequently emphasised the need to apply the exhaustion rule with some degree of flexibility and without excessive formalism. It has further agreed that the rule on exhaustion of domestic remedies is neither absolute nor capable of being applied automatically; in reviewing whether it has been observed it is essential to have regard to the particular circumstances of each individual case (see *Communauté genevoise d'action syndicale (CGAS) v. Switzerland* [GC], no. 21881/20, § 140, 27 November 2023, with further references).

58. The Court reiterates that, within the context of the present application, it would be artificial to distinguish between the second and third applicants and the applicant company and that, at the domestic level, the appeal challenging the NTRC's decision, lodged by the second and third applicants

in their capacity as the founders of the applicant company, was accepted and examined by the domestic courts (see paragraphs 27 and 53 above). The second and third applicants' capacity to represent the applicant company's interests in this matter before the courts at two levels of jurisdiction was never questioned or challenged in any way at the domestic level and the courts dealt with their appeals without any objections or examination as to standing – regardless of their conclusion as to the merits of the complaint. Given the specific circumstances, the Court does not see how the submission of a formally separate appeal by the applicant company itself could have led to a different outcome of the case at the domestic level (compare, *mutatis mutandis*, *Alasgarov and Others v. Azerbaijan*, no. 32088/11, § 32, 10 November 2022). Accordingly, the Court dismisses the Government's objection.

3. Conclusion as to admissibility

59. The Court further notes that this complaint is neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. It must therefore be declared admissible.

B. Merits

1. The parties' submissions

(a) The applicants

60. The applicants submitted that the refusal to award them the broadcasting licence had amounted to an interference with their rights under Article 10 of the Convention that had not been prescribed by law and had not been necessary in a democratic society.

61. The applicants noted that, after the NTRC had informed the bidders of its decision, it had not sent a copy of its reasoned decision to the bidders within fifteen days, as required by the Broadcasting Law. In response to the applicants' requests, it had sent them a letter refusing to provide a copy of the minutes of its meeting. The applicants had obtained a copy of the minutes only during the subsequent court proceedings.

62. They further noted that neither in its announcement of the call for tenders nor elsewhere had the NTRC set out any preference for the type of programmes to be broadcast on the radio frequency in question. Neither had it indicated any criteria on which bids would be assessed. Only the broadcasting zone (limited to Baku and Absheron) had been defined. Despite this, the NTRC had explained its decision in its letter of 31 January 2011 by stating that it favoured a radio station that would broadcast news programmes and that Golden Prince LLC's proposed programming mainly included news programmes (see paragraph 19 above). Other factors mentioned by the NTRC members (and recorded in the minutes of the meeting) had been the personnel,

productive potential and technical capabilities of Golden Prince LLC; however the NTRC members did not clarify how those factors had been evaluated. For example, in the applicants' view, the qualifications of the staff listed in Golden Prince LLC's bid had not given them an obvious advantage over the staff of the applicant company. Without further explanation, it was impossible to understand how the above-mentioned factors had weighed in favour of Golden Prince LLC.

63. The Broadcasting Law and the Licensing Rules stipulated a very broad list of selection criteria – several of which were vague. However, even if those criteria could nevertheless be considered to be sufficiently precise, the legislation did not expressly require the licensing authority to apply these criteria in the decision-making process or give reasons for its decisions. It was apparent from the minutes of the NTRC meeting that in the instant case the NTRC did not use clear and accurate selection criteria, any clearly drafted evaluation form, a summary list of standardised questions, a systematised evaluation table or any other document setting out evaluation results. Even though the NTRC had held a public hearing before the decision had been made, it had then held a vote in a closed meeting and had announced the winner without revealing its reasoning. The selection procedure consisted of simply issuing a decision based on the vote held after several NTRC members had made comments regarding random points that had drawn their attention in the documents submitted by the bidders. Those comments, as recorded in the minutes of the meeting, had consisted of unfounded and subjective statements in support of their preference for Golden Prince LLC's bid; none of those comments had encompassed any criteria-based comparison of all three bids or discussed the unsuccessful bids. This had reflected a decision-making process that could only be described as arbitrary. The lack of any clear reasoning had not been remedied during the court proceedings: the courts had failed to spot the breaches by the NTRC of the legal requirements and had instead issued contrived reasoning by way of justifying the NTRC's actions.

64. Moreover, the applicants argued that the present application needed to be considered within the context of "a virtual absence of any independent broadcasters in Azerbaijan". Television and radio broadcasting was either under government control or under the control of businessmen with close ties to the government. The applicants submitted that "by controlling the distribution of frequencies, licence awards and the advertisement market, and through other means, the government completely control[led] the broadcast media". The NTRC had been created by the then President of Azerbaijan in 2003. All nine members of the NTRC were appointed by the President and no transparent procedures or public consultations in respect of the selection of NTRC members were written into the NTRC regulations. It was therefore completely dependent on the President's Office. The applicants argued that all decisions concerning the granting of licences and broadcasting frequencies

were “made in the [public policy] department of the President’s Office”, which had been headed at the time in question by A.H. Moreover, at that time, A.H.’s spouse had been a member and a deputy chairman of the NTRC, while the chairman of the NTRC (at the time of the events in question) used to previously work in the same department of the President’s Office.

65. Furthermore, according to the applicants, at the time of the competition, it had not been clear who the owners of Golden Prince LLC were. Only after the licence had been awarded had they learned that its owner, A.V., had previously been associated with companies that were believed to be owned by family members of A.H. A few years later, the investigation conducted by the OCCRP had revealed that Golden Prince LLC (among a number of other companies) belonged to the family of A.H. and S.V.; and this had been confirmed by A.H. himself when contacted by the BBC.

66. The applicants noted that not all frequencies available for television and radio broadcasting were in use in Azerbaijan: only fourteen radio frequencies were in use. In this connection, the NTRC chairman had explained that this constituted a sufficient number of occupied frequencies and that there was no need to award licences for all available frequencies. The applicants further noted that in the period between 2007 and 2009 the broadcasting licences of Radio Free Europe/Radio Liberty, Voice of America, the BBC and several other international and foreign radio stations had been revoked. Those frequencies remained unfilled. No new licences had been granted to local radio stations, except in the cities of Baku and Nakhchivan. Although it appeared that certain independent broadcasters were operating, in reality they were owned by people “connected to those in political power”.

67. The applicants argued that this situation was not in line with the Committee of Ministers Recommendation (2000)23, which stated, *inter alia*, that specific rules governing regulatory authorities for the broadcasting sector should be “defined” as regards “incompatibilities” in order to avoid a situation in which regulatory authorities were under the influence of those holding political power and in order to ensure that the rules guaranteed that the members of those authorities would be appointed in a democratic and transparent manner. Neither was it compliant with Committee of Ministers Recommendation (2007)2 on media pluralism and diversity of media content (which stated that a sufficient variety of media outlets provided by a range of different owners – both private and public – should be available to the public). The applicants argued that it followed that they had been refused a licence by a body whose independence from the executive was questionable at best, in a regulatory environment that failed to promote any media pluralism and in a licensing competition that had been won by a broadcaster about whom the little that was known pointed to a link with an official of the President’s Office.

(b) The Government

68. The Government acknowledged that the refusal to grant the licence to the applicant company constituted an interference with the exercise of the rights guaranteed by Article 10 § 1 of the Convention. However, the interference had been justified. In particular, it had been in accordance with Articles 14.1 and 15.1 of the Broadcasting Law and Articles 2.1.4 and 4.7 of the Licensing Rules, the provisions of which were sufficiently clear and precise. Furthermore, the NTRC had held an open meeting – in which all three bidders had participated – and had, moreover, subsequently provided them with copies of the minutes of that meeting. The NTRC had also given reasons for its decision to award the licence to Golden Prince LLC. Furthermore, the NTRC's decision had been available for review by the domestic courts – and, indeed, had been so reviewed.

69. The Government noted that Article 10 of the Convention did not prevent the States from requiring that broadcasting, television or cinema enterprises be licensed and that the interference in the present case had been within the respondent State's margin of appreciation. As regards the applicants' submissions that the NTRC was not an independent regulatory body, the Government submitted that – pursuant to the NTRC Regulations (see paragraph 40 above) – it was independent in its activities. It had been established by the President and had nine members – of whom three were appointed for two years, three for four years and three for six years. The members elected the chairman and the deputy chairman of the NTRC themselves. The NTRC members were prohibited from making any statements or participating in any events that could cast doubt on their independence and impartiality and from receiving any mandate or taking any instructions from any official or authority. Moreover, the NTRC members could not be removed from their office, except in specified circumstances. The above-noted provisions ensured the independence of the NTRC and were in compliance with the Committee of Ministers Recommendation Rec(2000)23 on the independence and functions of regulatory authorities for the broadcasting sector. The Government noted that the applicants argued that the NTRC was “likely to follow government instructions in its operations”; however, they did not provide any evidence to indicate that the NTRC had followed such instructions.

2. The Court's assessment

(a) Whether there was an interference

70. The Court notes that the NTRC in effect rejected the applicant company's bid for a broadcasting licence by not recognising it as the winner in the call for tenders. This refusal constituted an interference with the applicants' freedom to impart information and ideas (see *Informationsverein Lentia and Others v. Austria*, 24 November 1993, § 27, Series A no. 276;

Radio ABC v. Austria, 20 October 1997, § 27, *Reports* 1997-VI; *Demuth v. Switzerland*, no. 38743/97, § 30, ECHR 2002-IX; *Glas Nadezhda EOOD and Elenkov v. Bulgaria*, no. 14134/02, § 42, 11 October 2007; and *Meltex Ltd and Movsesyan v. Armenia*, no. 32283/04, § 74, 17 June 2008).

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

72. In 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 own territories – particularly in respect of its technical aspects. The granting of a licence may also be made conditional on such matters as the nature and objectives of a proposed station, its potential audience at the national, regional or local level, the rights and needs of a specific audience and the obligations deriving from international legal instruments. However, the compatibility of such interferences must be assessed in the light of the requirements of paragraph 2 (see the above-cited cases of *Glas Nadezhda EOOD and Elenkov*, § 44, and *Meltex Ltd and Movsesyan*, § 76, with further references).

(b) Whether the interference was justified

73. 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. The Court reiterates that the expression “prescribed by law” in the second paragraph of Article 10 not only requires that the impugned measure have a legal basis in domestic law, but also refers to the quality of the law in question – which should be accessible to the person concerned and foreseeable as to its effects. As regards the requirement of foreseeability, the Court has repeatedly held that a norm cannot be regarded as a “law” within the meaning of Article 10 § 2 unless it is formulated with sufficient precision as to enable a person to regulate his or her conduct. That person must be able – if need be, with appropriate advice – to foresee, to a degree that is reasonable in the circumstances, the consequences that a given action may entail (see *Magyar Kétfarkú Kutya Párt v. Hungary* [GC], no. 201/17, §§ 93-94, 20 January 2020).

74. The notion of “quality of the law” requires, as a corollary of the foreseeability test, that the law be compatible with the rule of law. It thus implies that there must be adequate safeguards in domestic law against arbitrary interferences by public authorities (*ibid.*, § 93; see also *NIT S.R.L. v. the Republic of Moldova* [GC], no. 28470/12, § 159, 5 April 2022). 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 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 *Selahattin Demirtaş v. Turkey (no. 2)* [GC], no. 14305/17, § 249, 22 December 2020, and *Navalnyy v. Russia* [GC], nos. 29580/12 and 4 others, § 115, 15 November 2018).

75. 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 Elenkov*, cited above, §§ 49-51).

76. Turning to the present case, the Court notes that the NTRC's evaluation of bids for a broadcasting licence was to be carried out in accordance with the number of requirements and criteria established by the Broadcasting Law and the Licensing Rules adopted by the NTRC (see paragraphs 38 and 39 above). In particular, Article 32 of the Broadcasting Law set out the requirements for the programming, and Article 4.7 of the Licensing Rules set out a number of criteria on which the NTRC was to base its choice in granting a broadcasting licence. Some of those criteria – such as “preference ... given to local television and radio broadcasting productions” and the possession of a “creative staff [with] potential and experience in the field of ... broadcasting” and of “modern technical and financial resources” – seemed quite clear and specific, while some others seemed less so. Although many of those criteria could be subject to a highly subjective assessment, the Court is prepared to accept, for the purposes of the present complaint and within the specific context of the instant case, that the relevant domestic law (including those selection criteria) was sufficiently accessible and precise. However, it must further verify whether the manner in which the licensing procedure was conducted in respect of the present case was in accordance with the applicable law and provided sufficient guarantees against arbitrariness.

77. Even though the applicants were able to attend part of the NTRC meeting of 18 January 2011 – during which they had been able to speak in support of their bids and answer questions (contrast *Glas Nadezhda EOOD and Elenkov*, cited above, § 50; also compare *Meltex Ltd and Movsesyan*, cited above, § 82) – the Court is not convinced by the Government's and the domestic courts' assertions that at the end of the procedure the NTRC provided the applicants with a duly reasoned decision and did so within the time-limit provided by law. It notes, in particular, that Article 18.5 of the Broadcasting Law required the NTRC to provide a reasoned decision on any refusal on its part to grant a licence within fifteen days of the day of the announcement of the results of the call for tenders in question. In this connection, the Court refers to the relevant case-law principles (see paragraph 75 above); it also notes that the guidelines adopted

by the Committee of Ministers of the Council of Europe in the broadcasting regulation domain call for the 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 42 above).

78. In the present case, on 31 January 2011, within thirteen days of the announcement of the results of the call for tenders, the NTRC sent the applicants a letter informing them of the results in writing, with an enclosed copy of its decision in the form of an extract from the minutes of the meeting of 18 January 2011. However, that extract contained no reasoning at all (see paragraph 19 above). As to the cover letter, it is true that the NTRC stated in it that Golden Prince LLC had been awarded the licence because its proposal for “a purely news radio station would be a novelty for the television and radio space”. However, the Court cannot accept that, given the circumstances of the present case, this amounted to a duly reasoned decision. Firstly, although preference for a station focusing mainly on news programmes as such was not expressly listed among the above-mentioned applicable selection requirements and criteria, it could be argued that it should be assessed under the criterion of “originality of the broadcasting concept” under the Licensing Rules. However, even if so, no reasoning was provided in the letter in respect of all the other selection criteria. Secondly, while accepting that a licensing authority in the broadcasting sector may possess a certain degree of discretionary power, the Court notes that the legislation (as in force at the material time) did not expressly provide a procedure to be followed in awarding a licence to broadcast a specific type of programming (for example, mainly news, as in the present case); however, it did – in more general terms – vest the NTRC with the authority to define the rules and terms for a particular call for tenders and to assess, among other criteria, the “originality of the broadcasting concept”. In the present case the NTRC had not indicated its preference for such a radio station in advance in its announcement of the terms of the call for tenders (see paragraph 5 above) – thus rendering it unforeseeable for bidders that this would eventually be cited as a decisive factor in the selection process. Given such circumstances, the fact that this was the sole reason given in the NTRC’s letter of 31 January 2011 not only constituted inadequate reasoning in itself, but also demonstrated that, in practice, the NTRC had apparently exercised very wide, virtually unlimited discretionary powers in deciding at a later stage of the licensing procedure to heavily favour a single factor as grounds for awarding the licence to a specific bidder and denying it to others.

79. That being said, the Court now turns to the Government’s submission and the domestic courts’ position that additional, more comprehensive reasons were nevertheless actually cited in the minutes of the closed part of the NTRC meeting of 18 January 2011.

80. In this regard, the Court notes, firstly, that the NTRC did not send a full copy of the minutes to the applicants with its letter of 31 January 2011; moreover, following the applicants' specific request for a copy of those minutes, the NTRC expressly refused to provide it (see paragraph 20 above). Accordingly, even if those minutes could be argued to constitute the equivalent of a "decision" within the meaning of Article 18.5 of the Broadcasting Law, the NTRC acted contrary to the requirements of that provision, and the domestic courts' judgments were silent on this point. A copy of the minutes was eventually made available to the applicants only at some point during the court proceedings; it follows that they had not been aware of the content of those minutes at the time of lodging their appeal against the NTRC's decision.

81. Secondly, having noted the content of the minutes of the NTRC meeting of 18 January 2011 (summarised in paragraphs 11-16 above), the Court agrees with the applicants that the minutes could not be considered to constitute a duly reasoned decision demonstrating that the applicant company had been denied the licence after an adequate evaluation of the submitted bids. Indeed, during the meeting, several NTRC members made oral remarks that mentioned certain other factors (which they deemed to be favourable for Golden Prince LLC's bid) that corresponded to some of the selection criteria outlined by the relevant law – such as its technical capabilities (equipment), staffing potential and broadcasting concept. However, the Court cannot but note that those remarks were very general and short (just a few phrases each), and lacked any specifics as to why exactly those NTRC members considered that Golden Prince LLC's bid better corresponded to those criteria; they merely stated that this was so. No references were made to any prior comprehensive points-based assessment in respect of each criterion (if such an assessment had actually been carried out), and there was no information concerning the specific weighting given to the importance of each criterion considered. In particular, it is not clear on which specific standards or indicators the assessment of the technical capabilities of each bidder was based, and the only detail mentioned in the minutes in respect of this was the statement of Golden Prince LLC's representative that it had procured "very high-quality equipment" (see paragraph 13 above). As to staffing potential, it is again unclear what was taken into consideration for evaluation purposes – the overall number of staff, staff members' experience in the relevant field, and so on – and what scores were awarded to each bidder. In sum, the Court cannot conclude that the minutes of the NTRC meeting of 18 January 2011 amounted to a "duly reasoned decision" and considers, moreover, that those minutes did not demonstrate that a comprehensive and objective evaluation had actually been carried out.

82. The above-noted considerations are sufficient to conclude that the interference in the present case did not meet the Convention requirement of lawfulness, since a licensing procedure whereby the licensing authority issues

decisions that are not duly reasoned does not provide adequate protection against arbitrary interferences by a public authority with the fundamental right to freedom of expression (compare *Meltex Ltd and Movsesyan*, cited above, § 83). However, given the particular circumstances of the present case and having regard to the legal and factual submissions made before it, the Court consider that it should examine further the applicants' arguments concerning the manner of the appointment of members of the NTRC and its composition at the relevant time, as well as concerning its independence and impartiality.

83. At the relevant time, the NTRC members were appointed directly by the President – apparently without any public consultative process or prior nomination or selection procedures (see paragraph 40 above; see also paragraph 44 above for information regarding various other appointment procedures existing in the member States at the time; compare also, *mutatis mutandis*, *Manole and Others v. Moldova*, no. 13936/02, §§ 108-10, ECHR 2009 (extracts)). This does not appear to have been in accordance with the guidelines appended to Committee of Ministers Recommendation Rec(2000)23, which recommended that the members of regulatory authorities be appointed in a democratic and transparent manner (see paragraph 41 above). The Court also notes in this regard the recommendation made by the Council of Europe Commissioner for Human Rights following his visit to Azerbaijan in September 2007 that the composition and function of the NTRC be reviewed “by clearly defining the general legislative framework regulating the appointment of the members, and by ensuring a democratic and transparent appointment and full independence” (see paragraph 45 above).

84. Moreover, as to the specific composition of the NTRC when it awarded the licence in the present case, the Court notes with serious concern the applicants' submissions in respect of the links of the winning bidder, Golden Prince LLC, to the family of one of the NTRC members, S.V. (see paragraphs 30-36 and 64-65 above). The Court notes that most of the relevant supporting documents in respect of these submissions were enclosed with the observations submitted by the applicants after the Government had been given notice of the present application. Although in the domestic judicial proceedings the applicants complained in a more general manner (and with reference to the NTRC's previous licensing decisions) of the NTRC's alleged bias in favour of “State-controlled” companies and against independent media (see paragraphs 25 and 28 above), they did not raise before the domestic courts the same more detailed arguments concerning persons behind Golden Prince LLC and their affiliation with S.V., her son (S.H.) and her husband (A.H.). However, the Court takes due note of the fact that the applicants did not have this information in their possession when lodging their domestic appeal (see paragraph 30 above), and that before lodging their appeal they had attempted to obtain from the NTRC a copy of Golden Prince LLC's bid and corporate documents, but their request had been refused (see

paragraph 21 above). Moreover, the above-mentioned investigation confirming many of the specifics relating to these matters was published in 2014 – a few years after the domestic judicial proceedings had been concluded and the present application had been lodged with the Court (see paragraphs 32-34 above). Neither did the Government submit any objections in respect of these submissions, instead refraining from expressly commenting on them.

85. The Court notes that the OCCRP's investigation revealed that one of the founders of Golden Prince LLC was a relative of S.V., who was a member of the NTRC at the time of the events in question (and later its deputy chairman) and the wife of A.H. (a department head in the President's Office). Moreover, S.V.'s and A.H.'s son, S.H., was presented as the general director of Araz FM Radio (for which Golden Prince LLC submitted its bid) at public events after the licence was granted to it. Subsequently, the BBC reported that A.H. himself had confirmed the findings of that investigation – in particular the fact that several of the companies mentioned in the OCCRP's article (including Golden Prince LLC) belonged to his family. Neither the Government nor the applicants have submitted any information indicating that A.H. ever subsequently claimed that the BBC reported his statements incorrectly. Under such circumstances – even leaving aside serious questions that this situation raises as to possible undue influence having been exerted by a high-ranking official of the State executive authority over the regulatory body in the field of broadcasting – the Court emphasises the fact that S.V. was one of the members of the NTRC present at the meeting of 18 January 2011. Those NTRC members voted unanimously to award the licence to a company that had been incorporated by her relative and whose bid concerned a radio station whose director was her son. There is no indication that S.V. made any attempts to recuse herself. This constituted an apparent conflict of interest that was never adequately disclosed. Moreover, as noted above, after the results had been announced, the NTRC formally refused the applicants' request that it provide them with a copy of Golden Prince LLC's corporate documents – essentially withholding information that would have revealed this conflict of interest. The Court cannot regard this situation as anything other than seriously undermining the impartiality of the NTRC and rendering arbitrary the entire procedure whereby Golden Prince LLC was awarded the licence.

86. Furthermore, S.V.'s own business activities and her immediate family's business interests (which reportedly involved, at the time of the events in question, a number of companies – including some operating in the media sector) also give rise to questions regarding the compatibility of her NTRC membership with those other activities. In particular, the Court refers in this regard to clauses 12 and 14(iv) of the NTRC Regulations concerning persons “engaging in entrepreneurial, commercial or other paid activities (except scientific, pedagogical and creative activities)” (see paragraph 40

above). It also refers to the guidelines appended to Committee of Ministers Recommendation Rec(2000)23, according to which specific rules should be defined as regards incompatibilities in order to avoid a situation in which “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” (see paragraph 42 above). It appears that these questions have never been expressly and adequately addressed on the domestic level and, in their observations in the present case, the Government provided no specific comments in respect of the applicants’ factual submissions in this regard.

87. In view of the foregoing considerations, the Court concludes that the interference in the present case cannot be considered to have been “prescribed by law” within the meaning of the Convention. Having reached that conclusion, the Court does not need to satisfy itself that the other requirements of Article 10 § 2 (legitimate aim and necessity of the interference) have been complied with.

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

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

89. 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

1. Pecuniary damage

90. The applicants claimed a lump sum of 100,000 euros (EUR) in respect of pecuniary damage, including (i) expenses incurred in preparing for the call for tenders and in purchasing equipment, and (ii) loss of expected profit from advertisements that they would have realised had they been awarded a licence. In support of their claim, they submitted that it was difficult for them to estimate the level of lost profit because information regarding broadcasters’ annual profits was not publicly available; however, according to the data published by the State Statistics Committee, the “average income” realised by radio companies “only from direct advertisements” was EUR 350,000 in 2017 and EUR 187,000 in 2018 and, according to the applicants, these amounts “represented only a small fraction of their revenues”. In respect of this statistical information, the applicants did not submit the information published directly by the State Statistics Committee, but rather a third-party source that had reported that information together with

a number of other statistics (it appears, however, that the above-mentioned amounts, as reported by this source, corresponded to combined revenues of all radio stations from advertisement, and not the “average income”).

91. The Government submitted that the applicants had failed to provide any evidence in support of the part of the claim concerning the expenses that they had incurred in preparing for the call for tenders and in purchasing equipment. The remaining part of that claim was also unsupported by sufficient evidence, and no distinction was made as to whether the alleged “average” amounts cited referred to radio companies’ revenues or net income. Moreover, even if the applicants had been awarded the licence, there was no guarantee that they would have made any profit at all.

92. The Court reiterates that, under Rule 60 of the Rules of Court, any claim for just satisfaction must be itemised and submitted in writing together with the relevant supporting documents or vouchers, failing which the Chamber may reject the claim in whole or in part. The Court notes that the applicants’ claim in respect of pecuniary damage is not itemised in respect of each specific head of damages claimed, is either not substantiated with any material or is substantiated with insufficient relevant material, and is based on speculative arguments that cannot serve as a basis for a precise determination of pecuniary damage suffered (if any). It must therefore be rejected.

2. Non-pecuniary damage

93. The applicants claimed EUR 20,000 in respect of non-pecuniary damage.

94. The Government submitted that the amount claimed was excessive and that the finding of a violation of the Convention would constitute sufficient just satisfaction in itself.

95. The Court awards the applicants (the applicant company and the second and third applicants) jointly EUR 4,500 in respect of non-pecuniary damage, plus any tax that may be chargeable.

B. Costs and expenses

96. The applicants also claimed EUR 5,100 for the costs and expenses incurred before the domestic courts and the Court. In support of their claim, they submitted a contract for legal services to be provided by Mr R. Hajili (their representative before the Court) and Ms G. Ismayilova.

97. The Government argued that the amount claimed was excessive and that, moreover, the contract for legal services had not been concluded in a manner compliant with the domestic legal requirements in respect of the currency in which the legal fees were denominated.

98. 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 were actually and necessarily incurred and are reasonable as to quantum. In the present case, regard being had to the documents in its possession and the above criteria, the Court considers it reasonable to award the sum of EUR 2,000 – covering costs under all heads – plus any tax that may be chargeable to the applicants.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Takes note* of the agreement between the fourth applicant, Mr Rasul Agahasan oglu Jafarov, and the Government and the arrangements made to ensure compliance with the undertakings given therein (Rule 43 § 3 of the Rules of Court) and *decides* to strike the application, in so far as it concerns the fourth applicant, out of its list of cases, in accordance with Article 39 of the Convention;
2. *Declares* the remainder of the application admissible;
3. *Holds* that there has been a violation of Article 10 of the Convention;
4. *Holds*
 - (a) that the respondent State is to pay the applicant company and the second and third applicants jointly, within three months from the date on which the judgment becomes final, in accordance with Article 44 § 2 of the Convention, the following amounts, to be converted into Azerbaijani manats at the rate applicable at the date of settlement:
 - (i) EUR 4,500 (four thousand five hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
 - (ii) EUR 2,000 (two thousand euros), plus any tax that may be chargeable to the applicants, in respect of costs and expenses;
 - (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;
5. *Dismisses* the remainder of the applicants' claim for just satisfaction.

OBJECTIVE TELEVISION AND RADIO BROADCASTING COMPANY AND OTHERS
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Done in English, and notified in writing on 18 February 2025, pursuant to
Rule 77 §§ 2 and 3 of the Rules of Court.

Milan Blaško
Registrar

Ioannis Ktistakis
President

OBJECTIVE TELEVISION AND RADIO BROADCASTING COMPANY AND OTHERS
v. AZERBAIJAN JUDGMENT

APPENDIX

List of applicants:

No.	Applicant's Name	Year of birth/registration	Nationality	Place of residence
1.	OBJECTIVE TELEVISION AND RADIO BROADCASTING COMPANY LLC	2010	Azerbaijan	Baku
2.	Mehman Yadulla oglu ALIYEV	1957	Azerbaijani	Baku
3.	Emin Rafik oglu HUSEYNOV	1979	Stateless	Baku
4.	Rasul Agahasan oglu JAFAROV	1984	Azerbaijani	Baku