

Press release issued by the Registrar

CHAMBER JUDGMENT
MELTEX LTD AND MESROP MOVSESYAN v. ARMENIA

The European Court of Human Rights has today notified in writing its Chamber judgment¹ in the case of *Meltex Ltd and Mesrop Movsesyan v. Armenia* (application no. 32283/04).

The Court held unanimously that there had been a **violation of Article 10** (freedom of expression) of the European Convention on Human Rights concerning the Armenian authorities' refusal to grant the applicants' requests for broadcasting licences.

Under Article 41 (just satisfaction) of the Convention, the Court awarded the applicant company 20,000 euros (EUR) in respect of non-pecuniary damage and EUR 10,000 for costs and expenses. (The judgment is available only in English.)

1. Principal facts

The applicants are Meltex Ltd, an independent broadcasting company established in 1995 with its registered office in Yerevan (Armenia), and its chairman, Mesrop Movsesyan, who was born in 1950 and lives in Yerevan.

The case concerned the applicants' complaint about being refused broadcasting licences on seven separate occasions.

In January 1991 Mr Movsesyan set up A1+, the first independent television company in Armenia and widely recognised as one of the few independent voices in Armenian television broadcasting. The content of its programmes included analysis of international and domestic news, advertising and various entertainment programmes. During the run-up to the 1995 presidential elections, A1+ refused to broadcast only Government propaganda and, as a result, its State broadcasting licence was suspended. Subsequently Mr Movsesyan set up Meltex Ltd and, within that structure, launched A1+ again. In January 1996 Meltex opened a school to train journalists, cameramen and technicians, who were later not only employed by Meltex but also by other television companies. In January 1997 Meltex was granted a five-year broadcasting licence.

¹ Under Article 43 of the Convention, within three months from the date of a Chamber judgment, any party to the case may, in exceptional cases, request that the case be referred to the 17-member Grand Chamber of the Court. In that event, a panel of five judges considers whether the case raises a serious question affecting the interpretation or application of the Convention or its protocols, or a serious issue of general importance, in which case the Grand Chamber will deliver a final judgment. If no such question or issue arises, the panel will reject the request, at which point the judgment becomes final. Otherwise Chamber judgments become final on the expiry of the three-month period or earlier if the parties declare that they do not intend to make a request to refer.

From 2000 to 2001 legislative changes were introduced to television and radio broadcasting in Armenia. The Television and Radio Broadcasting Act, passed in October 2000, established the National Television and Radio Commission (“the NTRC”), a public body composed of nine members appointed by the President of Armenia, which was entrusted with the licensing and monitoring of private television and radio companies. The Broadcasting Act also introduced a new licensing procedure, whereby broadcasting licences were granted by the NTRC on the basis of calls for tenders.

In February 2002 the NTRC announced calls for tenders regarding various broadcasting frequencies, including band 37, the band on which Meltex operated. At a public hearing on 2 April 2002 the NTRC, according to a points-based vote, nominated Sharm Ltd the winning company¹. No other reasons were given for its decision.

On 3 April 2002 A1+ ceased to broadcast.

Between May and December 2003 Meltex participated in bids for seven other bands, each time unsuccessfully.

Mr Movsesyan wrote to the NTRC requesting reasons for the refusals of Meltex’s bids. The NTRC repeatedly replied that it only made decisions as to which was the best company, following which it granted or refused broadcasting licences.

Meltex brought several sets of proceedings in which it sought to have those decisions annulled and complained about the NTRC’s failure to give written reasons for its decisions to refuse broadcasting licences.

Ultimately, the Armenian courts dismissed Meltex’s claims as unfounded, finding that the calls for tenders concerning those seven bands had been carried out in accordance with the law.

2. Procedure and composition of the Court

The application was lodged with the European Court of Human Rights on 27 August 2004.

Judgment was given by a Chamber of seven judges, composed as follows:

Josep **Casadevall** (Andorran), *President*,
Elisabet **Fura-Sandström** (Swedish),
Boštjan M. **Zupančič** (Slovenian),
Alvina **Gyulumyan** (Armenian),
Ineta **Ziemele** (Latvian),
Luis **López Guerra** (Spanish),
Ann **Power** (Irish), *judges*,

and also Santiago **Quesada**, *Section Registrar*.

¹ On 27 May 2008 the European Court of Human Rights declared inadmissible the applicant company’s complaint about it being refused a broadcasting licence for band 37 since the NTRC’s decision had been taken prior to the Convention’s entry into force in respect of Armenia (*Meltex Ltd v. Armenia*, application no. 37780/02).

3. Summary of the judgment¹

Complaint

Relying, in particular, on Article 10 (right to freedom of expression), the applicants complained about being refused broadcasting licences on seven separate occasions.

Decision of the Court

Article 10

The Court found that the NRTC's refusal of Meltex's bids for broadcasting licences had effectively amounted to an "interference" with their freedom to impart information and ideas.

The Court noted that the NRTC's decisions had been based on the Broadcasting Act and other complementary legal acts. Section 50 of that Act had defined precise criteria for the NRTC to make its choice, such as the applicant company's finances and technical resources, its staff's experience and whether it produced predominately in-house, Armenian programmes. However, the Broadcasting Act had not explicitly required at that time that the licensing body give reasons when applying those criteria. Therefore, the NRTC had simply announced the winning company without giving any reasons why that company had met the requisite criteria and not Meltex. Indeed, even though the NRTC had held hearings, no reasoned decisions had been publically announced. Meltex and the general public therefore had no way of knowing on what basis the NRTC had exercised its discretion to refuse a licence.

The Court considered that a procedure which did not require a licensing body to justify its decisions did not provide adequate protection against arbitrary interference by a public authority with the fundamental right to freedom of expression.

The Court recalled the guidelines adopted by the Council of Europe's Committee of Ministers in the domain of broadcasting regulation which called for open and transparent application of the regulations governing licensing procedures and specifically recommended that "[a]ll decisions taken ... by the regulatory authorities ... be ... duly reasoned". Similarly, the Court pointed to a Resolution concerning Armenia by the Council of Europe's Parliamentary Assembly of 27 January 2004 which had concluded that "the vagueness of the law in force ha[d] resulted in the [NRTC] being given outright discretionary powers".

The Court therefore concluded that the interference with Meltex's freedom to impart information and ideas, namely having been refused a broadcasting licence on seven separate occasions, had not met the requirement of lawfulness under the European Convention, in violation of Article 10.

The Court's judgments are accessible on its Internet site (<http://www.echr.coe.int>).

¹ This summary by the Registry does not bind the Court.

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The European Court of Human Rights was set up in Strasbourg by the Council of Europe Member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.