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

FIFTH SECTION

DECISION

Application no. 24064/13
TELERADIOKOMPANIYA ERA, TOV
against Ukraine

The European Court of Human Rights (Fifth Section), sitting on 1 September 2022 as a Committee composed of:

Stéphanie Mourou-Vikström*, President,*
Lado Chanturia*,*
Mykola Gnatovskyy*, judges,*
and Martina Keller, Deputy Section Registrar,

Having regard to:

the application (no. 24064/13) against Ukraine lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") on 4 April 2013 by a Ukrainian company, Teleradiokompaniya Era, Tov, established in 1998 and based in Kyiv ("the applicant company"), which was represented before the Court by Mr N.S. Kulchytskyy, a lawyer practising in Kyiv;

the decision to give notice of the application to the Ukrainian Government ("the Government"), represented by their Agent, Mr Ivan Lishchyna, of the Ministry of Justice;

the parties' observations;

Having deliberated, decides as follows:

SUBJECT MATTER OF THE CASE

1. The application concerns the applicant company's complaint that the State authorities refused to issue it a licence for digital broadcasting and that the applicant company did not have an effective domestic remedy in this respect. The applicant company invokes Articles 10 and 13 of the Convention.

2. The applicant company held a licence for analogue television broadcasting, issued on 30 April 2010 and valid until 30 April 2017. In 2011 it was issued with an additional licence for satellite broadcasting, valid until

19 October 2021. In 2015 the applicant company obtained another licence for satellite broadcasting, valid until 2 June 2025. Since its creation, the applicant company was broadcasting in analogue format.

3. In 2008 the Cabinet of Ministers of Ukraine decided that Ukraine was to change from analogue to digital broadcasting by 2015, which would result in analogue television and radio transmitters ceasing to function the same year. However, analogue broadcasting was not terminated in 2015 as planned; digital broadcasting did not fully replace analogue broadcasting until 2019.

4. On 15 April 2011 the National Council of Television and Radio Broadcasting ("the National Council"), by decisions nos. 821 and 822, announced a competition for licences for nationwide digital broadcasting on a number of free channels and adopted the rules of the competition.

5. The applicant company participated in the competition.

6. On 18 August 2011, the National Council adopted decisions in respect of the results of the competition.

7. By a letter of 23 August 2011, the applicant company was informed that based on the results of the competition it was not granted a licence. By a further letter of 2 September 2011, it was informed that it could not be granted the licence because all six members of the National Council had abstained from voting on its application.

8. The applicant company appealed to the courts against the decision to hold the competition and the results issued in August 2011, but to no avail (the final decision was given by the Higher Administrative Court on 11 March 2013).

9. In 2012 another competition for nationwide digital broadcasting was held, but the applicant company did not participate. According to the Government, another competition was planned for 2015, but it remains unclear from the material in the case file whether that competition took place.

10. The applicant company continued to broadcast in analogue until 14 April 2017, on the basis of its licence for analogue broadcasting (see paragraph 2 above).

11. After that date the applicant company stopped broadcasting in analogue, but from 15 May to 16 June 2017 it continued to broadcast nationwide by satellite using its licence for satellite broadcasting (see paragraph 2 above).

12. From 16 June 2017 onwards the applicant company continued broadcasting by satellite, but only in the Kyiv and Odessa Regions.[1]

[1] The exchange of observations between the parties finished in 2015. After that the parties did not submit to the Court any new factual information. The information contained in paragraphs 11-13 concerning the developments after 2015 comes from the page dedicated to the applicant organisation on Wikipedia (Ера (телеканал) — Вікіпедія (wikipedia.org).

THE COURT'S ASSESSMENT

13. The applicant company complained that the authorities' unlawful and unfounded refusal to grant it a licence for digital broadcasting as a result of the competition of 2011 had breached its right to freedom of expression under Article 10 of the Convention. It further complained that it had no effective remedy in respect of that complaint as required by Article 13 of the Convention.

14. The Government submitted that the applicant company's complaints were manifestly ill-founded and that it did not have victim status because after not having obtained a licence in 2011, it had continued to broadcast under its analogue and satellite licences. They also contended that the applicant company had not exhausted domestic remedies because it had not availed itself of the procedure for exchanging the licence and it had not participated in the competition held in 2012. According to the Government's submissions before the Court, the procedure for obtaining a licence by way of a competition was aimed at entities which did not hold a broadcasting licence. As the applicant company had held a licence for analogue broadcasting, pursuant to the Broadcasting Act, it could have used the procedure for exchanging its analogue broadcasting licence for a digital one. The application for such an exchange had to be lodged no later than two months after a broadcasting organisation had become fully ready to switch to digital broadcasting.

15. The Government noted that, as of 2015, only 8% of Ukrainian households were equipped to receive digital television, while 30% of households were equipped to receive satellite programmes and 24% were equipped to receive analogue television programmes. They also noted that as of 2015, when the Government submitted their observations to the Court, the applicant company had not used its licence for satellite broadcasting.

16. The applicant company maintained its complaints. It stated that the licence for satellite broadcasting had not replaced the licence for digital broadcasting. The applicant company also contended that its analogue licence had entitled it to five hours of broadcasting per day, whereas, had it won the competition of 2011, it would have been allowed to broadcast for twenty-four hours a day. The applicant company also stated that although the procedure for exchanging analogue broadcasting licence for a digital one (see paragraph 15 above) existed according to the legislation, but in practice licences were issued only through competitions.

17. The Court observes that after the applicant company failed to obtain a licence following the competition in 2011, it still had several ways in which to impart information and ideas (see paragraphs 11-13 above). The Court also notes that the applicant company's initial application to the Court did not include a complaint concerning the amount of time during which it was allowed to broadcast each day under the analogue licence. The initial

application only concerned the applicant company's assertion that without a digital licence, it would no longer be able to continue broadcasting after 2015 when the switch to digital television was planned.

18. In view of the above, the application must be rejected as manifestly ill-founded pursuant to Article 35 § 4 of the Convention.

For these reasons, the Court, unanimously,

Declares the application inadmissible.

Done in English and notified in writing on 22 September 2022.

Martina Keller Deputy Registrar	Stéphanie Mourou-Vikström President