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

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No violation in Grand Chamber case concerning withdrawal of Moldovan television station's licence

In today's **Grand Chamber** judgment[1] in the case of NIT S.R.L. v. the Republic of Moldova (application no. 28470/12) the European Court of Human Rights held, by 14 votes to 3, that there had been:

no violation of Article 10 (freedom of expression) of the European Convention on Human Rights

and, by 15 votes to 2, that there had been:

no violation of Article 1 of Protocol No. 1 (protection of property).

The case concerned the applicant company's allegation that its television channel was shut down for being overly critical of the Government and, in particular, whether domestic law could impose an obligation of neutrality and impartiality in the news bulletins of television stations broadcasting on national public networks.

The Court recalled that the internal pluralism policy chosen by the Moldovan authorities and embodied in the Audiovisual Code 2006 had received a positive assessment by Council of Europe experts. While the policy chosen by the national authorities could be viewed as rather strict, the case related to a period before Moldova transitioned to terrestrial digital television, when the number of national frequencies was very limited and when the authorities had to put in place broadcasting legislation ensuring the transmission of accurate and balanced news and information reflecting the full range of political opinions.

With that in mind, the Court was satisfied that the reasons behind the decision to restrict the applicant company's freedom of expression had been relevant and sufficient and that the domestic authorities had balanced the need to protect pluralism and the rights of others, on the one hand, and the need to protect the applicant company's right to freedom of expression on the other.

In addition, even though its loss of licence had eventually led to the demise of its analogue television network, the applicant company could have reapplied for a broadcasting licence after a year. The Court was satisfied that the respondent State had struck a fair balance between the general interest of the community and the property rights of the television station.

In its judgment, the Court developed its case-law on pluralism in the media and clarified the interrelationship between the internal and external aspects of media pluralism, the scope of the margin of appreciation afforded to States, and the level of scrutiny applicable to restrictions in this area. It also outlined the factors for assessing a regulatory framework and its application.

Principal facts

The applicant company, Noile Idei Televizate (NIT) S.R.L., had a private television channel (NIT) in Moldova. It started operating in 1997 and was issued with a licence to broadcast nationally from 2004. As of 2009, it was the main voice of the sole opposition party.

Between 2009 and 2011 the television station was sanctioned multiple times for breaching legislation concerning protection of pluralism, namely duties of neutrality and impartiality, in its

1. Grand Chamber judgments are final (Article 44 of the Convention).
All final judgments are transmitted to the Committee of Ministers of the Council of Europe for supervision of their execution. Further information about the execution process can be found here: www.coe.int/t/dghl/monitoring/execution.

news bulletins. In particular, the audiovisual national authority accused the channel of a lack of pluralism, politically biased news bulletins, favouring the opposition political party and broadcasting distorted news items.

In 2012, after the television station failed again to comply with the law on pluralism as laid down in Article 7 of the domestic Audiovisual Code of 2006, despite numerous milder sanctions imposed on it, its licence to operate was withdrawn.

The applicant company challenged the decision before the national courts, but its action was dismissed as ill-founded in 2013. The Court of Appeal found in particular that the audiovisual authority had had no other option but to impose the harshest sanction of revoking the television station's licence, given that it had refused to comply with the domestic legislation on pluralism.

Complaints, procedure and composition of the Court

The applicant company complained in particular under Article 10 of the European Convention on Human Rights and under Article 1 of Protocol No. 1 that the withdrawal of its licence for its television station had amounted to a breach of its right to freedom of expression and of its property rights. It also complained under Article 6 (right to a fair trial) that the proceedings concerning the revocation of its licence had not been fair. It asked the Court to examine, in particular, whether domestic law could impose an obligation of neutrality and impartiality in the news bulletins of private television stations broadcasting on national public networks.

The application was lodged with the European Court of Human Rights on 11 May 2012. On 17 April 2018 the Moldovan Government was given notice[2] of the application, with questions from the Court. On 3 March 2020 the Chamber to which the case had been allocated relinquished jurisdiction in favour of the Grand Chamber.

Judgment was given by the Grand Chamber of 17 judges, composed as follows:

Robert **Spano** (Iceland), *President*,
Jon Fridrik **Kjølbro** (Denmark),
Ksenija **Turković** (Croatia),
Paul **Lemmens** (Belgium),
Síofra **O'Leary** (Ireland),
Yonko **Grozev** (Bulgaria),
Valeriu **Griţco** (the Republic of Moldova),
Egidijus **Kūris** (Lithuania),
Branko **Lubarda** (Serbia),
Stéphanie **Mourou-Vikström** (Monaco),
Jolien **Schukking** (the Netherlands),
María **Elósegui** (Spain),
Ivana **Jelić** (Montenegro),
Arnfinn **Bårdsen** (Norway),
Darian **Pavli** (Albania),
Erik **Wennerström** (Sweden),
Saadet **Yüksel** (Turkey),

and also Søren **Prebensen**, *Deputy Grand Chamber Registrar.*

2. In accordance with Rule 54 of the Rules of Court, a Chamber of seven judges may decide to bring to the attention of a Convention State's Government that an application against that State is pending before the Court (the so-called "communications procedure"). Further information about the procedure after a case is communicated to a Government can be found in the Rules of Court.

Decision of the Court

Article 10

The Court noted that, unlike previous cases where existing standards on media pluralism had been developed mainly in the context of complaints of unjustified State interference with an applicant's rights to freedom of expression and where the Court had relied, amongst other things, on the principle of media pluralism in finding a violation, it was the other dimension of media pluralism that was at stake in this case. The applicant company complained of restrictions on its freedom of expression which were based on the grounds of ensuring political pluralism in the media, with the aim of enabling diversity in the expression of political opinion and enhancing the protection of the free-speech interests of others in audiovisual media. It was a question therefore of striking a proper balance between the competing interests of the community in safeguarding political pluralism in the media, and of respecting the principle of editorial freedom.

A further specific feature was the emphasis laid in the relevant national legal framework on internal pluralism, namely the obligation on broadcasters to present different political views in a balanced manner, without favouring a particular party or political movement. In contrast, earlier cases had been more concerned with issues of external pluralism, which meant the existence of various media outlets, each expressing a different point of view, and was basically achieved by ensuring that the media were not concentrated in the hands of too few.

The Court had already acknowledged that, in such a sensitive sector as the audiovisual media, the State was obliged to put in place an appropriate legislative and administrative framework to guarantee true effective pluralism. Furthermore, when it came to audiovisual broadcasting, States were under a duty to ensure, first, that the public were given access through television to impartial and accurate information and a range of opinions and comments, reflecting, amongst other things, the diversity of political outlook within the country, and, secondly, that journalists and other professionals working in the audiovisual media were not prevented from imparting such information and comments. The Court clarified in this respect that neither aspect, internal or external pluralism, should be considered in isolation from each other; on the contrary, both aspects had to be considered together. Thus, in a national licensing system involving a certain number of broadcasters with national coverage, what might be regarded as a lack of internal pluralism in the programmes offered by one broadcaster might be compensated for by the existence of effective external pluralism. However, it was not sufficient to provide for the existence of several channels. What was required was to guarantee diversity of overall programme content, reflecting as far as possible the variety of opinions encountered in society.

The Court reiterated that there might be different approaches to achieving overall programme diversity in the European space. A number of national licensing systems tended to rely on the diversity of perspectives provided by the different licensed operators, coupled with structural safeguards and general obligations of fair coverage, while other national systems required stricter content-based duties of internal pluralism. As the choice of how to achieve overall programme diversity varied according to local conditions, States should in principle enjoy wide discretion in how to go about ensuring pluralism in the media.

In this case, the severity of the sanction was a factor that called for close scrutiny by the Court. The Court recalled that the internal pluralism policy chosen by the Moldovan authorities and embodied in the Audiovisual Code 2006 had received a positive assessment by Council of Europe experts. While the policy could be viewed as rather strict, the case related to a period before Moldova transitioned to terrestrial digital television, when the number of national frequencies was very limited and when the authorities were under a strong obligation to put in place broadcasting legislation ensuring the transmission of accurate and balanced news and information reflecting the full range of political opinions. In that context, the legislative choices had been carefully considered

and genuine efforts had been made at parliamentary level to strike a fair balance between the competing interests at stake. All broadcasters, whether public or private, had been subjected to the same rules, which had been applied not to the entire audiovisual content of licensed broadcasters but only to their respective news bulletins. Implementation of the rules had been monitored by the Audiovisual Coordinating Council (ACC), a specialist body established by law. Its meetings, monitoring reports and decisions were accessible to the public and the broadcasters' representatives were given an opportunity to attend and to submit comments. The ACC was required to provide reasons for any decision to impose a sanction, which could be challenged before the courts.

Regarding the application of the regulatory framework in NIT's case, the Court determined that the decision had been supported by relevant and sufficient reasons.

The Court was mindful of the fact that the severity of the sanction could have had a potentially "chilling effect" on the freedom of expression of other licensed broadcasters in Moldova. However, in the specific circumstances of the case, it felt that the domestic authorities had acted within their margin of appreciation in achieving a reasonable relationship of proportionality between the competing interests at stake:

As the applicant company had contended that the revocation, as well as the majority of the previous sanctions, had been politically motivated, the Court had to scrutinise closely the safeguards against arbitrariness and abuse. It found that NIT's allegations had been duly examined by the courts and there was no concrete evidence to support the allegation that the ACC had sought to hinder NIT from expressing critical views of the government, or had pursued any other ulterior purpose.

It also noted that the measure had not prevented the applicant company from using other means to broadcast its news bulletins and programmes, and that the applicant company had not been prevented from pursuing other income-generating activities. Indeed, it had continued to share content through its Internet homepage and YouTube channel. Moreover, the applicant company could have reapplied for a broadcasting licence after one year.

With the above considerations in mind, the Court was satisfied that the reasons behind the decision to restrict the applicant company's freedom of expression had been relevant and sufficient and that the domestic authorities had balanced the need to protect pluralism and the rights of others, on the one hand, and the need to protect the applicant company's right to freedom of expression on the other.

The interference had thus been "necessary in a democratic society" There had accordingly been no violation of Article 10.

Article 1 of Protocol No. 1

As regards the revocation of the applicant company's television broadcasting licence, the Court observed that it was the result of the television company's persistence in refusing to comply with the relevant licence requirements but also down to the overall gravity, nature and accumulation of its transgressions. The fact that it had not changed its behaviour to comply with the Audiovisual Code despite twelve sanctions in three years had led the authorities to feel entitled to apply its most serious sanction.

The Court noted that an expert report provided by the applicant company concluded that it had operated at a loss even before the revocation of its licence. Consequently, the Court found that the revocation of the licence had not affected the applicant company's proprietary interests to an excessive degree. In this connection, the Court noted, moreover, that even though the loss of licence had eventually led to the demise of the applicant company's analogue television network, that had not been a forgone conclusion as the company could have reapplied for a broadcasting licence one year later. It thus appeared that the applicant company's pecuniary and other proprietary interests

had been sufficiently taken into account in the relevant proceedings. The Court was therefore satisfied that the State, acting within its wide margin of appreciation in this area, had struck a fair balance between the general interest of the community and the property rights of the applicant company. The Court concluded that there had been no violation of Article 1 of Protocol No. 1.

Article 6 § 1

The Court considered that most of the applicant company's grievances under this Article covered largely the same grounds as the complaints under Article 10 and Article 1 of Protocol No. 1. Given the reasons already set out and the fact that the national courts had examined all the arguments raised by the applicant company and dismissed them by providing reasons which were not arbitrary or manifestly unreasonable, the Court did not find that the alleged shortcomings had affected the fairness of the proceedings in any way.

As to the specific complaint concerning the allegedly unlawful amendment by the national authorities of an article of the Audiovisual Code of 2006, the Court noted that the amendment had come into effect shortly after NIT's licence had been revoked and that the amendment had had no influence or impact on the proceedings brought by the applicant company against that decision. Therefore, the Court was not persuaded that the amendment in question had rendered the proceedings unfair. It followed that this complaint was manifestly ill-founded and had to be rejected.

Separate opinion

Judges Lemmens, Jelić and Pavli expressed a joint dissenting opinion. This opinion is annexed to the judgment.

The judgment is available in English and French.

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