Statement Regarding CoE Committee of Ministers Decision to Close the Examination of "A1+" Case

June 27, 2011

On June 10, 2011 the Resolution CM/ResDH(2011)39 on execution of the June 17, 2008 judgment of the European Court of Human Rights on the case of "Meltex" LLC versus Republic of Armenia was released. The Resolution was adopted at the June 8, 2011 Meeting of the Ministers' Deputies by the Committee of Ministers of the Council of Europe.

In the Resolution the CoE Committee of Ministers announced about its decision to close the examination of the case of "A1+" TV company founder, "Meltex" LLC. Our organizations have examined thoroughly the Resolution and all the relative circumstances, perhaps this is why this statement is adopted and released with a delay.

We are convinced that the Committee of Ministers rendered a decision on the closure of the TV company's case having neither sufficient legal nor other grounds for it.

The facts and the circumstances cited in the annex of this statement manifest that the Armenian authorities did not take any measures to restore the violated right of "Meltex" LLC/"A1+" TV company to freely impart information and ideas. Moreover, the comparison of these facts and circumstances admit that "A1+" has been persistently restricted to return on air.

On one side, the CoE Committee of Ministers Resolution stresses that over and above the payment of just satisfaction, the respondent state where appropriate should take individual measures to put an end to the violations and erase their consequences so as to achieve as far as possible restitutio in integrum. However, on the other side, the Resolution ignores the fact that the rights of "Meltex" LLC have not been restored anyway.

We regret to state that decisions like the one passed by the CoE Committee of Ministers free the hands of the authorities, justify their interventions against freedom of expression, reduce the performance of the efforts made by many local and international organizations towards the promotion of democratic values in the country.

We regard this Resolution as running counter to the aims for which the structures, engaged in the supervision of execution of the European Court of Human Rights decisions, are formed. We call upon the CoE Committee of Ministers to implement the procedures under its competence in line with the priorities and values proclaimed by the Council of Europe.

ANNEX

– Since September 2008 the representatives of "Meltex" LLC have persistently addressed the Committee of Ministers written communications informing that there are still pending proceedings before national courts and the European Court of Human Rights. These proceedings regard the applications lodged by "Meltex" LLC, where the "A1+" founder contests the obstacles for implementing the June 17, 2008 ECHR

ruling. These obstacles are stipulated either by national state bodies or are a result of legislative imperfections. The Committee of Ministers has taken into account these communications, according to Point 1 of Article 9 of its Rules, and has therefore referred to them in its interim decisions.

– As of June 19, 2011 the following information was available on the Committee of Ministers' website, in the section regarding the execution process of the case of "Meltex" LLC . In particular:

"On 20/05/2009, the applicant company sent a letter (DD(2009)307E distributed at the 1059th meeting) informing the Committee of Ministers (…), it lodged two appeals before the Court of Cassation to reopen the proceedings for judicial review (…), but that these two appeals were dismissed. (…)The applicant company complains that no individual measure has been taken so far by the authorities following the judgment of the European Court."

"The applicant's lawyer informed the Committee of Ministers (DD(2010)72 of 15/02/2010, distributed for the 1078th meeting and declassified on 24/03/2010) that he had lodged an appeal before the Constitutional Court arguing that Article 204.28 of the Code of Civil Procedure, on the basis of which his appeals before the Court of Cassation had been dismissed, was unconstitutional and that these proceedings before the constitutional court was still pending."

"The applicant party informed the Committee of Ministers that it had lodged a new application before the European Court of Human Rights in October 2009."

"The Armenian authorities, which were invited in September 2009 and March 2010 to provide full information on the remedies pursued by the applicant before the competent national judicial authorities, sent on 9/04/2010 a translation of the decision of the Constitutional Court of 23/02/2010, in which it noted that Article 204.28 of the Code of Civil Procedure had already been declared unconstitutional in its decision of 28/11/2007 and that the applicant's right to apply for reopening under "newly revealed circumstances" had not expired."

– If the Committee of Ministers did not attach importance to the applications pending before the RA Constitutional Court or the ECHR, then why was it persistently reminding about these proceedings in all its decisions, since September 2008 when starting the examination of the execution of the "A1+" TV company ruling. It should also be noted that even though the Government announced that after the decision of the Constitutional Court "Meltex" LLC got the right to apply to the Court of Cassation for reopening the case under "newly revealed circumstances", and the company did use this right, the appeal of "A1+" founder was again dismissed and the latter informed the Committee of Ministers about this in its 10/02/2011 communication.

Given all the above we can state that the Resolution of the Committee of Ministers on closure of "A1+" TV company's case examination is unacceptable even from a formal point of view:

1. The execution of the ECHR ruling on the TV company's case is still pending before national jurisdictions. The Constitutional Court continues to consider the constitutionality of the national legislation provisions, which hindered the reopening of proceedings on the contested court decisions regarding the TV company's case in 2004.

2. The No.45119/09 complaint of the TV company lodged on October 2009 is still under the examination of ECHR. In it the TV company argued several legal violations made during the execution of the ECHR ruling that resulted in a new infringement of Article 10 of the European Convention on Human Rights and Fundamental Freedoms.

3. The holding of new broadcast licensing competition and the so-called "given possibility" to the TV company for participating in it cannot be considered as a measure taken by the RA Government to restore the violated right of the TV company as the latter is entitled to take part in the competition not owing to special efforts and measures of the Government, but by virtue of the RA Law "On Television and Radio", adopted in October 2000. Even if "Meltex" LLC had not addressed the ECHR and had not received the well-known ruling of June 17, 2008, it would still have the possibility to participate in the 2010 competitions. In fact, not all the TV companies, who took part in the 2010 licensing competitions, had lodged an appeal before the ECHR and had received a favorable court decision.

According to Point 1 of Article 9 of the "Rules of the Committee of Ministers for the Supervision of the Execution of Judgments and of the Terms of Friendly Settlements", *"The Committee of Ministers shall consider any communication from the injured party with regard to payment of the just satisfaction or the taking of individual measures"*. Pursuant to the possibility, foreseen by this provision, "Meltex" LLC has sent to the Committee of Ministers overall 4 communications (documents No.No. DH-DD(2010)369E, DD(2010)72 and DD(2009)307E of the Committee of Ministers). According to Point 2 of Article 9 of the Rules, *"The Committee of Ministers shall be entitled to consider any communication from non-governmental organisations, as well as national institutions for the promotion and protection of human rights, with regard to the execution of judgments under Article 46, paragraph 2, of the Convention"*. Subsequently, prominent non-governmental organizations such as Yerevan Press Club and the Committee to Protect Freedom of Expression have sent two communications (document of the Committee of Ministers No.DH-DD(2010)375E). In the aforesaid documents "Meltex" LLC and the NGOs had expressed their concern about the abovementioned as well as other wide range of issues, regarding the inaction of the authorities towards the ECHR ruling execution, the illegality of the 2010 broadcast licensing competitions, regulatory provisions, as well as actions and decisions rendered on their basis. Meanwhile, the documents and the last Resolution of the Committee of Ministers manifest that it had paid zero attention to the abovementioned communications. Therefore the question whether Point 1 of Article 9 of the Committee of Ministers' Rules has any practical purpose raises.

The holding of broadcast licensing competitions, prescribed by the Armenian legislation, was suspended by two years under a special amendment to the RA Law "On Television and Radio", adopted in September 2008 after the ECHR ruling on the case of "A1+". The moratorium on the competitions was stipulated by the absence of a concept on switching to digital broadcasting and of a respective regulatory framework. However the amendments to the broadcast legislation, signed by the RA President on June 17, 2010 (right on the day when the ECHR ruling on "A1+" was rendered in 2008) and clearing the way for new competitions, did not contain anything which would allow to talk about any additional knowledge, notions about digitalization of which the legislator was unaware in 2008 while freezing the licensing. This fact is not undermined by any single expert of this sphere. Thus, even the possibility for "A1+" to take part in a regular competition on common ground was delayed for two years.

There was a real contest between two applicants in only four of the 25 broadcast licensing competitions, held in 2010, the other competitions had only one applicant. "A1+" was among the applicants who had a

rival, and as result did not get a license. The June 17, 2008 ECHR ruling implied that during all the posterior competitions the National Commission on Television and Radio (NCTR) should provide DUE justification for determining both the winners and the losers. Whereas, the justification given to "A1+" cannot be considered as due anyhow, as it contains a direct contradiction with the ratings given by NCTR. Moreover numerous articles in the press, based on the examination of competition packages , show that NCTR has demonstrated a selectively strict and critical attitude towards the "A1+" application package.

As one of the reason for closure of "A1+" case the CoE Committee of Ministers alleges the process of reforming the Armenian broadcast legislation. Meanwhile, the abovementioned 2010 amendments to the RA Law "On Television and Radio" were strongly criticized by international organizations, local and foreign experts. In defiance of natural expectations on increased opportunities for broadcasters due to the digitalization process, the amendments provided for an abrupt decrease in number of Armenian TV channels. At the same time, despite the numerous demands, including CoE experts' recommendations, the RA Government did not release the results of the broadcast frequencies audit, which would allow to judge about the validity of reducing frequencies put up for the competitions. Respectively, these amendments only limit the chances of "A1+" for getting a license. The results of the initiated later work on new amendments to the broadcast law remain unclear. Anyway they will be procrastinated as the competitions have already been held in line with the current legislation.

In view of the above the Resolution of the Committee of Ministers does not conform with the resolutions of the Parliamentary Assembly of the Council of Europe, including Resolutions 1620(2008), 1643(2009), 1677(2009)1, where the CoE has repeatedly urged the Armenian authorities to ensure open, fair and transparent licensing competitions.

The Committee of Ministers' Resolution disregards the report of Thomas Hammarberg, Commissioner for Human Rights of the Council of Europe, released on May 9, 2011. The latter, highlighting the reasoning provided by the National Commission on Television and Radio on the results of competition No.11 between "A1+" and "ArmNews" TV companies, noted: "The methodology used to assess the bids was problematic and it affected the credibility of the tender."

The Committee of Ministers' Resolution cannot be positively perceived by the public as it radically contradicts to the assessments made by many prominent organizations regarding competition No.11. Thus, the international human rights organization "Human Rights Watch" assessed the competition as another setback for freedom of expression and information in Armenia. While, the international human rights organization "Freedom House" considered the thirteenth denial of "A1+" lawful request for a license as a slap in the face to advocates of free media everywhere.

Yerevan Press Club
Internews Media Support public organization
Committee to Protect Freedom of Expression
"Asparez" Journalists' Club of Gyumri
Media Diversity Institute-Armenia
"Investigative Journalists" NGO
"Journalists for the Future" NGO
Vanadzor Press Club
Vanadzor Branch of Helsinki Citizen's Assembly

Helsinki Committee of Armenia
Transparency International Anti-Corruption Center
Open Society Foundations-Armenia
“Krtutyan Asparez” NGO
“Menk Plus” NGO
“Shirak Kentron” NGO