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Advocate General's Opinion in Case C-92/23 | Commission v Hungary (Right to provide media services in a radio frequency)

According to Advocate General Rantos, Hungary infringed EU law by refusing to renew Klubrádió's contract for the use of the 92.9 MHz frequency and by excluding it from the call for tenders relating to that frequency

Klubrádió is a Hungarian commercial radio station, which, beginning in 1999, broadcast programmes concerning that country's public life. According to the European Commission, it is an independent radio which is critical of the government. In 2014, it signed a new contract with Mediatanács (the Media Council) for the use of the 92.9 MHz frequency in the Budapest broadcasting area. The contract was concluded for a period of seven years, with an option to renew for a period of five years.

On expiry of the contract, Mediatanács refused its renewal: it considered that Klubrádió had twice failed to fulfil its obligation to provide monthly information on broadcasting quotas, which constituted a repeated infringement. According to the Hungarian Law on the media, a repeated infringement automatically entails refusal to renew; minor infringements do not constitute such an infringement.

Subsequently, Mediatanács published a new call for tenders for the provision of media services on the frequency concerned, but Klubrádió's application was declared invalid. The decision was justified by errors in programming and Klubrádió's negative equity in the five years preceding the submission of its application. Klubrádió's application for temporary use of the frequency was also refused.

Claiming that, by preventing that radio station from providing its services, Hungary had failed to fulfil its obligations, in particular under the regulatory framework for electronic communications networks and services ¹ and the principle of proportionality, the European Commission brought an action for failure to fulfil obligations before the Court.

Advocate General Athanasios Rantos proposes that the Court should **uphold the Commission's action** so far concerns most complaints.

According to the regulatory framework for electronic communications networks and services, rights of use for radio frequencies must be assigned on the basis of objective, transparent, non-discriminatory and proportionate criteria. According to Advocate General Rantos, those principles are also applicable to a refusal to renew. The infringement of the obligation to communicate data relating to broadcasting quotas **does not appear to be so serious as to result in a refusal to renew**. Accordingly, Advocate General Rantos takes the view that Mediatanács, by the refusal decision, **breached the principle of proportionality**.

As regards Klubrádió's tender, **the inaccuracies in the programming grid are so insignificant** that it seems disproportionate to make them a ground for declaring the bid invalid. They do not appear to affect the substance of the tender and do indeed appear to lend themselves to correction following a request for clarification; that

circumstance does not affect the principle of equality of arms with the other applicants. Moreover, **the existence of negative equity** in Klubrádió's accounts **is not a factor which should have led to the rejection of its tender**. Thus, by rejecting Klubrádió's application as invalid, on the basis of disproportionate criteria, Hungary infringed the regulatory framework for electronic communications networks and services.

NOTE: The Advocate General's Opinion is not binding on the Court of Justice. It is the role of the Advocates General to propose to the Court, in complete independence, a legal solution to the cases for which they are responsible. The Judges of the Court are now beginning their deliberations in this case. Judgment will be given at a later date.

NOTE: An action for failure to fulfil obligations directed against a Member State which has failed to comply with its obligations under EU law may be brought by the Commission or by another Member State. If the Court of Justice finds that there has been a failure to fulfil obligations, the Member State concerned must comply with the Court's judgment without delay. Where the Commission considers that the Member State has not complied with the judgment, it may bring a further action seeking financial penalties. However, if measures transposing a directive have not been notified to the Commission, the Court of Justice can, on a proposal from the Commission, impose penalties at the stage of the initial judgment.

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The [full text](#) of the Opinion is published on the CURIA website on the day of delivery.

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¹ That regulatory framework consists, in particular, of [Directive 2002/21/EC](#) of the European Council and of the Council of 7 March 2002 on a common regulatory framework for electronic communications networks and services, as amended by Directive 2009/140/EC of the European Council and of the Council of 25 November 2009 amending Directives 2002/21/EC, 2002/19/EC and 2002/20/EC; of [Directive 2002/20/EC](#) of the European Parliament and of the Council of 7 March 2002 on the authorisation of electronic communications networks and services, as amended by Directive 2009/140; and of Commission [Directive 2002/77/EC](#) of 16 September 2002 on competition in the markets for electronic communications networks and services.