

[HU] Landmark Interpretations of the Hungarian Media Act by the Hungarian Constitutional Court

IRIS 1999-9:1/15

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On 30 June 1999 the Hungarian Constitutional Court (Court) provided landmark interpretations of certain provisions of Article 55 of the Act I of 1996 on Radio and Television Broadcasting (Media Act). (See the report on the claims in February IRIS 1999-3: 8). The challenged sections of the Media Act govern election procedure for the board of trustees (board) and the status of the presidium of trustees (presidium) of national public service broadcasting companies.

According to the Media Act, the board is composed of members elected by Parliament and members delegated by the organizations defined in the Media Act (Article 55 Section 2). The members elected by Parliament shall form the presidium (Article 55 Section 3). One half of the members who may be elected by Parliament to the board shall be nominated by the government factions (Article 55 Section 5). The other half shall be nominated by the opposition groups of MPs in such a way that at least one candidate of each group of MPs shall be elected as a general rule (see Article 55 Sections 5 and 8). The Court arrived at the following conclusions regarding the maintenance of a balanced ratio between governmental and opposition party nominees to the presidium. Those nominees who are still members of the presidium, even though their parliamentary faction has been dismissed as a result of the latest Parliamentary elections in Hungary, should be counted neither on the government nor on the opposition side. The Court argued that according to constitutional jurisprudence the terms "government" and "opposition" only relate to parliamentary status. According to the decision of the Court it is therefore constitutional that these members can remain in office until their term of four years expires (Article 55 section 9 of the Media Act). In accordance with section 55 the Court also pointed out that there are no such provisions explicitly laid down in the Hungarian Constitution, nor do any arise from the spirit of the Constitution which would require that only parliamentary parties could be represented in the presidium. On the contrary, the presence of such party nominees in the presidium whose parties were voted out of parliament can potentially counterbalance parliamentary influence on public service broadcasting.

The Court also held constitutional the provision which allows parliamentary parties to delegate members to the presidium (Article 55 Section 5). Contrary to the claim, this law does not constitute overwhelming political influence on public

service broadcasting. As the Court argued, the most important powers of management belong to the whole board, and not exclusively to the presidium. For example the board has the power to elect the president of the public service broadcaster (Section 66).

The constitutionality of Article 55 Section 8 of the Media Act has also been challenged before the Court. According to this section: "it is not an obstacle to the formation of the presidium of the board if either the government party or the opposition side does not nominate a candidate". The Court held this provision also to be constitutional. According to the majority of the judges, this section institutionalised mandatory parliamentary political compromise. It was aimed at preventing a situation where the formation of the presidium - and therefore the operation of the whole board - was impossible. In the opinion of the Court, the formation and operation of the presidium is most vital for the operation of public service broadcasting companies. However, the Court acknowledged that Article 55, Section 8 may potentially lead to political overrepresentation in the presidium which may cause unilateral political influence on freedom of opinion (broadcasting). In the meantime, the Court pointed out that there is a greater constitutional interest vested in the formation and operation even of a politically univocal board than in the endangerment of the solid operation of the board of public service broadcasters. Furthermore, in the majority opinion of the Court Article 55 Section 8 does not create disproportionate restriction on freedom of opinion, because this situation may only occur exceptionally, in cases where there is a lack of political compromise amongst parliamentary factions.

22/1999. (VI. 30.) AB határozat

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Constitutional Court judgement of 30 June 1999, Resolution number 22/1999 (VI.30.).

