[HU] New issues for the IRISZ TV case?

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On 22 February 1999, the Hungarian Supreme Court ruled in summary that the Hungarian National Radio and Television Commission (NRTC) did not act in accordance with law when it did not disqualify CLT-UFA's MAGYAR RTL's application for national terrestrial broadcast licences, awarded by NRTC in June 1997 after a public bid (Supreme Court judgement number Gf. VI.31. 856/1998/19, see IRIS 1999-3: 8; IRIS 1998-4: 9). In April 1999, NRTC filed a protest against this judgement in the Supreme Court. According to Article 270 of Act III of 1952 on Civil Procedure, unless otherwise prescribed by law, the parties to a case or third persons who have rights and legitimate interests related to it may submit a protest to the Supreme Court against any final decision passed in a civil case, claiming that the decision is unlawful or unfounded.

Basing its protest on legal grounds, the NRTC requested that the Supreme Court confirm the judgement of first instance, which had been favourable to NRTC and that the Supreme Court dismiss the plaintiff's appeal against the judgement of first instance including the refusal of IRISZ TV's modification to the claim.

On 24 November 1999, the Supreme Court issued an order, in which it referred to the Supreme Court's earlier judgement (see above Gf. VI.31. 856/1998/19 by another panel of the Supreme Court), in which it refused to decide on the merit of NRTC's protest. The Court referred to Article 29 of Act LXVI of 1997 on the Organisation and Management of Court (Act), which allows the suspension of the review of the IRISZ TV case until the decision in the "procedure of unity of law" in another case concerning bids for privatisation of state enterprises already pending before the Supreme Court has been rendered. The "unity of law procedure" is applied when one of the panels of the Supreme Court wishes to overrule the judgement of another panel of the Supreme Court concerning an issue of law (Article 29 Section 1 point b of the Act).

Now, on 7 December 1999, the privatisation of state enterprises unity of law procedure was completed with the following conclusions of the Supreme Court (Resolution Number 4/1999. PJE):

The court can address the allegations concerning violation of rules governing public bids for privatisation contracts.

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The claims of the participants in public bids for privatisation related to the annulment of the contract concluded between the announcer and the winner of a privatisation bid could not be refused on the ground that the plaintiff lacked legal standing to sue.

The Supreme Court reasoned that the participants in public bids for privatisation contracts have a legitimate legal interest related to the outcome of the bids and therefore have legal standing to sue. The SupremeCourt also pointed out that even if the plaintiff is successful in his litigation, he may not be placed in the position of the original winner of the bid. The Supreme Court argued that because of the freedom of contract stipulated in the Constitution, courts can conclude contracts between parties only in exceptional circumstances, i.e. in instances explicitly foreseen by law. However, according to the Supreme Court this does not mean that the bidders for privatisation contracts can not seek legal remedies through the courts because of the damage caused to them as result of the bids. Furthermore, the Supreme Court pointed out that in cases where the announcer of such a bid does not select the winner in accordance with the relevant rules, the applicant suffers injury because he loses the chance of winning and lacks equal competition opportunities with other bidders.

The law of unity judgement discussed above does not contain direct reference to the IRISZ TV versus NRTC case. However, the Supreme Court announced that the final decision on this matter will be reached in 23 February 2000. Until that time at least one question remains open. How this judgement of unity will be interpreted by the panel of the Supreme Court finally ruling on the IRISZ case?

4/1999. PJE Jogegységi Határozat

http://www.lb.hu/joghat/jp0499.html

Hungarian Supreme Court, Resolution Number 4/1999. PJE, 7 December 1999.

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