[RU] Supreme Court Cancels Government's Regulation

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On 11 April 2001, the Supreme Court of the Russian Federation considered in public proceedings a complaint lodged by the Kostroma city telephone network against the Government of the Russian Federation.

The complainant alleged that article 4.2 of the Regulation of the Government of the Russian Federation " On Licensing of Activities in the Communications Sector " of 5 June 1994 # 642 conflicted with the Federal Statute "On Licensing of Certain Kinds of Activities" of 25 September 1998 #158-FS; thereby infringing the complainant's rights. In fact, while the impugned article stipulated that the Ministry of Communications may issue a license within the territory limitations of an operator's activity, according to article 7 of the Federal Statute "On Licensing of Certain Kinds of Activities" if the federal bodies (currently the same Ministry of Communication), regulating licensing activity, issue a license, the activity may be performed on the whole territory of the Russian Federation.

The Government's representatives asked the Court not to uphold the complaint, because the Federal Statute "On Licensing of Certain Kinds of Activities" stipulated that the licensing procedure of some type of activities was carried out in accordance with acts already in force. The Government representatives referred to the fact that earlier the licensing of activities in the communications sector was regulated through the Federal Statute "On Communications" of 16 February 1995 # 15-FS, and the aforementioned Regulation of 5 June 1994 # 642.

However, the applicant claimed that the Regulation "On Licensing of Activities in the Communications Sector" of 5 June 1994 # 642 takes effect entirely regardless of the fact that such kind of rules should only apply if it does not contradict the Federal Statute "On Licensing of Certain Kinds of Activities". According to article 7 of this statute, if the federal bodies, regulating licensable activity, issue a license, the activity may be performed on the whole territory of the Russian Federation. At the same time, the Regulations "On Licensing Activities in Communications Sector" of 5 June 1994 # 642 allows for geographical limitations to be placed on the license. Hence this provision contradicts the federal act and should not be considered legal.

The Court also found that the reference to the fact that the provisions of the federal statute "On Licensing of Certain Kinds of Activities" do not apply to the

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licensing procedure in the communication's sphere were not well-grounded.

In accordance with the Federal Statute "On Communications" of 16 February 1995 # 15-FS, matters concerning licensing (such as types of license and periods of validity, terms of issue, suspension and termination and other matters) are regulated by the legislation of the Russian Federation. This is significant as such matters are regulated through not only the Federal Statute "On Communication" but also the Federal Statute "On Licensing of Certain Kinds of Activities". The latter is a basic act that concerns essential licensing matters, and determines the manner in which a license may be issued for an activity even if this activity is not included in the list of kinds of activities which are subject to licensing.

In fact, article 19 of the Federal Statute "On Licensing of Certain Kinds of Activities" stipulates that the licensing procedure, established by this act shall not affect the licensing procedures already determined by the existing acts. The Regulation "On Licensing of Activities in the Communications Sector" came into force earlier than the above-mentioned act.

As it was determined before the Federal Statute "On Licensing of Certain Kinds of Activities" came into force, the establishment of a licensing procedure in the communication sector has been delegated by the Federal Statute "On Communication" to the Government of the Russian Federation.

The Court took into consideration the Government's licensing procedure had been established before the federal act "On communication" was passed, and another procedure of licensing was not yet in place.

In accordance with article 19 of the Federal Statute "On Licensing of Certain Kinds of Activities" Presidential decrees and Government regulations concerning the licensing procedure on the territory of the Russian Federation shall be applied in that part which does not conflict with this law.

Thus article 4 of the Regulation, which limits the geographical area of the license, is contrary to article 7 of the Federal Statute "On Licensing of Certain Kinds of Activities" and therefore is not to be applied.

Hence the Court did not consider the Government's representatives' reference to the necessity of taking into account the capability of exploitation by technical means because it does not determine the limits of application of the issued license.

Thus the Court found that Article 4 of the "On Licensing Activities in Communications Sector" was not lawful and upheld the complaint.

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