# [HU] Constitutional Court Rules on Powers of the Media Authority

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On 10 February 2005 the Constitutional Court issued a decision concerning the power of the Országos Rádió és Televízió Testület (National Radio and Television Commission, the independent Hungarian regulatory authority for the media) to deliver official general interpretations of the law. The request for the decision of the forum was submitted by a judge of the Fővárosi Bíróság (Metropolitan Court) a few years ago in a case of an appeal against decision no. 1331/2002. (IX.12.) of the ORTT.

The background of the case can be summarised as follows: Act I of 1996 on radio and television broadcasting (Broadcasting Act) originally defined one sixth of the population of the country (approx. 650.000 households) as the largest possible area of service for a programme distributor. This limitation has been eased to one third by an amendment of the Broadcasting Act at the end of 2003. By the contested decision - brought before this amendment - the ORTT has established that the UPC Magyarország Kft., the largest Hungarian cable operator, had reached the legal maximum of its service area and the enterprise has been called to refrain from further extension. The cable operator submitted an appeal to the court against the decision. The judge turned to the Constitutional Court for guidance in this context.

The Constitutional Court analysed the relevant provisions of the Broadcasting Act and the corresponding practice of the regulatory authority. It found that the method for defining the actual area of service used in the case was set out by a separate decision - No. 1294/2001 (IX.28.) - of the ORTT. This decision provided detailed rules for calculating the relevant number of households in a general manner. The Constitutional Court also noted that under Act XI of 1987 on Legislation the ORTT has no power to adopt positions, guidelines, or any other general interpretations of the law. In regard to this the body also expressed in its ruling that such guidelines -issued by state organisations without the proper legal empowerment- are jeopardising legal certainty, since they might mislead the parties concerned by creating the false impression of having any binding force.

Drawing the conclusions the Constitutional Court has declared decision 1294/2001 (IX.28.) of the ORTT null and void, and emphasised that the role of the ORTT is to deliver decisions - being themselves subjects of judicial review - in individual

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cases.

The ruling of the Constitutional Court has provided the requested constitutional grounds for the Metropolitan Court enabling it to deliver a judgment in the near future concerning the merit of the appeal against decision 1331/2002 (IX.12) of the ORTT. Moreover the ruling has far-reaching implications regarding the practice of the ORTT. The broadcasting authority has already adopted a number of general interpretations concerning several provisions of the Broadcasting Act. These decisions lay down guidelines for broadcasters mainly in questions of advertising and sponsorship. The validity of these opinions is also called into question by the decision of the Constitutional Court.

### *2/2005. (II. 10.) AB határozat*

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