[LV] Constitutional Court Affirms the Independence of the National Broadcasting Council

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On 16 October 2006 the Constitutional Court of the Republic of Latvia (*Constitutions tiesa*) adopted the judgement on the constitutionality of the independent status of the National Broadcasting Council.

The judgement was adopted following the review of the application submitted by twenty members of the Latvian Parliament (*Saeima*). The members of the Parliament disputed certain provisions of the Radio and Television Act (*Radio un televīzijas likums*) adopted on 24 August 1995, claiming that they are contrary to the Constitution (*Satversme*) of the Republic of Latvia, namely, to Article 58 of the Constitution (stating that all state institutions are under the control of the Cabinet of Ministers) and Article 91 of the Constitution (stating that human rights shall be observed without any discrimination).

The disputed provisions of the Radio and Television Law (Article 46, paragraphs 6, 7, 8 and 9) form the core of the functions of the National Broadcasting Council, namely that the Council issues the broadcasting licences to broadcasting companies, including the commercial broadcasters, that the Council controls the observance of the laws in the activities of the broadcasters and may impose penalties in case of violations, including pecuniary penalties and revocation of the broadcasting licence. The members of the Parliament argued that the above-mentioned powers are characteristic of state institutions, as they give the Council the power to grant rights and impose obligations to private individuals and companies. According to Article 58 of the Constitution, all state institutions are under the control of the Cabinet of Ministers. The Council, however, is an autonomous institution and is not supervised by the Cabinet of Ministers; thus, the members of the Parliament believed that its powers are contrary to the requirements of the Constitution.

In this case the Constitutional Court for the first time had to focus on the interpretation of Article 58 of the Constitution. The Court at first established that this Article addresses the principle of the division of powers, and that the functions of the Council fall within the executive power. Also, the Court noted that the Council has been established on the basis of the Radio and Television Law, its members are elected by the Parliament, its autonomy is provided in the Radio and Television Act, and indeed it is not under the control of the Cabinet of

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Ministers. The Court continued with a challenging statement that Article 58 does not intend to prescribe that all state institutions without exception should be under the control of the Cabinet of Ministers. This argument was based on the historical interpretation of the Article, evidencing that the Article aims to exclude the authority of the president to give instructions to state institutions. However, the Article does not exclude that there may be state institutions which are independent in the fulfilment of their functions prescribed by law and are not under the control of the Cabinet of Ministers. There are special areas of the executive power which should not be under the control of the Cabinet of Ministers, as the Cabinet of Ministers may not implement these powers effectively. The Court mentioned examples such as the Central Election Committee and the Central Bank.

The Court proceeded with an examination of whether there was a justification for the Council being outside the control of the Cabinet of Ministers. The Court noted that the functions of the Council include the representation of the public interests in the area of electronic mass media, to ensure compliance with laws and the freedom of speech and information, as well as to safeguard free competition among electronic mass media. As the information and mass media may have a direct impact on processes of elections and public power, it is justified that the Council is not subordinate to the Cabinet of Ministers. The Court also paid attention to the Recommendation of the Council of Europe (Rec (2000)23) endorsing that the broadcasting regulators should be independent of political and economic interests. The Court pointed out that in case where the Council were to be subordinate to the Cabinet of Ministers, it might be impossible to ensure the right of freedom of speech within the activities of the electronic mass media, as the Council might be used in narrow political interests.

According to this reasoning, the Court concluded that the disputed provisions reflect a justified and necessary competence of the Council and that they are, therefore, in conformity with the Constitution. The judgment is final and may not be challenged.

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