[LV] Regional Court Assesses a Decision on Granting a Broadcasting Permit as Illegal

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On 4 January 2007, the Regional Administrative Court of Latvia ruled that a decision of the *Nacionālā radio un televīzijas padome* (National Broadcasting Council - NRTP) on the issuing of a broadcasting licence did not conform to the law. Although the specific decision concerned a permit for radio broadcasting, the principles pointed out by the court equally apply to television broadcasting licences.

The issuing of all kinds of broadcasting licences in Latvia is carried out by the National Broadcasting Council in accordance with the Radio and Television Law. The law requires a special competition for the assignment of free frequencies. In order to receive a broadcasting permit, the participant needs to win a competition. Within the competition, the Council must evaluate the applications of the participants and assess which application would best serve the needs of the public. The Radio and Television Law does not explicitly list the criteria that the Council should take into account when assessing the applications.

In the relevant case resulting in the judgement mentioned above, the Council issued the broadcasting permit for two individuals, but did not indicate in its decision any reasons why the application of these particular individuals was deemed to be the most suitable to the public needs. Before the court the Council argued that the Radio and Television Law does not foresee the obligation to explain its reasoning. Moreover, as the Council is a collegial body (decisions are adopted by the majority of the nine Council members' votes), each member is voting according to his/her own opinion and taking into account his or her individual reasoning. The claimants nevertheless argued that the Council, as an executive body, is obliged to comply, not only with the Radio and Television Law, but also with the laws on administrative procedure, which require that each administrative act (and a decision on a broadcasting permit is an administrative act) must contain the grounds and reasons for its adoption.

The court of the first instance (the Administrative District Court) had rejected the claim, stating that the Council members are representatives of the public and their reasoning may not be subject to evaluation by the court. Nevertheless, the Regional Administrative Court had an opposite opinion and ruled that the decisions on granting broadcasting permits must contain the reasoning. Although

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the court cannot assess the rationality of the reasons presented by the Council, it has to examine if the Council has indicated certain reasoning and grounds for the decision at all. The court agreed with the claimant's argument that the Council is, as a public executive body, obliged to follow the requirements of the administrative procedure and to provide reasoning for its decision. In the case of granting broadcasting licences, the Council must indicate the criteria, which it has applied to the assessment of the applications, as well as to provide grounds as to why the application of the winning participant has been found the best and most suitable in view of the public needs.

The judgement is not final and may be appealed by any of the parties to the Senate of the Supreme Court of Latvia. However, the judgement follows a tendency, which has been established already by a similar judgement of the first instance court in a case adjudged in March 2006.

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