

[LT] Constitutional Court Examines Acts on Broadcasting

IRIS 2007-4:1/27

*Jurgita Iešmantaitė
Radio and Television Commission of Lithuania*

On 21 December 2006 the Constitutional Court of the Republic of Lithuania adopted a ruling on the compliance of certain provisions of the Act on the National Radio and Television of Lithuania, and the Act on the Provision of Information to the Public, with the Constitution of the Republic of Lithuania (see IRIS 2006-2: 17 and IRIS 2006-9: 16).

These acts established the model of financing of the Lithuanian Public Service Broadcaster (LRT) and the method of assigning the newly co-ordinated radio frequencies (channels) for the broadcasting of LRT programmes.

The ruling of the Constitutional Court is important for the Lithuanian audiovisual sector, because all of the disputed legal norms, still exist in the current Law on the LRT. Additionally, the ruling basically ended the debates regarding the legitimacy of advertisements broadcast on the Public Service Broadcaster's channels.

The Court adopted the ruling after it had examined the application of fifty-six members of the *Seimas*, the Lithuanian Parliament. They had criticised two issues:

1. The provisions of the Act on National Radio and Television of Lithuania (Law of 29 June 2000; Art. 5, 6 and 15), which provide that LRT is financed through allocations from the state budget and income obtained from advertising and commercial activity, that LRT has the right to carry out commercial activities (to broadcast advertisements) and that LRT has a priority right to newly co-ordinated radio frequencies (channels); and
2. the provision of the Law on the Provision of Information to the Public (Law of 29 August 2000; Art. 31), which states that newly co-ordinated radio frequencies (channels) for the broadcast of the LRT programmes be assigned on a non-tender basis.

The members of the Parliament claimed that LRT's financing model (financed from the state budget and at the same time granted the right to engage in commercial activity) contradicts the principal of fair competition (Art. 46 of the Constitution), and furthermore, that such legal regulation violates the principle of

equality (Art. 29 of the Constitution). They argued that state support is ensured only for one entity, whereas other entities (private broadcasters) that carry out the same activity, do not receive any support from the State.

The Constitutional Court pointed out that the State is under the constitutional obligation to ensure the activity of the Public Service Broadcaster and to assign sufficient funding for it. Further, the Court noted that the Constitution allows the legislator to choose the financing model of the Public Service Broadcaster at its own discretion. The choice of the financing model was an issue of social, political as well as economical expediency depending exclusively on the competence of the legislator.

The Court states, in the ruling, that the legislator has the right to determine by law the authorisation of, as well as the restrictions on, advertising in the programmes of the Public Service Broadcaster. The restrictions on advertising were a matter of legislation, and not subject to constitutional control. The Court noted that the legislator has the right to forbid advertising on the public service broadcaster only in the case where both public resources and financial potential made this possible, and if it did not affect the constitutional mission of the PSB.

As regards the legal regulation which provides a priority right for newly coordinated radio frequencies (channels) on a non-tender basis for the Public Service Broadcaster's programmes, the Court ruled that this is not in conflict with the Constitution of the Republic of Lithuania, because the state was obligated to create favourable conditions for the Public Service Broadcasters' activity as well as to safeguard the public interest.

According to this reasoning, the Court concluded that the named provisions are not in conflict with the Constitution of the Republic of Lithuania.

The Ruling of the Constitutional Court was final and is not subject to appeal.

-

<http://www.lrkt.lt/dokumentai/2006/n061221.htm>

Constitutional Court ruling of 21 December 2006

-

Constitution of the Republic of Lithuania

http://www3.lrs.lt/pls/inter2/dokpaieska.showdoc_l?p_id=275302

