[HU] Decision of the Constitutional Court on the Composition and the Regulatory Powers of the Media Authority

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The rules of Act I of 1996 on Radio and Television Broadcasting (Broadcasting Act) governing the election of the members of the *Országos Rádió és Televízió Testület* (National Radio and Television Commission - ORTT) have been the subject of complaints submitted to the Constitutional Court on several occasions. Complaints have also been filed with regard to the unique regulation of the legal relationship between terrestrial broadcasters and the media authority. In this respect it shall be noted that, unlike in most European countries, the basis of this relationship is not a licence as issued by the media authority, but a contract concluded between ORTT and the broadcaster on the basis of terrestrial frequencies. However, beyond its role as a contractual partner, the ORTT also has the power to act as an authority in certain cases, such as imposing sanctions.

On the basis of the relevant complaints the Constitutional Court delivered a decision on these issues in June 2007. The most important elements of this decision can be summarised as follows:

- As regards the composition of the membership of ORTT the Constitutional Court found that the current rules of the Broadcasting Act governing the election of the members of ORTT are in compliance with the necessity for institutional independence of the media authority. In the view of the Constitutional Court, as expressed in its decision, the judicial control over the decisions of ORTT and the process of election by the Parliament provides sufficient guarantees for the institutional independence of ORTT, even if its members are nominated exclusively by the parliamentary factions.

- Concerning the process of tendering terrestrial broadcasting possibilities the Court expressed that the procedure established by the Broadcasting Act does not provide the possibility for applicants request judicial review of the decisions of ORTT. This is in contradiction to the constitutional principle of the right of appeal. As a consequence the Constitutional Court has called on the Parliament to implement proper regulation by the end of this year.

- In respect of the dual nature of ORTT in its relationships with terrestrial broadcasters, the Constitutional Court stated that the possibility for ORTT to act

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as an authority or as a contractual partner in the same cases at its sole discretion, as granted to it by the Broadcasting Act, is contrary to the principle of legal certainty. As a consequence the Constitutional Court annulled the provision granting the ORTT the status of an authority while imposing sanctions on broadcasters from 1 January 2008.

The decision of the Constitutional Court can be evaluated in the light of decision 59/2007 (VI.26.) of the Parliament on the reform of audiovisual media regulation. Arising from the decision of 26 June 2007 the Parliament expressed the need for a comprehensive amendment of the national regulatory framework of the audiovisual media. According to the Hungarian Constitution this requires a qualified majority (at least two thirds of votes) in the Parliament. It is obvious that the clear statements made by the Constitutional Court in its recent decision and the removal of powers of authority from the ORTT provides extra pressure for a new wave of such media legislation.

However, it is also worth noting that there are a number of Hungarian cable and satellite television channels operating on the basis of a single registration. For them, lacking any contractual relationship with the ORTT, the decision of the Constitutional Court might become a source of legal uncertainty.

Magyar Közlöny 81. szám 2007. junius 27.

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Decision 46/2007 (VI.27.) of the Constitutional Court, promulgated in Official Journal No. 81 27 June 2007

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Decision 59/2007 (VI.26.) of the Parliament on the reform of audiovisual media regulation, promulgated in Official Journal No. 80 26 June 2007

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