[BG] Postponement of Tenders for Analogue Television Deemed Null and Void

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Rayna Nikolova
New Bulgarian University

In a judgement of 11 January 2008 the Supreme Administrative Court confirmed that the Council of Electronic Media (CEM) is not empowered to issue declarations, and therefore was not able to effectively postpone tender decisions by declaration.

In 2006, the CEM published eight tenders for analogue television frequencies with local coverage for the cities of Sofia (3), Plovdiv (2) and Varna (3). After a special expert commission evaluated the tender documentation prepared by the applicants in the first half of 2007, a session of the CEM was scheduled for 2 July 2007 with the only purpose being to evaluate the applications and announce the successful bidders. However, at its meeting the Council did not announce the successful bidders and adopted a declaration stating that it will take its final decision after the Council of Ministers adopted the National Digital Frequency Plan.

One of the participants in the tender, TV Sedem EAD, appealed the declaration of the CEM before a three member jury of the Supreme Administrative Court (court of first instance). On 28 September 2007, the Supreme Administrative Court issued decision No. 8898 announcing that the declaration of the Council postponing the completion of the published tenders for analogous television for the cities of Sofia, Plovdiv and Varna was null and void.

The three member jury of the Supreme Administrative Court reached its decision on the basis of the following reasons: “Although the decision of the Council was issued in the form of a declaration, the latter has direct legal effect on the completion of the procedures for the allocation of the eight free frequencies in the cities of Sofia, Plovdiv and Varna. [...] In its capacity as a collective administrative body with special competence, the Council shall adopt its decisions in accordance with the provisions of Article 34 - 36 of the Radio and Television Act. Those decisions constitute administrative acts subject to appeal before the Supreme Administrative Court. [...] The specialised state bodies can issue administrative acts, which are termed “decisions” by the legislature and that have a form and content prescribed by the law. In this case, the appealed declaration has been issued outside the competence granted to the Council by the law. The Council is not permitted to issue declarations, but only reasoned decisions (compare Article

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32 para. 2 and Article 116 of the Radio and Television Act). According to the established court practice, an administrative act issued outside the competence of the issuing authority shall be deemed null and void and cannot have legal effect. [...] Based on the above, the court holds that the declaration of the Council has been issued in breach of Article 32 para 4 of the Radio and Television Act and therefore the declaration should be considered null and void".

The CEM appealed the decision of the court of first instance before a five member jury of the Supreme Administrative Court. On 11 January 2008, the court of second instance issued its decision No. 425 rejecting the Council's claim and upholding the previous decision.

On 22 January 2008, the CEM scheduled its final decision for 5 February 2008 regarding the announcement of the successful bidders in the eight tenders for analogue television. The participants in the tenders warned that they would bring the issue before the European institutions, if the Council fails again to announce the winners in the eight tender procedures.

On 5 February 2008 the CEM failed to form the necessary legal quorum and its session was cancelled. Two days later, on 7 February 2008, the Media Commission at the Parliament issued a statement that the eight tenders for analogue television should be finalised as soon as possible.

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Supreme Administrative Court, judgement of 11 January 2008

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