[HU] Procedure of Establishing Broadcasting Fees for Cable and Satellite Broadcasters Found Unconstitutional

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In a judgement of 8 April 2008, the Hungarian Constitutional Court evaluated the procedure for defining broadcasting fees by the *Országos Rádió és Televízió Testület* (National Radio and Television Commission - ORTT) and established that the lack of detailed criteria in this regard as defined by law is not compatible with the Constitution.

On the basis of the regulation provided by Act I. of 1996 on Radio and Television Broadcasting (Broadcasting Act), broadcasters under the jurisdiction of Hungary are obliged to pay an annual broadcasting fee. The broadcasting fee is the income of the Broadcasting Fund that is managed by the ORTT. In the case of terrestrial broadcasters the amount of the broadcasting fee is offered by the applicants and forms one element for evaluation in the tendering procedure. On the other hand, the fees for satellite and cable broadcasters are defined unilaterally by the ORTT. Regarding the latter categories of broadcasters, the Broadcasting Act gives almost an absolute freedom to the ORTT in calculating these fees.

It is worth noting that in recent years the related practice of the ORTT has been the subject of several criticisms. Broadcasters pointed out that the fees prescribed by the ORTT are much higher than similar fees applied in neighbouring EU member states. High broadcasting fees have also contributed to decisions by broadcasters to change their place of residence and re-establish their broadcasting activities i.e. in the Czech Republic.

In the recent decision the Constitutional Court expressed that the arbitrary definition of the broadcasting fee system is not compatible with the Hungarian Constitution. According to the judgement, the absence of detailed and legally binding criteria prevents the courts from effectively supervising the corresponding decisions of the ORTT. In this regard, as argued by the Constitutional Court, the lack of legally binding guidelines for the definition of the broadcasting fees forms a violation of the right to appeal as enshrined by Article 57 § (1) of the Hungarian Constitution. On these grounds, the Constitutional Court called upon the Parliament to solve the constitutional problem and to enact proper legislation on the issue by the end of 2008.

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In a concurring opinion attached to the decision, one of the judges expressed that arbitrary definition of the broadcasting fees is also contrary to the constitutional requirement of legal certainty. He also argued that the Constitutional Court should have overruled those provisions of the Broadcasting Act that make possible the arbitrary decisions of the ORTT.

The recent judgement follows an earlier decision of the judicial forum (see IRIS 2007-8: 13) that also pointed out some unconstitutional elements in the Broadcasting Act. Such decisions of the Constitutional Court continue to highlight the necessity of revising the twelve year old regulatory regime.

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http://isz.mkab.hu/netacgi/ahawkere2009.pl?s1=37/2008&s2=&s3=&s4=&s5=&s6=&s7=&s8=&s9=&s10=&s11=Dr&r=1&SECT5=AHAWKERE&op9=and&op10=and&d=AHAW&op8=and&l=20&u=/netahtml/ahawuj/ahawkere.htm&p=1&op11=and&op7=and&f=G

Judgement 37/2008. (IV.8.) of the Constitutional Court promulgated in the Official Journal Magyar Közlöny , No. 58, 8th April 2008, page 3013

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