[BG] Decision of the Constitutional Court on Digital Broadcasting

IRIS 2009-8:1/8

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On 4 June 2009 the Bulgarian Constitutional Court decided on a case regarding the constitutionality of some provisions of the Electronic Communications Act (ECA) and the Radio and Television Act. The application to the Constitutional Court was submitted by 51 members of the National Assembly. The application contains arguments for declaring Article 47a, Article 48, paras. 3, 4 and 5 of the ECA (published in the State Gazette, issue 17 of 2009); Paragraphs 5, 5a, 5b, 5c, 5d of the Final and Transitional Provisions of the ECA and Article 116i of the Radio and Television Act (published in the State Gazette, issue 14 of 2009) incompatible with the Bulgarian Constitution.

The application states that Article 47a of the ECA contradicts the Constitution because by virtue of this provision a restriction on radio and television operators and their related parties in obtaining permits for the use of a scarce resource (radio frequency spectrum for carrying out electronic communications through electronic communications networks for terrestrial digital broadcasting) is established.

According to the disputed Article 48, para. 3 of the ECA, an enterprise and its related parties, which has/have obtained a permit for the use of an individually assigned scarce resource, is/are restricted to becoming a radio and television operator or to creating radio or television programmes. In addition, the above-mentioned enterprises and their related parties cannot construct electronic communications networks for broadcasting radio and television programmes (Article 48, para. 5 of the ECA). According to the claim submitted to the Constitutional Court the said prohibition contradicts Article 19, paras. 1, 2 and 3 of the Constitution because it violates the principle of equal economic initiative and the principle that all Bulgarian and foreign legal entities performing economic activities in the country should enjoy equal rights. The prohibition contained in Article 48, para. 3 of the ECA is identical with the ban set out in Article 116i of the Radio and Television Act.

The Constitutional Court decided as follows:

- Article 48, para. 5 of the ECA has been proclaimed unconstitutional and therefore illegal, and

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- Paragraph 5a, item 1 (which says:” Within the framework of a single procedure under Article 48 (1) herein, the Communications Regulation Commission shall designate a single undertaking whereto the said Commission shall grant an authorisation for the use of the individually assigned scarce resource - radio spectrum, for the provision of electronic communications over electronic communications networks for digital terrestrial broadcasting within a national range in conformity with the provisions for the First Stage of the Plan for the Introduction of Digital Terrestrial Television Broadcasting (DVB-T) in the Republic of Bulgaria, adopted by the Council of Ministers.”) has been proclaimed partially illegal.

The rest of the disputed provisions have been declared compatible with the Constitution and therefore remain in force.

РЕШЕНИЕ № 3 София, 4 юни 2009 г. по конституционно дело № 3 от 2009 г., съдия докладчик Георги Петканов (Обн., ДВ, бр. 45 от 16.06.2009 г.)

http://www.constcourt.bg/Pages/Document/Default.aspx?ID=1286

Decision No 3 of 4 June 2009 on Constitutional Case No 3/2009

http://www.constcourt.bg/Pages/Document/Default.aspx?ID=1453

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