

[LV] Supreme Court Adjudicates on the Duties of the NBC

IRIS 2010-1:1/31

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On 1 October 2009 the Department of Administrative Cases of the Supreme Court Senate issued a judgment in a dispute between a private person and the National Broadcasting Council (NBC).

The underlying facts concern a private person, R., who requested from the private TV broadcaster LNT a copy of a broadcast that allegedly contained defamatory information on R. LNT offered a copy for a certain fee, which R. considered too high. Consequently, R. complained to the NBC, asking it inter alia to penalise LNT. The NBC denied the request and R. appealed this denial in the administrative court. The court of first instance satisfied the claim in part on 3 October 2007 stating that the NBC had failed to provide a reasoned answer to R.'s complaint. The court requested that the NBC should issue a substantiated decision (see IRIS 2007-10: 17).

The judgment of the court of first instance was appealed by both parties. The appellate court rejected the claim in full on 3 December 2008. It agreed with the court of first instance that the answer of the NBC was not reasoned sufficiently; however, it indicated that the answer was essentially correct. The court explained that according to the Radio and Television Law (RTVL) a person has a right to request a copy of a broadcast from a broadcaster only if he/she wants to exercise the right of reply, but not in cases concerning other civil claims (e.g., a defamation claim). In such cases the evidence needs to be requested in accordance with the Civil Procedure Law.

The applicant further appealed the judgment to the Senate and considered that the appellate court had restricted the scope of the relevant provision of the RTVL. R. argued that a person has the right to request such a copy irrespective of what legal remedy he/she plans to pursue. R. explained that the object of his application was that the NBC should penalise LNT and ensure that LNT issue a copy of the broadcast to R.

The Senate established that R. requested the issuing of an administrative act: i.e., R. expected that the NBC should impose a penalty on LNT and requested LNT to issue a copy of the broadcast to R. for a fee acceptable to R. The Senate indicated that the RTVL provides a private person with the right to submit a complaint to

the NBC, but it does not provide a right to request that the NBC should penalise a particular broadcaster. The Senate referred to its earlier jurisprudence that a person's interest in penalising some official could not be recognised as a subjective legal interest. As a consequence, the Senate concluded that in this case R. wanted to use the NBC to solve a private dispute with LNT over the amount of the fee for the copy of the broadcast. In the Senate's opinion this dispute had to be solved by civil litigation.

The Senate decided that R. did not have subjective rights to submit this application to the administrative court and consequently the Senate cancelled the appellate court judgment and terminated the proceedings in the case. The judgment cannot be appealed.

NORAKSTS Lieta Nr.A42382506SKA - 293/2009 SPRIEDUMS Rīgā 2009.gada 1.oktobrī

http://c4.vds.deac.lv/files/AL/2009/10_2009/01_10-2009/AL_0110_AT_SKA-0293_09.pdf

Supreme Court Senate, Department of Administrative Cases, judgment of 1 October 2009

