[GR] Council of State Ruling Threatens to Invalidate Countless ESR Decisions

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The risk that a significant number of decisions of the Εθνικό Συμβούλιο Ραδιοτηλεόρασης (National Council for Radio and Television - ESR) may be cancelled is now visible in the wake of Decision 1098/2011 of the Συμβούλιο της Επικρατείας (Council of State - Supreme Administrative Court of Greece). The Court, on the basis of a constitutional provision (Article 101a) that states that the term of office of members of independent agencies must be fixed, held that statutory provisions extending such term beyond a reasonable period of time are unconstitutional. It consequently annulled an ESR decision - a fine imposed by the National Council for Radio and Television on a regional TV station that was issued in February 2007 - because the term of office of some of the persons involved in the seven-member independent body had expired eight months earlier.

It must be recalled that members of the ESR are decided upon by the Conference of Presidents, an inter-partisan college of the Greek Parliament, requiring a 4/5 majority of its members. Due to the obligation to achieve this increased majority, often significant delays in the appointment of new members can be observed. For example, the term of office of four ESR members expired in June 2006 and was not renewed until February 2008 and the term of office of three members that had expired in October 2009 was renewed for two of them in January 2011, while the decision on the renewal of the term of the third member is still pending. All this suggests that if the reasoning behind Decision 1098/2011 (where, it should be noted, a minority of 3 out of 7 judges dissented) is followed by other formations of the same Court, then a host of judgments that were taken in the above intervals will be threatened with annulment.

The ESR is one of the few independent authorities in the European broadcasting area lacking normative or advisory responsibilities and it has limited its activities to controlling the content of radio and television broadcasts, having issued a large number of decisions in recent years.

Συμβούλιο της Επικρατείας, Απόφαση Αριθμ. 1098/2011 (Δ΄ Τμήμα, 7μ.) 11 Απριλίου 2011

Administrative Court of Justice, Decision No. 1098/2011 (Section D, 7 members) 11 April 2011

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