[PL] Constitutional Tribunal Judgment on Fees for Granting Broadcasting Licences

IRIS 2011-8:1/40

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On 19 July 2011 the Constitutional Tribunal decided on the conformity of rules establishing the amount of the fee for granting a broadcasting licence with the Constitution of the Republic of Poland.

Art. 40 para. 1 of the Broadcasting Act of 29 December 1992 (Dz. U. of 2011, Nr 43, item 226, with further amendments - BA) specifies that a fee shall be charged for awarding a broadcasting licence, irrespective of the fee for the use of radiocommunications equipment or the use of a frequency, provided for in the Act on Communications. Art. 40 para. 2 BA specifies also that the exact amount of such a fee shall be determined by the National Broadcasting Council of Poland (NBC), in agreement with the Minister of Finance, taking into account the nature of the particular broadcasters and their programme services. These fees constitute a source of income for the State budget. Specific rules for determining such a fee were subsequently announced in the Regulation of the NBC of 4 February 2000. According to the guidelines given in Art. 40 para. 2 BA the aforementioned NBC Regulation established specific rules for determining the amount of a fee for radio and television programme services and for the various technical ways of distribution (analogue terrestrial, digital terrestrial, DVB-H standard, satellite or cable).

The Constitutional Tribunal found that Art. 40 para. 2 BA is inconsistent with Art. 217 (”The imposition of taxes, as well as other public impositions, the specification of those subject to the tax and the rates of taxation, as well as the principles for granting tax reliefs and remissions, along with categories of taxpayers exempt from taxation, shall be by means of statute”.) and Art. 92 para. 1 of the Constitution (”Regulations shall be issued on the basis of a specific authorisation contained in, and for the purpose of the implementation of, statutes by the organs specified in the Constitution. The authorisation shall specify the appropriate organ to issue a regulation and the scope of matters to be regulated as well as guidelines concerning the provisions of such act.”) of the Constitution. In consequence, the regulation adopted on the basis of Art. 40 para. 2 BA has also been found inconsistent with Art. 92 para. 1 of the Constitution. The Tribunal stated that specific rules for establishing the amount of a fee for granting a licence should have been established by an act adopted by the Parliament, not by regulation. The Tribunal held that Art. 40 para. 2 BA does not include sufficiently

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specific guidelines for determining the amount of such a fee.

It should be observed, however, that the rule that a fee is charged for granting a licence was not questioned by the Tribunal. It ruled that Art. 40 para. 2 BA and the regulation adopted on its basis will lose force 12 months after the publication of the judgment in the Official Journal, which took place on the day the judgment was announced by the Tribunal.

It is expected that Parliament will adopt an amendment to the BA containing a new redaction of Art. 40 para. 2.

Wyrok Trybunału Konstytucyjnego z dnia 19 lipca 2011 r. sygn. akt P 9/09

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Tribunal decision of the Constitutional Tribunal of 19 July 2011

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