[BG] Constitutional Court blocks Broadcasting Act

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In its Decision No. 21 of 14 November 1996, Bulgaria's Constitutional Court held that some of the main provisions of the recent Broadcasting Act adopted on 5.9.1996 (see IRIS 1996-10: 14) were unconstitutional.

The constitutional appeal lodged by 74 Members of Parliament, backed by a constitutional appeal lodged by the Attorney General, focussed on the statute, the composition and the powers of the National Broadcasting Council (NRR) (see IRIS 1996-6: 15). For the parliamentary draftsmen, the Council - which was based on a particular Western European model, as repeatedly stated in public debate - was to represent an external body under the authority of the State. Its brief was: to decide appointments to the internal organs of the State broadcasting organisation; to become involved in the management of frequencies by adopting a position on the programme intentions of private applicants for a broadcasting frequency; to supervise compliance with the provisions of the law by all programme-makers under the dual system of regulation. The Act refers to the NRR as a "specialised State body".

The Constitutional Court held that the establishment of a "State body" holding certain powers, powers which might lead to the suspicion of an indirect influence on the programme-making activities of broadcasting organisations, infringed the principle of freedom of the media, and was therefore unconstitutional.

With regard to the fact that the NRR was to be composed of persons elected or appointed by Parliament, the President or the Prime Minister, the Court emphasised that the principle of political pluralism meant excluding the possibility of "one or more political groups institutionalising a majority on the NRR, and therefore a majority in the management of national broadcasting operations." The Constitutional Court declared the current variant of the composition of the NRR to be unconstitutional; it refrained from giving any indication as to a possible solution to the problem. Nevertheless, the judges emphasised that "the substance of the principle of political neutrality in the composition and operation of the NRR is crucial to the constitutionality of the settlement." Furthermore the Constitutional Court quashed the incompatibility rules governing the creation of private broadcasting companies, including the restriction on the share held by foreign capital in Bulgarian broadcasting companies, which had been limited under the Act to a maximum of 49%.

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The right of political groups represented in Parliament to have access to radio and television was also declared unconstitutional, since this conflicted with the principle of equality and the principle of political pluralism. According to the Court, anchoring such a privilege in law would result in "the well-known totalitarian outcome, paid for by all Bulgarian citizens, of being influenced and indoctrinated by a single political faction represented in Parliament, or by several factions. An outcome which runs counter to the country's fundamental democratic order, and which represents a threat to freedom of thought and opinion." By its Decision no. 21, which all in all declared Section 15 of the Broadcasting Act to to be void and struck at the heart of the Act (the NRR), the Constitutional Court has effectively crippled the Broadcasting Act, and rendered it inoperative.

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Decision No. 21 of the Bulgarian Constitutional Court, of 14 November 1996, published in Darzaven vestnik No. 102 dated 29 November 1996.

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