

[PL] Regulations amending the Broadcasting Act partially unconstitutional

IRIS 2017-2:1/26

*Krzysztof Kowalczyk
BSJP Brockhuis Jurczak Prusak, Warsaw*

On 13 December 2016, the Polish Constitutional Tribunal issued a judgment on the assessment of the constitutionality of the Act of 30 December 2015 amending the Broadcasting Act (case no. K 13/16). The act changed, in particular, the manner of electing the executives of state-owned broadcasting companies and terminated the mandates of the current members of the management and supervisory boards of said companies (see IRIS 2016-2/22). The judgment was published in the Journal of Law on 29 December 2016. The applications for investigating the constitutionality of the act have been filed both by a group of Deputies of the Sejm (lower house of the Polish Parliament) and by the Commissioner for Citizens' Rights.

While assessing the sole legislative procedure, the Constitutional Tribunal decided that the allegation in this regard has not been sufficiently justified by the applicants. Thus, the Constitutional Tribunal discontinued the review proceedings with regard to this allegation - without a substantive examination of said issue. This way, the Tribunal did not make any final decision on the constitutionality of the legislative procedure, while not ruling out the possibility of a substantive examination in the event of any future proceedings on the basis of another application.

In principle, the Constitutional Tribunal declared the majority of the amendments introduced to the act admissible on the grounds of the Polish Constitution. For instance, the Tribunal allowed for electing the executives of state-owned broadcasting companies without a competition procedure. Similarly, what the Tribunal deemed compliant with the Constitution is that said executives shall be appointed without specifying their terms of office. The Tribunal also did not question the decrease in the number of members of the particular bodies of state-owned media companies. The Tribunal decided that the abovementioned amendments, as such, do not undermine the constitutional position of the National Broadcasting Council.

What the Tribunal deemed unconstitutional are in turn those provisions of the act that deprive the National Broadcasting Council of any influence over the process of electing members of the bodies of state-owned broadcasting companies. However, the Tribunal allowed here for a broad judicial discretion to be exercised

by the ordinary legislator. As indicated by the Tribunal, if the Constitution provides in Article 213(1) that the National Broadcasting Council shall safeguard freedom of speech, the right to information, as well as the public interest regarding radio broadcasting and television, it arises, therefrom, that the National Council has to participate in the process of electing members of the bodies of state-owned broadcasting companies (while not prejudging on the form of such participation).

In addition, the Constitutional Tribunal has questioned depriving the National Broadcasting Council of its powers to grant consent to modifications in the articles of the association of state-owned broadcasting companies. The Tribunal found that the constitutional position of the National Council requires that any amendments to the articles of association of state-owned media companies are made solely upon the consent of the authority in question.

Therefore, as a result of the issued ruling, another amendment to the Polish regulations regarding the appointment of executives of state-owned broadcasting companies will certainly be necessary.

Press release of the Constitutional Tribunal from 13 December 2016

<http://trybunal.gov.pl>

Press release of the Constitutional Tribunal from 13 December 2016

