[RO] Modification of the PBS law declared unconstitutional

IRIS 2017-8:1/31

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The Constitutional Court of Romania ruled on 12 July 2017 that some articles of the modified version of the Law no. 41/1994 on the functioning of the Romanian public radio and television services are not constitutional. The Court reacted to a complaint of unconstitutionality lodged by the National Liberal Party and the Popular Movement Party (opposition) (see inter alia IRIS 2013-5/37, IRIS 2013-10/36, IRIS 2014-1/38, IRIS 2014-2/30, IRIS 2014-4/25, IRIS 2014-6/30, IRIS 2014-7/30, IRIS 2015-6/33, IRIS 2015-8/26, IRIS 2016-5/28, IRIS 2017-3/26).

The Court declared unconstitutional the provisions of the draft Law which provided for the appointment of the new Boards of Administration, within 90 days from the date of its entry into force, as well as the provision that Board of Administration representatives are required to renounce their membership of a political party during the exercise of their mandates. The right of association cannot be restricted, ruled the Constitutional Court.

The opposition considered that the proposed modifications of Law no. 41/1994 will irremediably affect the status, organisation and functioning of public radio and television - two autonomous public services that are regulated by the Constitution. The Law does not clarify the legal status of the PBS as a result of the change in the manner of the financing of State broadcasting introduced by Law no. 1/2017, which cuts the radio and television licence fees. The Law excludes from the financing the acquisition of licenses, the production and distribution of events of major cultural, artistic and sports importance (domestic or international), thus significantly prejudicing Romanian citizens' right to be informed. It furthermore, according to the Liberal and Popular parties, removes from parliamentary control the executive management of public radio and television.

The Senate (the upper chamber of the Romanian Parliament) adopted on 20 June 2017 a draft law on the modification of Law no. 41/1994; under the amendment the functions of the President of the Board of Administration and of its CEO, presently held by a single person, will be separated.

The President of the Board will be appointed by the Parliament, as is the case now, and the CEO will be nominated on the basis of a selection of management

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projects, and the term of office shall be four years. During the exercise of their mandate the members of the Board of Administration are obliged to renounce to the membership of a party or, as the case may be, to renounce to be a member in the governing bodies of the trade union organizations. The draft Law provided for professional criteria for future Board members, including professional experience of at least 5 years in one of the media, cultural, communication, public relations, education, economic, financial or legal areas, as well as managerial experience. Another modification of the draft Law stipulated that the public radio and TV will mandatorily produce programmes for the ethnic minorities.

The decision of the Senate was final. The draft law was adopted tacitly by the Chamber of Deputies (the lower house) on 4 May 2016.

The Constitutional Court deemed that the Senate, acting as a decision-making body, had overstepped the constitutional limits imposed by the principle of bicameralism..

The Constitutional Court also ruled that changing the makeup of the existing Boards of Administration of the public radio and television, which operate under the existing form of the Law no. 41/1994, would breach the principle of the non-retroactivity of civil law.

The Parliament has now to correct those provisions that have been declared unconstitutional.

Decizia Curţii Constituţionale, 17/07/2017

https://www.senat.ro/Legis/PDF/2016/16L263DC.pdf

Decision of the Constitutional Court, 17 July 2017

Sesizarea Curţii Constituţionale, 3 July 2017

https://www.senat.ro/Legis/PDF/2016/16L263SC.pdf

Complaint lodged to the Constitutional Court, 3 July 2017

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