# [HR] Constitutional Court decision on CRTA's conformity with the Constitution

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*Nives Zvonarić*
*Ministry of Culture, Zagreb, Croatia*

The Constitutional Court of the Republic of Croatia has not accepted six proposals for initiating the procedure for assessing the conformity of Articles 33 (2), 34, 35 and 36 (1) of the Croatian Radio-Television Act (CRTA) with the Croatian Constitution.

All the submitters, in essence, contested the obligation (stipulated under the CRTA) for owners of broadcast receivers without exception to pay the radio and television licence fee in a standard amount of 80 Kuna per month and regardless of their financial capabilities. They complained that the fee therefore contravenes Article 51 (1) of the Croatian Constitution, which stipulates that everyone shall participate in the covering of public expenses in accordance with their economic capabilities. The applicants claimed that the fee is a public expense - a kind of parafiscal tax - which (just like any other public expense, such as regular taxes, fees, or duties) must be based on the principles of equality and fairness laid down in Article 51 (2) of the Constitution. Moreover, this “parafiscal tax” is not paid in respect of a product or service (i.e. watching and listening to radio and television channels according to the principle of "pay per view"), but on the basis of their ownership of a receiving device. They also submitted that setting the fee at the amount of 1.5% of average monthly net salary in the Republic of Croatia (according to recent data) represents an abuse of the “monopoly and dominant position” enjoyed by Croatian Radio-Television (HRT) - the public broadcaster financed by these funds - on the market, given that device-owners are obliged (i.e. forced) to participate in settling public costs. Furthermore, the applicants considered that, owing to the monopoly position of Croatian Radio-Television, private commercial radio and television broadcasters, which do not accumulate revenue from the collection of the fees, are disadvantaged compared to the public broadcasters and are therefore discriminated against. Thus, the disputed provisions of the CRTA would also contravene Article 49 of the Constitution, which requires the State to ensure that all entrepreneurs enjoy equal legal status on the market and prohibits the abuse of monopoly positions. Some applicants also submitted that the fact that some persons (natural and legal) are allowed to pay only one fee even though they own two or more receivers, while others are charged one fee per receiver owned contravenes Article 51 (2) of the Constitution as well.

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The Constitutional Court took the view that the CRTA was adopted (inter alia) with the aim of aligning the status, activity and financing of Croatian Radio-Television as a public service, in accordance with the acquis communautaire and the legal acts of the European Union undertaken during the process of the accession of the Republic of Croatia to the EU. The Court emphasised that the CRTA is part of the implementation legislation under which the national legal order was aligned with the requirements arising for Member States from the European Union legal order. In line with the general principles of State Aid Rules (as well as other relevant EU documents concerning PSBs), the CRTA establishes Croatian Radio-Television as a public service broadcaster aimed at providing as many citizens as possible with objective information. Hence, the sources and mode of financing Croatian Radio-Television must be considered in the light of its special public role. Accomplishing that role, with a view to maintaining the autonomous and independent position of a public service broadcaster, implies special forms of financing, as arising from the relevant parts of the State Aid Rules. In the present case, the fee as a form of public-service financing constitutes (previously existing) State aid that was already in place in the Republic of Croatia before the entry into force of the Treaty on the European Union for Croatia.

The Constitutional Court found that the monthly fee cannot be classified as a tax or other public fee (as the applicants had argued) and that accordingly, Article 51 of the Constitution did not apply. The monthly fee is a specific financial obligation (which has the nature of State aid) payable by anyone who owns or possesses a radio and television receiver or other radio or audio-visual programme reception device on the territory of the Republic of Croatia covered by a transmission signal. The monthly fee is not (directly) linked to the ownership of radio-television receivers, as argued by some applicants, but rather the possibility to access public broadcasting services. The obligation to make a monthly fee payment refers, or “is imposed”, only on those citizens who, by purchasing a receiver, gain the possibility of access to those broadcasting services undertaken in the public interest (namely services of general economic interest).

If products and services of Croatian Radio-Television (as a public service broadcaster) and the obligation to pay a fee in order to finance that service are regarded in this light, it is obvious that the position of its products and services on the market is different to the position and services of commercial providers; the Court therefore rules that the reference to an abuse of the monopoly position of Croatian Radio-Television or to the allegedly unlawful and unconstitutional standing of Croatian Radio-Television compared to commercial providers has to be rejected.

Lastly, the Constitutional Court also emphasised that discussing (in)equality requires two comparable parties in similar situations; unequal treatment or discrimination only occurs if parties in equal situations are treated unequally or if parties in unequal situations are treated equally. According to the Court, Article

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34 (8) CRTA stipulates an exemption for companies in the gastronomy sector from the general obligation to pay per receiver owned as stated in Article 34 (4) CRTA; however, this applies to a separate group of legal and natural persons (those in the gastronomy industry), which are not comparable to other groups of legal and natural persons to which Article 34 (4) of the CRTA applies.

### *Ustavni sud Republike Hrvatske, 10.07.2018, U-I - 662 / 2011*

https://sljeme.usud.hr/usud/praksaw.nsf/Praksa/C12570D30061CE54C12582CD00491110?OpenDocument

*Decision of the Constitutional Court of the Republic of Croatia (10.07.2018, U-I - 662 / 2011)*

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