

37/1992. (VI. 10.) AB decision

Summary

Headnotes:

The regulatory duty of the State - in the interest of enforcing "neutrality", that is comprehensive, balanced and accurate reporting - regarding the public radio and television was based on their monopoly position and the limited number of frequencies.

Summary:

The petitioners sought an *ex post facto* review of the constitutionality of Paragraph 6 of Council of Ministers Decree 1047/1974 (IX.18) MT and a declaration that the said Paragraph 6 was unconstitutional, as well as a declaration that there had been an unconstitutional omission to enact laws. Paragraph 6 of the said Decree provided that the Hungarian State Radio and the Hungarian State Television were under the supervision of the Council of Ministers, and subject to its approval of their corporate and operational regulation.

It was submitted that Paragraph 6 violated [Articles 8.2 and 61.2 of the Constitution](#), as well as [Article 61.4 of the Constitution](#), which permitted the regulation of the suspension of public radio and television and the appointment of their heads only by an Act passed by a two-thirds majority of the members of Parliament. In the absence of such an Act, passing such a regulation at the level of the Council of Ministers engendered an unconstitutional situation since it afforded the Government an exclusive opportunity to exercise a determining influence over news content, thus violating the right to the freedom of press.

The freedom of the press was a fundamental right derived from the umbrella right of all rights related to communication, the freedom of expression, guaranteed under [Article 61 of the Constitution](#). The State was obliged to guarantee press freedom, recognising that the press was the pre-eminent tool for disseminating and moulding views and for the gathering of information necessary for individuals to form their own opinions. Since the freedom of the press was subject only to external limits, it was primarily guaranteed by the State's non-intervention with respect to content, ensured (for example) by the prohibition of censorship and the opportunity to establish newspapers freely. The protection afforded to the right to be informed, namely the substantive and procedural means provided for safeguarding the freedom of information, was developed by the State in connection with regulating access to data not just by the press but by everyone. Since the forming of public opinions in a democracy depended on the objective and comprehensive dissemination of information, the right to information indispensable to the formation of such opinions was constitutionally recognised as a restriction on the freedom of the press only to the extent that it was unavoidable: statutory regulation would therefore be required to prevent the emergence of information monopolies.

The freedom of expression in radio and television imposed requirements beyond those necessary to secure the freedom of the press. As a result, in the present case, Paragraph 6 of Council of Ministers Decree 1047/1974 (IX.18) MT was contrary to [Articles 61.1 and 61.2 of the Constitution](#) because it did not contain any substantive, procedural or organisational

regulation which would preclude the possibility of the government using its licence to assert (even indirectly) a controlling influence on programme content. The protection of the freedom of expression of opinions in the radio and television context required extensive, legally-regulated, organisational solutions able to guarantee comprehensive, balanced and accurate reporting of the views prevailing in society and to promote unbiased reporting about facts and events in the public interest. Any future Act on radio and television would have to ensure that neither organs of the State (legislature or government) nor specific interest groups could, directly or indirectly, exert a formative or undue influence on the content of public radio and television broadcasting, thereby introducing bias in the subject-matter of programmes.