

22/1999. (VI. 30.) AB decision

Summary

Headnotes:

It is a constitutional requirement when applying Article 55.5 of the Media Law that those members of the executive committee of the boards of public broadcasters' foundation who were delegated by parliamentary groups which do not exist any more cannot be considered either as members who were appointed by governmental groups or as members appointed by opposition groups.

Summary:

In Act I of 1996 on Radio and Television (henceforth: the Media Law), the legislator established, *inter alia*, the Hungarian Radio Public Foundation and the Hungarian Television Foundation in order to provide public service broadcasting and to ensure its independence. The public foundations are managed by boards of trustees, which are composed of persons who are elected by Parliament or delegated by organisations defined in the Media Law. The trustees elected by the Parliament constitute the board's executive committee. According to Article 55.4 and 55.5 of the Media Law, Parliament elects at least eight trustees to the boards with a simple majority of the votes of the Members of Parliament. Half of the trustees are appointed by government groups and the other half are appointed by opposition groups. However, at least one nominee of each group must be elected. If a parliamentary group does not participate in the nomination, the other groups of the given side may nominate four persons.

The executive committee shall be established when all the members are elected. It is also considered to be established if a parliamentary group on the government or the opposition side does not nominate anybody. It shall be elected for a four year term. According to the Media Law, no change in the number of parliamentary groups during the term of the executive committee shall affect the members of the executive committee, but new member(s) shall be nominated and elected for the remaining term of the executive committee if the maintenance of equal proportions requires this.

In their submission, the petitioners requested the Court to declare unconstitutional Article 55.9 of the Media Law, which states that the fact that a parliamentary group which appointed a member to the executive committee no longer exists does not affect the mandate of the member in question. In the petitioners' view, this could violate the maintenance of equal proportions within the executive committee. According to the Court, under the Media Law, the most important tasks are not within the competence of the executive committee, but rather within that of the Board of Trustees. Therefore, parliamentary parties cannot influence the operation of public broadcasters through the members of the executive committee.

The Court also held that if a parliamentary group no longer exists, the representative of this group within the executive committee can keep his/her mandate, but this member cannot be considered either as a representative of a governmental group or as a representative of an opposition group. The equal proportion shall be maintained without taking into account these members of the executive committee.

Under Article 55.8 of the Media Law, the executive committee is considered to be established even if a parliamentary group on the government or the opposition side does not nominate anybody. As a consequence of this provision, in the petitioners' opinion, the committee can be considered to be established with the members appointed only by the governmental groups or the opposition, in violation of the principle of equal proportions. According to the Court, this provision aims to force the governmental groups and the opposition groups to reach a compromise on the new members of the executive committee, since the establishment and operation of the committee is an important guarantee of the continuous operation of public service broadcasters. Therefore this provision, though it limited the right to a free and balanced expression of opinions, helped to ensure the right to receive and impart information of public interest and the right to be informed. The Court emphasised that in the current case, the restriction was necessary and proportionate to the aim to be achieved, since without the establishment of the executive committee the Board of Trustees could not operate.

Supplementary information:

Five judges out of eleven attached dissenting opinions in which they emphasised that the Court should have declared Article 55.8 of the Media Law null and void, since it limited the right to freedom of expression unnecessarily. As a result of the establishment of the executive committee, the right to a balanced expression of opinions could not be achieved.