

KRRiT's statement on the bill amending the Broadcasting Act

30.12.2015

Sent at an accelerated pace late in the evening of 28 December for further parliamentary work, the bill contained in Sejm Paper No. 158, contrary to earlier announcements by politicians of the Law and Justice party, does not comprehensively deal with the issues of public media operation in Poland, but merely introduces changes which, once enacted, would allow the immediate appointment of new authorities in public radio and television enterprises.

The bill's drafters have prepared their proposed amendments independently of the current legal framework of this democratic state, without respecting the twenty-year-old ruling by the Constitutional Tribunal stating that *the principle of independence of public radio and television concerns in particular its position relative to the government. The interpretation of the provisions of the Broadcasting Act, including the provisions concerning the organisation of public radio and television enterprises and the position of their supervisory boards, should be made with regard to this axiological point of departure.*

The legal argument of the Constitutional Tribunal remains in effect, bearing in mind that the political position of the National Broadcasting Council enumerated in the Polish Constitution has not changed in the period since the ruling was issued. In a full bench ruling on the possible dismissal of supervisory board members by a government body (in 1995, by the Minister of Finance), the Constitutional Tribunal had no doubt as to the legal basis of KRRiT's authority, its sources and means of use. However, according to the Tribunal, such a dismissal of the members of supervisory boards by a government representative would threaten the boards' independence and *would run completely contrary to the constitutional interpretation of the principle of independence of public radio and television, and would also violate the constitutionally-established responsibility of the National Broadcasting Council for the proper functioning of these members of the mass media.*

The present bill transfers the right to appoint and dismiss the management and supervisory boards of public radio and television entities to a governmental body - the Minister of the Treasury - without also formulating any legal limitations on the exercise of these rights, allowing the minister to introduce virtually unlimited changes in membership.

The new model of appointing public media authorities abandons the use of competitions, in which, in the case of members of supervisory boards, the collegiate bodies of academic institutions were able to submit candidates. It also removes the authorities' term limits, which formed an essential guarantee of stability by providing a clear mechanism for assessing management. Moreover, it revokes the mandatory grounds for dismissal of members of the management and supervisory boards, granting full discretion in these matters to a one-man government body, and thus creating complete dependence on his person, which the Constitutional Tribunal warned against in 1995 and which has been avoided thus far. In addition, the bill does not provide for *vacatio legis*, introducing an unjustified haste to its enactment, contrary to the provisions on the promulgation of normative acts.

These selected examples of the bill's legal solutions demonstrate that the parliamentary majority aims to introduce the model of government-dependent state media known in the past. From the point of view of the law of a democratic state and its political foundations, this action eliminates the necessary distance between the authorities and public media, which serves to protect free speech, information and creative autonomy and forms a *buffer system* separating public media from the political realm.

Warnings against such outcomes as the above can be found in numerous documents of the European Community, which stress that the independence and transparency of the appointment of public media organisations form a fundamental part of institutional public radio and television's freedom and autonomy. Recommendation No. R (96) 10 of the Committee of Ministers to Member States on the **Guarantee of Independence of Public Service Broadcasting states: *The rules governing the status of the boards of management of public service broadcasting organisations, especially their membership, should be defined in a manner which avoids placing the boards at risk of any political or other interference.*** Other documents accepted by the Council of Europe and European Parliament are similar in spirit with regard to public media's legal status.

It should also be noted that the proposed amendment does not in fact carry out previous announcements made by Law and Justice politicians, in which they emphasised ideas for bringing public media under public control, e.g. through a system for appointing management in consultation with professional organisations of journalists and artists.

Changes to Polish media law are necessary. For many years, the National Broadcasting Council has been putting forward such a demand to bodies responsible for the legislative process, presenting expert studies and projects *de lege ferenda* along with their justification. Changes must thus be prepared in accordance with current legislative procedure. They should not be the result of political actions that, in breaking away from requisite procedure, are based exclusively on short-term justifications and party aims.

KRRiT Chairman
Jan Dworak

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