



Strasbourg, 29 January 2001
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Restricted
CDL (2001) 9

0149 / 2001

Engl. only

EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW

(VENICE COMMISSION)

**DECISION
ON CONSTITUTIONAL COURT
OF THE REPUBLIC OF ARMENIA
ON THE LAW
“ON TELEVISION AND RADIO”**

I

IN THE NAME OF THE REPUBLIC OF ARMENIA

DECISION OF THE CONSTITUTIONAL COURT OF THE REPUBLIC OF
ARMENIA

On the case on deciding the Question of Conformity of Paragraph 10 of Article 28, point 'C' of Paragraph 1 and Paragraph 4 of Article 32, Paragraph 1 of Article 35, Article 36 and Paragraph 1 of Article 40, Paragraph 2 of Article 42, Paragraph 3 of Article 59 of The Law "on Television and Radio" of the Republic of Armenia Adopted on October 9, 2000, by the National Assembly with the Constitution of the Republic of Armenia

City of Yerevan

January 11, 2001

The Constitutional Court of the Republic of Armenia chaired by the President of the Constitutional Court G. Harutyunyan, represented by the Deputy President of the Constitutional Court, Members of the Constitutional Court A. Gyulumyan, F. Tokhyan, H. Nazaryan, R. Papayan, V. Poghosyan, V. Sahakian and M. Sevyan,

with the participation of

an official representative of the plaintiff, D. Harutyunyan, Minister of Justice of the Republic of Armenia,

the respondents, the representatives of the National Assembly of the Republic of Armenia Sh. Khocharyan, President of the Standing Commission on science, education, culture and youth issues of the National Assembly of the Republic of Armenia and A. Yeremyan, Chief specialist of the Staff of the National Assembly of the Republic of Armenia.

pursuant to Paragraph 1 of Article 100 and Paragraph 1 of Article 101 of the Constitution of the Republic of Armenia, to Paragraph 1 of Article 5, to Paragraph 1 of Article 25 and Article 55 of Law "On the Constitutional Court" of the Republic of Armenia,

considered in a public hearing, the case on deciding the question of conformity of Paragraph 10 of Article 28, Point "c" of Paragraph 1 and Paragraph 4 of Article 32, Paragraph 1 of Article 35, Article 36 and Paragraph 1 of Article 40, Paragraph 2 of Article 42, Paragraph 3 of Article 59 of the Law "On Television and Radio" of the Republic of Armenia adopted on 9, 2000 by the National Assembly with the Constitution of the Republic of Armenia.

The case was initiated through a petition of the President of the Republic of Armenia contesting the constitutionality of the said Articles of the Law "On Television and Radio" of the Republic of Armenia, filed with the Constitutional Court.

Having heard the report of V. Hovhannissyan, the Deputy President of the Constitutional Court, having examined the explanations and comments of the parties to the proceeding,

having examined the Law "On Television and Radio" of the Republic of Armenia and other existing documents in the case, the Constitutional Court of the Republic of Armenia

FINDS:

1) Law "On Television and Radio" was adopted on October 9, 2000, submitted for signing to the President of the Republic of Armenia on October 20, 2000, it was signed on November 9, 2000 by the President of the Republic of Armenia, officially published and entered into effect on November 18, 2000.

The President of the Republic of Armenia, stipulated by Paragraph 2 of Article 55 of the Constitution of the Republic of Armenia, did not have any objections or suggestions on the said Law.

2) The discussed Law determines the status, rights and obligations of teleradio companies, regulates the system of its foundation, licensing and guidance, as well as issues pertaining to the creation and activity of the companies.

According to Article 16 of the Law "On Television and Radio" of the Republic of Armenia, teleradio companies can be both public and private.

Articles 28-36 of Law determine the system of fundamental principles of organizing and activity of the Public teleradio company, the particularities of its legal status.

Articles 37-46 of Law determine the powers, system of formation and activity of the independent organ of the National Commission, licensing and controlling the activity of the Public teleradio company.

3) The disputable provisions of Articles 28, 32, 35, 36, 40, 42 and 59 of Law concern to the confirmation of the Statutes of Public teleradio company and National Commission of Television and Radio and questions on review of its activity, as well as the system of state financing of the Public teleradio company.

4) The plaintiff considers, that the disputable provisions of the Law are contrary to the Constitution of the Republic of Armenia, because, first, the powers of the National Assembly are determined by the Constitution of the Republic of Armenia, they do not include such functions, which concern to the confirmation of the Statute of any legal subject, to the realization of financial special review separated from the general state budget, as well as to controlling of its activity through the reports. Secondly, the law in question, by reserving such powers to the National Assembly, puts the Public teleradio company in direct dependence from a legislative body of state authority. In addition, the powers reserved to the National Assembly by disputed norms of the Law on controlling the activity of the National Commission on Television and Radio, do not arise from the principles of creating an independent body exercising executive functions.

5) The respondent considers, that first: in spite of the fact that the law was adopted very hastily and contains norms that need to be corrected, it does not conflict with the Constitution of the Republic of Armenia. Secondly, the statute of both the Public teleradio company and the National Commission on television and Radio is foreseen to be confirmed by law, the constitutional authority for which, in their opinion, the National Assembly possesses. Thirdly, the disputed norms,

concerning the financial control, conform to the powers granted to the National Assembly by the Constitution of the Republic of Armenia, in particular, by the provisions of Article 77 of the Constitution of the Republic of Armenia. Fourthly, the system of control, stipulated by the law, conflicts with the powers granted to the President of the Republic by the same law and has the purpose to guarantee the transparency of activity of the bodies in question.

6) The disputed provisions of the law concern two different legal subjects: the system of activity and formation of the National Commission on Television and Radio and Public teleradio company. It, first of all, pursues the purpose to create legal bases to reform the National Television and Radio of the Republic of Armenia into a Public teleradio company. A similar approach is conditioned by the obligations of the Republic of Armenia pertaining to membership in the Council of Europe, which stipulate: "To replace the National TV channel by a Public TV channel under an independent administrative council". It is also necessary to mention, that this obligation concerns one of the problems in the field of Human Rights and the basis of its realization, in particular, should incorporate the requirement of Article 4 of the Constitution of the Republic of Armenia.

Proceeding from these reasons, Article 28 of the Law, becoming a subject of discussion, determines, that "The state creates a public teleradio company to guarantee the constitutional right of the citizens...", taking into consideration, the requirement of Article 24 of the Constitution of the Republic of Armenia. However, the problem is not only that human constitutional rights were restricted by the language in question, reserving them only to citizens, but it is also important, how the main idea is implemented in the law, in viewpoint of guaranteeing functional independence of the new informational system. The complete analysis of the law testifies, that the solutions in it are defective.

Therefore, the question on constitutionality of the disputed provisions of the Law (in particular, provisions of articles 28 and 36) first of all concerns the above-mentioned main problem. The law provides such a system of the formation and operation of the Council of Public teleradio company, which fixes the principle of an invariance of the members of the Council in their term of powers, longer term period of powers than the President of Republic of Armenia authorized by the power of nomination, exercising the principle of collegiality of election of the President and Deputy President of the Commission. Similar communications of institutes of state do not carry the nature of continuous control. Though, from the point of view of strengthening the guarantees of independent operation of the system, could be found other decisions, but not by that way, with which intensifies continuous, durable, direct and indirect effects of state authority on the activity of the newly formed system.

By the disputed norms of the Law "On Television and Radio" of the Republic of Armenia in the field of regulation the relations, regarding the foundation and activity of the public teleradio company, especially, granting such powers to the National Assembly, first of all should arise from these principles fixed by the Constitution of the Republic of Armenia, according to which, is the frameworks of law-making activity of the National Assembly are not clarified and not limited, then it is obvious from the Articles 62, 71, 76, 77, 81 and after comparison of a number of other Articles, that the controlling powers of the National Assembly, regarding executive power are determined definitely and concretely. Besides, with the authority granted to the National Assembly by Paragraph 10 of Article 28 and Paragraph 2 of Article 42, supposes not the existing of law-making activity of the National Assembly, but the direct and unbalanced power. If the given norms would be formulated so, that the appropriate Statutes are adopted by the law, than these norms would receive other legal contents.

Secondly, with regard to disputed provisions, the Convention on Protection of Human Rights and freedoms of 1950, the Covenant of Civil and political rights of 1966 and other relevant international instruments providing freedom of expression for everyone, including having own opinion, receiving and disseminating ideas and information, suppose the exception of intervention of state bodies as guarantee its exercising. But it is not an obstacle for execution of licensing system in this sphere, as well as, proceeding from the legal interests of the society and the state, of stipulating some restrictions by law.

In this case, the following circumstances should be taken into account in the laws which stipulate such restrictions:

- a) the law should be mostly general and more abstract than concrete concerning the definition and regulation of relations;
- b) the restrictions foreseen should be adequate and should arise from the nature of democratic principles of international law, as well as of national legislation;
- c) the restrictions should not endanger the main contents of Human Rights.

Consequently, taking into consideration the above-mentioned circumstances, the issue should not concern intervention into the activity of independently acting bodies through continuous and functional control, but rather the guaranteeing of independently acting legislature. This principle should be the main idea for this law.

7) Paragraph 10 of Article 28 of the Law "On Television and Radio" of the Republic of Armenia mentions: "The Statute of Public teleradio company confirms the National Assembly of the Republic of Armenia", in Article 32, where the powers of the governing body of Public teleradio company, that is the Council, are determined, it is foreseen, that the Council "cultivates and represents the Statute of Public teleradio company to the National Assembly" (Paragraph 1, Point "c") and an annual report on its activity to the President and National Assembly of the Republic of Armenia (Article 32).

Article 75 of the Constitution of the Republic of Armenia offers an exhaustive list of entities that have the right of legislative initiative in the National Assembly and no other body can may submit such bills to the legislative body by law, which are becoming the subject discussion of law and norms of which should have a legal force of law by the procedure of adopting of law.

Concerning the disputed provision of Paragraph 4 of Article 32 of the Constitution of the Republic of Armenia, such a communication can only has a purpose to guarantee transparency and can not have any legal effect.

8) Paragraph 1 of Article 35 of Law "On Television and Radio" of the Republic of Armenia mentions: "The Council forms annually the budget of expenses of Public teleradio company for the next year, separately notifying the Council on distributed amounts for Public teleradio company", and submits it to the Government of the Republic of Armenia, the latter submits them to the National Assembly for confirmation.

As regards controlling the issues on formation, confirmation and exercising of the state budget of the Republic of Armenia, these are regulated by Article 76 and Paragraph 2 of Article 89 of the Constitution of the Republic of Armenia, by the Law "On budget system of the Republic of Armenia", adopted on June 24, 1997 and by other legal acts.

Pursuant to Article 76 of the Constitution of the Republic of Armenia. "The National Assembly confirms the state budget upon presentation by the Government" and according to clause 2 of Article 89 the Government "presents the draft state budget for the confirmation of the National Assembly, guarantees the exercising of the budget, on which represents a report to the National Assembly".

According to Article 21 of the Law "On budget system of the Republic of Armenia" the state bodies of Government represent their and budget financing demands of the system to the Ministry of Finance of the Republic of Armenia, attaching to them the estimate of prescribed expenses with the relevant justification. After the analysis of the requirements and solving disagreement concerning them, the Government represents the final draft of budget to the National Assembly.

Therefore, the provision of Paragraph 1 of Article 35 of the Law "On Television and Radio" of the Republic of Armenia, does not violate the requirements of Point 2 of Article 89 and Article 76 of the Constitution of the Republic of Armenia, is not contrary to the Constitution neither in its contents nor by its form.

9) The 5th Part of the Law "On Television and Radio" of the Republic of Armenia is dedicated to questions on foundation, jurisdiction and operation of the National Commission on Television and Radio as an independent state body. Thus, according to Article 37 of law, the activity of the National Commission pertains only to licensing and controlling of Public teleradio company.

The idea behind the creation of such a commission is not only to restrict the opportunities in relation to administrative-governing influence and replace the function of governing with the function of regulation, but also to guarantee the freedom of activity and equal legal security of the subjects of system by law. After analysis of different Articles of the law, it follows, that the said issue has not received an exact and complete resolution yet.

As regards the disputable provisions on the National Commission, The National Assembly is granted a number of powers, concerning the issues of both foundation of the National Commission on Television and Radio, as well as controlling issues.

So, in the Law "On Television and Radio" of the Republic of Armenia

a) Paragraph 1 of Article 40 is mentioned: "The National Commission annually presents the financial report to the National Assembly of the Republic of Armenia. With the view of checking the reliability of this report, the National Assembly may hold an audit of the activity of the National Commission through the Supervision Chamber.

The National Commission publishes its report in press".

b) Point 2 of Article 42 is mentioned: "The National Assembly of the Republic of Armenia confirms the Statute of National Commission".

c) Paragraph 3 of Article 59 is mentioned: "After formation of the National Commission, the President of Commission represents the Statute of National Commission to the National Assembly of the Republic of Armenia within a month, which confirms the National Assembly".

"The analysis of Paragraph 1 of Article 40, Paragraph 3 of Article 59 of the Law "On Television and Radio" of the Republic of Armenia witnesses, that the disputed provision of the Article, by part of which the National Commission is granted the power to present a financial report immediately to the National Assembly, does not arise from the provisions of Articles 77 and 89 prescribed by the Constitution, controlling the state budget existence".

Proceeding from the results of the case, hearing and adhering to Paragraph 1 of Article 100, Article 102 of the Constitution of the Republic of Armenia, to Paragraph 1 of Article 5, Articles 55, 67 and 68 of the Law "On Constitutional Court"

DECIDES:

1. Paragraph 10 of Article 28 of the Law "On Television and Radio" of the Republic of Armenia, according which "National Assembly confirms the Statute of Public teleradio company" and formulation of which is not in conformity with the requirements of Article 62 of the Constitution of the Republic of Armenia.

2. Point "c" of Paragraph 1 of Article 32 of the Law "On Television and Radio" of the Republic of Armenia, according which "The Commission elaborates and presents the Statute of Public teleradio company" does not correspond to the requirements of Paragraph 1 of Article 75 of the Constitution of the Republic of Armenia.

3. Paragraph 4 of Article 32 of the Law "On Television and Radio" of the Republic of Armenia provides: "The Commission represents report on its activity to the President and National Assembly of the Republic of Armenia as such that does not make legal effects, is not contrary to the Constitution of the Republic of Armenia".

4. Paragraph 1 of Article 35 of the Law "On Television and Radio" of the Republic of Armenia, which provides: "Commission annually forms the budget for the next year of Public TV company and Radio company, separately notifying allocated amounts to the Commission, Public TV company and Public Radio company, submits it to the Government of the Republic of Armenia and the latter presents it to the National Assembly of the Republic of Armenia for confirmation, it is in conformity with the Constitution of the Republic of Armenia".

5. Article 36 of the Law "On Television and Radio" of the Republic of Armenia provides: "The Commission annually presents proposed program of operation of Public teleradio company together with a report on draft of annual state budget to the National Assembly for conformation", does not confirm with the requirements of Article 4, 5, 62 and 75 of the Constitution of the Republic of Armenia.

6. Paragraph 1 of Article 40 of the Law "On Television and Radio" of the Republic of Armenia, according to which "The National Commission annually presents the financial report to the National Assembly of the Republic of Armenia. With a view of checking reliability of this report, the National Assembly may hold an audit of the operation of the National Commission through the Supervision Chamber", pertaining to the provision of presentation of the system of the

financial report does not correspond to the demands of Articles 75 and 89 of the Constitution of the Republic of Armenia.

7. Paragraph 2 of Article 42 of the Law "On Television and Radio" of the Republic of Armenia, according to which, "The National Assembly of the Republic of Armenia confirms the Statute of the National Commission", does not correspond to the Article 62 of the Constitution of the Republic of Armenia with such formulation.

8. Paragraph 3 of Article 59 of the Law "On Television and Radio" of the Republic of Armenia, according to which, "After the formation of the National Commission, the President of the Commission represents the Statute of the National Commission to the National Assembly of the Republic of Armenia within a month, which is confirmed by the National Assembly", does not conform with the requirements of Paragraph 1 of Article 75 of the Constitution of the Republic of Armenia.

9. According to Paragraph 2 of Article 102 this Decision shall be final, is not subject to review and shall enter into effect upon publication.

President of the Constitutional Court of the Republic of Armenia:

G. HARUTYUNYAN

***January 11, 2001
CCR - 278***