

Judgment of 9th September 2004, [K 2/03](#)
RADIO AND TELEVISION LICENSE FEES

Type of proceedings: Abstract review Initiator: Commissioner for Citizens' Rights	Composition of Tribunal: 5-judge panel	Dissenting opinions: 0
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Legal provisions under review	Basis of review
Authorisation of the National Broadcasting Council to establish rules governing license fees for use of radio and television receivers, by means of regulation [Broadcasting Act 1992: Article 6(2) point 6 and Article 48(3)]	Conditions for authorising the issuing of a regulation Tasks of the National Broadcasting Council Legal reservation (exclusivity of statutes) in relation to public levies [Constitution: Articles 92(1), 213(1) and 217]

In common with many other countries, Polish public radio and television broadcasting is sustained by compulsory fees paid by radio listeners and television viewers and from advertisement revenues. Compulsory fees, referred to by statute as “license fees”, are lump sums collected for the use of radio receivers and television sets, with no regard paid to whether (or how often) they are actually used to receive public broadcasters’ programmes. Revenues collected from license fees are earmarked for realisation of a “public mission” carried out by public radio and television broadcasters in “offering, on the basis of principles specified by statute, to the entire society and individual parts thereof, diversified programmes and other services concerning information, journalism, culture, entertainment, education and sport, that are in their nature pluralistic, balanced and independent as well as innovative, of high quality and integrity of transfer” (Article 21(1) of the Broadcasting Act 1992). The legal mechanism relating to license fees, which do not form part of the State budget and are distributed directly to public broadcasters, ensures that such broadcasters retain their independence from political decisions relating to the distribution of State budgetary funds.

At present (autumn 2004), Article 48 of the 1992 Act represents the statutory basis for the obligation to pay license fees. Defining certain general principles directly (Article 48(1), (2), (4) and (5)), Article 48(3), read in conjunction with Article 6(2) point 6, of the same Act, authorises the National Broadcasting Council (*Krajowa Rada Radiofonii i Telewizji*; cf. Articles 213-215 of the Constitution) to specify, by means of a regulation, the level of license fees and the manner and procedure of payment thereof. This authorisation permits the National Broadcasting Council to specify cases when outstanding license fees will be remitted or accepted in instalments, together with the power to grant reductions or exemptions to certain categories of persons.

In his application to the Constitutional Tribunal, the Commissioner for Citizens’ Rights submitted that the aforementioned matters, representing significant components of public levies law, may, in the light of Article 217 of the Constitution, be regulated exclusively by statute (so-called legal reservation). The Commissioner also argued that the cited statutory authorisation, permitting the National Broadcasting

Council to issue regulations, did not fulfil the requirements stipulated in Article 92(1) of the Constitution. Moreover, in the applicant's opinion, the regulatory authority granted to the National Broadcasting Council by the challenged norm did not relate to the Council's constitutional tasks (as specified in Article 213(1)).

Together with the loss of binding force of the unconstitutional statutory provision, which will only occur on the date indicated in part II of the judgment summarised herein (or earlier, if the legislator introduces an appropriate amendment), the National Broadcasting Council's Regulation concerning fees will automatically lose its binding force.

RULING

I

1. Article 6(2) point 6 of the Broadcasting Act 1992, insofar as it authorises the National Broadcasting Council to set license fees, does not conform to Article 217 and conforms to Article 213(1) of the Constitution.

2. Article 48(3) of the Act (authorisation to issue a regulation concerning license fees) does not conform to Article 92(1) and Article 217 and conforms to Article 213(1) of the Constitution.

II

The Tribunal ruled that the loss of binding force of the provisions indicated in part I of this judgment shall be delayed until 30th September 2005.

III

Any fees collected on the basis of the provisions indicated in part I of this judgment shall not be subject to reimbursement.

PRINCIPAL REASONS FOR THE RULING

1. According to Article 213(1) of the Constitution, the National Broadcasting Council shall safeguard the freedom of speech and independence of the media. Furthermore, it is responsible for realisation of a public mission of the radio and television, encompassed in the "public interest" reference in the aforementioned constitutional provision. Realisation of the first goal need not be directly connected to the necessity of securing appropriate financial means for the activities of public radio and television broadcasting; however, the execution of tasks constituting this mission requires the provision of appropriate financial means. These may be either budgetary means or direct fees of a public-legal nature.
2. In the light of Article 213, read in conjunction with Article 92(1), of the Constitution, the National Broadcasting Council is authorised to issue, within constitutionally permissible limits, executive regulations concerning license fees.
3. In the light of Article 217 of the Constitution, the requirement that civil obligations be defined exclusively by statute (i.e. the principle of legal reservation) is particularly fortified in the case of taxes and other public levies. This represents not only a fortification of requirements in comparison with those stemming from Article 92 of the Constitution, but also a significant shift of competences within the context of the

separation of powers. The introduction, construction and level of levies, together with the principles governing their collection, belong to the sphere of the legislature's exclusive responsibility.

4. According to Article 50 of the Broadcasting Act, license fees are payments in favour of the "public interest" within the meaning of Article 213(1) of the Constitution. This interest implies the fulfilment by public radio and television broadcasters of a mission referred to, inter alia, in Articles 1(1), 21(1), 24(1)-(3) and other provisions of the reviewed Act. Accordingly, license fees may be recognised as a compulsory, non-refundable public-legal duty serving to realise the State's constitutional tasks. As such, they constitute a public levy within the meaning of Article 217 of the Constitution, distinguished from taxes and certain other public levies by virtue of their extra-budgetary nature and by the fact that their disposition is pre-determined for a particular purpose.
5. The recognition of license fees as a public levy within the meaning of Article 217 of the Constitution signifies that the imposition thereof may be undertaken solely by means of statute. All constitutive elements determining the financial burden imposed by this levy are matters whose regulation is reserved exclusively for statute. Only such issues as have no substantial significance on the construction of this levy may be regulated by means of an executive act (i.e. regulation).
6. In addition to its failure to conform to Article 217 of the Constitution, the reviewed authorisation for the National Broadcasting Council to issue a regulation, contained in Article 48(3) of the Act, does not fulfil the requirement of sufficient precision stipulated in Article 92(1) of the Constitution, since it does not contain guidelines concerning the content of such a regulation. It is also impossible to determine such guidelines on the basis of other provisions of this Act.
7. Whilst it is necessary to postpone the loss of binding force of the challenged provisions (part II of the ruling) in order to prevent the creation of a legal lacuna within which license fees would be factually non-existent for a certain period of time, the constitutionality of the existence of an appropriate levy was not challenged in this case and the defectiveness of this levy stems exclusively from the manner and procedure of its creation. The legislator should be provided with an appropriate time period within which to regulate this issue so as to render it in conformity with the Constitution.
8. Any "corrections" of binding law should not lead to a legitimisation of behaviour infringing the law. The Tribunal's finding that the reviewed legal provisions, adopted under provisions of the previous Constitution, fail to conform to the 1997 Constitution, for reasons concerned solely with the hierarchy of the sources of law, whilst at the same time approving the merited grounds for such a provision, should not and may not give rise to claims by citizens. For these reasons, any license fees collected to date, on the basis of the provisions still remaining in force, are not subject to reimbursement (cf. part III of the ruling).

Provisions of the Constitution

Art. 92. 1. Regulations shall be issued on the basis of specific authorization contained in, and for the purpose of implementation of, statutes by the organs specified in the Constitution. The authorization shall specify the organ appropriate to issue a regulation and the scope of matters to be regulated as well as guidelines concerning the provisions of such act.

2. An organ authorized to issue a regulation shall not delegate its competence, referred to in para. 1 above, to another organ.

Art. 190. [...] 3. A judgment of the Constitutional Tribunal shall take effect from the day of its publication, however, the Constitutional Tribunal may specify another date for the end of the binding force of a normative act. Such time period may not exceed 18 months in relation to a statute or 12 months in relation to any other normative act. Where a judgment has financial consequences not provided for in the Budget, the Constitutional Tribunal shall specify date for the end of the binding force of the normative act concerned, after seeking the opinion of the Council of Ministers.

Art. 213. 1. The National Broadcasting Council shall safeguard the freedom of speech, the right to information as well as safeguard the public interest regarding radio and television broadcasting.

2. The National Broadcasting Council shall issue regulations and, in individual cases, adopt resolutions.

Art. 214. 1. The members of the National Broadcasting Council shall be appointed by the Sejm, the Senate and the President of the Republic.

2. A member of the National Broadcasting Council shall not belong to a political party, a trade union or perform public activities incompatible with the dignity of his function.

Art. 215. The principles for and mode of work of the National Broadcasting Council, its organization and detailed principles for appointing its members, shall be specified by statute.

Art. 217. The imposition of taxes, as well as other public levies, the specification of those subject to the tax and the rates of taxation, as well as the principles for granting tax reliefs and remissions, along with categories of taxpayers exempt from taxation, shall be by means of statute.