

საქართველოს ახალგაზრდა იურისტთა ასოციაცია GEORGIAN YOUNG LAWYERS' ASSOCIATION



GYLA welcomes removal of license obligation for cable broadcasters

On April 11, 2012 the Constitutional Court of Georgia made a decision on the case Public Defender of Georgia vs. The Parliament of Georgia. The full version of the decision was placed on the official web-page of the Constitutional Court recently. Constitutional Court recognized license obligation for the cable broadcasting service unconstitutional, in contradiction with Article 24 (freedom of expression) of the Constitution of Georgia, however the court deemed necessary the license for satellite-based broadcasting.

GYLA, having the status of “a friend of the court”, was involved in the case. We should highlight that written opinions proposed by GYLA were reflected in descriptive part of the decision. GYLA insisted that unlike to terrestrial platform, in cable and satellite broadcasting naturally exhausting resource – frequency was not applied, therefore, receiving of license for start of such broadcasting from the Georgian National Communications Commission (GNCC) was not appropriate. On its side, after initiation of broadcasting without license by cable and satellite-based broadcasters, the Regulatory Commission should have retained the authority to inspect lawfulness of activity of such broadcasters.

The Constitutional Court upheld Public Defender and GYLA’s opinions in terms of cable broadcasters. The Court took into account that cable broadcasting was carried out by the infrastructure that was in private possession of broadcasting implementer entity, rather than by frequency spectrum under the state possession. Therefore, for launch of the broadcasting no license was required. The Commission retained authority to inspect compliance of the activities of cable broadcaster with the law, without license. The court did not either remove cable broadcaster’s obligation to submit, prior to launch of broadcasting, to GNCC information about the entity willing to start broadcasting.

The Court did not uphold public defender and GYLA’s position in the part of licensing satellite broadcasters. It stated that satellite broadcasting, in comparison to cable broadcasting, exceeds the borders of Georgia and falls under the jurisdiction of other countries; therefore it is subject to international regulation. The Constitutional Court declared that, state discretion in foreign relations to impose license restrictions is relatively broad.

The necessity of license for cable broadcasting created serious problems to TV Company “Maestro” in 2008. For the absence of license the Georgian National Communications Commission imposed sanctions on TV Company “Maestro”. Consequently, TV programs with public-political content were removed from broadcasting net of this Television station. With the motive to study public opinion the National Communications’ Commission refused TV Company “Maestro” in granting license for general broadcasting. The decision was appealed in a court. Ultimately, parties to the dispute have negotiated and by modification of the license “Maestro” managed to return with news programs and public-political programs only at the end

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of 2008. Nevertheless, failure to meet license obligation has hindered activity of cable broadcaster for some months.

Constitutional Court decision exempts the cable broadcasters from the obligation not to start broadcasting prior to initial permit from the commission. The decision is a step forward with a view to avoid cases similar to TV Company “Maestro” in future.