

## **13.02.2002, E.2001/293, K.2002/28**

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**Subject** : Powers, Privatisation, Freedom of contract, Energy, sector, regulation/ Contract, nullity.

### Headnotes:

The freedom of contract as guaranteed by Article 48 of the Constitution comprises the right to conclude contracts as well as the prohibition of intervention into concluded contracts. The parties to a contract are free to arrange the terms and conditions of the contract, and to decide when and how it shall be terminated.

### Summary:

The main opposition party appealed to the Constitutional Court alleging that some provisions of the Law on the Electric Energy Market are contrary to the Constitution.

It was projected that parts of the electricity sector should be privatised provided that the companies concerned operate these institutions for a certain period of time, and pay a certain amount of money. After the determined period, the establishments shall again be transferred to the public sector. This kind of privatisation is called "operate and transfer". The contracts regarding these establishments had been signed, but the actual transfer had not been realised since the necessary procedures had not been completed.

The challenged provisions stipulated that the contracts relating to a transfer of the electrical plants to the private sector shall be null and void if their actual transfer could not have been realised by 30 June 2001.

Article 48 of the Constitution provides that "Everyone has the freedom to work and conclude contracts in the field of his or her choice. Establishment of private enterprises is free". The Constitutional Court noted that according to that provision, the parties to a contract may arrange terms and conditions with their free will. It is for them to decide when and how a contract shall be terminated.

The challenged provisions stipulate that the contracts concluded by the free will of the parties (on the one hand the administration and on the other hand private companies) shall be annulled under certain conditions. On the contrary, to terminate a contract or to solve a dispute relating to the terms and conditions of a contract is subject to general rules.

For these reasons, the Constitutional Court concluded that the termination of contracts by law is contrary to Articles 2 and 48 of the Constitution. Thus, the challenged provisions were unanimously annulled.