[CZ] Constitutional Court Decision on Freedom of Information

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The Ombudsman of the Czech Republic has asked the Constitutional Court to rule on the compatibility with the Constitution of the Decree implementing the Secrecy Act. It is claimed that the Decree is not consistent with the constitutional law principles of legal certainty and the predictability of state action.

The protection of classified information is organised on two levels in the Czech Republic. General regulations are set out in the Secrecy Act, which defines matters that should be kept secret as "matters which, if known to the public, could jeopardise the interests of the Czech Republic or interests which the Czech Republic is obliged to protect". In order to implement the Act, the government has to issue a Decree listing matters that must be kept secret. A list of 18 such matters was appended to the Decree that was subsequently issued. Of these, 17 refer to actual files, while the final one covers "sensitive economic and security information linked to international relations".

In the Ombudsman's view, such a general provision is open to abuse and arbitrariness on the part of the authorities, particularly in relation to the transmission of information to the media. The list of secret matters should be worded in precise terms.

However, the Constitutional Court dismissed the Ombudsman's application on the grounds that if all secret matters had to be worded in precise terms, the objectives of the Act could not be met. Secret information might therefore have to be revealed. Predictability and legal certainty should not be considered absolute objectives. The Constitution also protected the legitimate interests of the Czech Republic and the legislator had to take all of these elements into account. Furthermore, citizens already had sufficient legal protection against any abuse and arbitrariness in the way these provisions were applied.

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