[PL] Constitutional Tribunal Examines the Act on Cinematography

IRIS 2006-5:1/29

Małgorzata Pęk
National Broadcasting Council of Poland

On 27 March 2006 the Commissioner for Civil Rights Protection - guarding human and civil freedoms and rights specified in the Constitution and other legal acts - appealed to the Constitutional Tribunal with the petition to state that article 19 paragraph 9 of the Act on cinematography of 30 June 2005 is not consistent with the Constitution.

The Act on cinematography of 30 June 2005 came into force on 19 August 2005. However, provisions on charges, being an important part of the cinematographic production support system (Article 19) came into force on 1 January 2006 (see IRIS 2006-1: 18).

The Act on cinematography established in Article 19 an indirect support system, aimed at strengthening the domestic cinematographic film market, but it also provided additional rules for public service broadcasters concerning direct support. This Act introduces charges (1,5% of revenues from certain types of activity) made by entrepreneurs whose business activity is connected with using films; i.e. broadcasters, digital platform operators, cable television operators, cinema owners, distributors selling or renting film copies in tangible form. These fees have to be paid to the Polish Institute of Film Art, which is a State legal person dealing with many tasks referring to the support of Polish film art.

The Article 19 paragraph 9 referred to states that payments described in the paragraphs 1 to 7 are subject to the application *mutatis mutandis* of the provisions of part III (“Tax obligations”) of the Act of 29 August 1997 on Tax Law (*Ordynacja podatkowa*). But in the case of the film funding charges, the competences of the fiscal administration are given to the Director of the Polish Institute of Film Art, and the competences of the appellation body are given to the Minister of Culture.

The Commissioner for Civil Rights Protection did not question the purpose or socio-economic usefulness of the fees described in Article 19 paragraph 1 - 7. But he claimed that it infringed the principle of correct and rational legislation referring to activities of fiscal administration and the collection of a new tax.

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Wniosek Rzecznika Praw Obywatelskich o stwierdzenie, że art. 19 ust. 9 ustawy z dnia 30 czerwca 2005 roku o kinematografii, przyznający Dyrektorowi Polskiego Instytutu Sztuki Filmowej uprawnienia organu podatkowego w związku z obowiązkiem wpłaty na rzecz Instytutu 1,5 % przychodu - narusza zasady poprawnej legislacji, a tym samym podważa zaufanie podatników do państwa i stanowionego prawa, a więc jedną z zasad demokratycznego państwa prawnego wynikającą z art. 2 Konstytucji RP

Constitutional Tribunal, Aplication of the Commissioner for Civil Rights Protection of 27 March 2006, case K 12/06

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