[PL] Constitutional Tribunal Examines Act on Cinematography

IRIS 2006-10:1/26

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The Polish Constitutional Tribunal held in its judgemnt of 9 October 2006 that the provision of Article 19 paragraph 9 of the Act of 30 June 2005 on cinematography is in conformity with the Constitution of the Republic of Poland.

The Act of 30 June 2005 on cinematography came into force on 19 August 2005; provisions on deductions 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 its Article 19 an indirect support system aimed at strengthening the domestic cinematographic film market, but also provided additional rules for public service broadcasters referring to direct support. This Act introduces deductions (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 are 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.

On 27 March 2006 the Commissioner for Civil Rights Protection approached the Constitutional Tribunal with a motion stating that Article 19 paragraph 9 of the Act on cinematography was not in conformity with the Constitution (see IRIS 2006-5: 17)

The provision questioned by the Commissioner for Civil Rights Protection - namely Article 19 paragraph 9 - states that payments described in paragraphs 1-5, 6 and 7 are subject to the application *mutatis mutandis* of the provisions of Part III (“tax obligations”) of the Act of 29 August 1997 - Tax Law (*Ordynacja podatkowa*) -, but in this case competencies of fiscal administration are given to the Director of the Polish Institute of Film Art and competencies of the appellate body to the Minister of Culture.

The Commissioner for Civil Rights Protection raised doubts about whether Article 19 paragraph 9 does not infringe the principle of the correct and rational legislation referring to activities of fiscal administration and the collection of a new tax.

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In its judgment the Constitutional Tribunal found that none of the arguments referring to competencies granted to the Director of the Polish Institute of Film in regard to fiscal administration does substantiate a charge of infringement of the Constitution.

In the opinion of the Tribunal no threat to the rights of those entities that are subject to the aforementioned payments exists. Vesting the Director of the Polish Institute of Film with competencies of fiscal administration constitutes a guarantee of the uniformity of the practice of collection payments, as the same central organ is enforcing the payments from all obliged entities.

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http://www.trybunal.gov.pl/Rozprawy/2006/k_12_06.htm

Press Release of the Constitutional Tribunal

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http://www.trybunal.gov.pl/Rozprawy/2006/Dz_Ustaw/k_12s06.htm

Constitutional Tribunal judgement of 9 October 2006 (case K 12/06)

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