[PL] Constitutional Tribunal Judgement on the Act on Disclosing Documents of the State Security Service from 1944-1990

IRIS 2007-10:1/30

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On 11 May 2007, after three days of deliberations, the Constitutional Tribunal of Poland issued its judgement on the illegality of several provisions of the Act on Disclosing Documents of the State Security Service from 1944-1990 (see IRIS 2007-5: 17), and presented its reasoning. The Tribunal found a substantial part of the Act to be inconsistent with the Constitution's provisions and rules. However, the judges were not entirely of the same opinion; nine submitted dissenting opinions on different specific issues dealt with in the judgement.

According to the very wide definition of the term "journalist" used in the Act, thousands of people involved in various ways in media activities, from both the public and commercial media sectors, became subject to the so-called lustration procedures. As a consequence, like all other professional groups enumerated in the Act, they were obliged by the law to file a "vetting declaration" and to answer the question as to whether or not they collaborated with the so-called special services (intelligence services) of the former regime. All were obliged to submit such declarations before 15 May 2007. According to the Tribunal's verdict, the lustration of journalists, in general, was deemed to be unconstitutional. Hence, the Tribunal stated, that the journalists who had not send their declarations up until the date mentioned above, were no longer obliged to do so; and that the declarations already submitted should be immediately returned.

The Tribunal is of the opinion that journalists (excluding the authors of commentary programmes in the public radio and television stations) and owners and chiefs of the private (commercial) media, are not, and should not be subject to lustration procedures, according to the respective provisions of the Constitution, and to binding instruments and standards of international law. The Tribunal recognises that subjecting private subjects (i.e. the private/commercial media sector) to the lustration process is not justified and illegal. As a constitutional requirement, limitations introduced by acts of law on the exercise of fundamental constitutional freedoms, in particular the freedom of expression and the media as well as the constitutional rights of individuals based upon these, may be imposed only when absolutely necessary in a democratic state, e.g. for the protection of the state security, the public order or health, etc., and when such limitations do not violate the essence of these freedoms and civil rights (Art.

31.3 of the Polish Constitution). Regarding the private media sector, such a case does not exist, according to the final opinion of the Tribunal; therefore, imposing such restrictions would infringe the proportionality rule.

Moreover, “private media” journalists do not belong to the legal catalogue of persons holding so-called “public functions” (a term which the Tribunal found to be far too broad). However, the Tribunal stated that the managing staff of the public electronic broadcast stations, and the programme managers and their deputies, editors and authors of commentary and information programme services of the channels, as well as managers of the regional programmes of the radio and television public stations may, and should be, subject to the lustration procedure. Only those categories of persons that evidently belong to the group of “public functionaries”, strictly connected with state and public authorities within the sense of “ *imperium* ”(“empire”) *or “dominium”,* shall be subject to the lustration procedure . This is why, according to the Court, such exclusion does not apply to the audiovisual public media sector.

The distinction between the public and the commercial media sector has evoked much legal doubt. Some of the judges did not share this opinion and stressed that journalists from neither the commercial nor from the public sector should be subject to the lustration procedure. Although they are “public persons”, having an enormous influence on public opinion, they cannot use legal and other “powerful” instruments characteristic of the state authority, i.e. they do not issue legal acts or administrative decisions.

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